STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of **Consumers Energy Company** for Ex Parte Approval of Certain Amendments to Rate GPD. /	Case No. **U-21859** (e-file paperless)

MICHIGAN PUBLIC SERVICE COMMISSION
STAFF'S INITIAL BRIEF

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Amit T. Singh (P75492)
Adam M. Cozort (P78363)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

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I. **Introduction and Procedural Background**

This case focuses on a new type of large-load customer (LLC) intending to take service from Consumers Energy Company (Company) within its service territory. To effectively serve this new type of customer, the Company filed its application requesting *ex parte* approval for certain amendments to rate GPD to accommodate unique high-demand load related to data center operations in February 2025. Several intervenors, including the Data Center Coalition (DCC), Association of Businesses Advocating Tariff Equity (ABATE), the Attorney General (AG), Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizen Utility Board of Michigan (MNSC), Ecology Center, Environmental Law and Policy Center, Union of Concerned Scientists and Vote Solar (Clean Energy Organizations or CEO) opposed the request for an *ex parte* order and instead requested that this case be conducted as a contested case proceeding. The Commission agreed and issued an order in March of 2025 setting a contested case proceeding. Following this, the Company filed a motion in limine seeking to limit the scope of the case and exclude issues related to "(1) whether Consumers Energy should serve data center load, (2) the development of a new rate for data centers, (3) the impact of data centers on other utility requirements (e.g. compliance with the renewable energy credit standard, the clean energy standard, etc.), and (4) the requirements for data centers to meet a Michigan sales tax exemption. Specifically, Consumers Energy requests that the Administrative Law Judge ("ALJ") limit the parties' evidentiary presentations to issues pertaining to the

"rules and conditions of service" for potential new data center customers under Rate GPD, including the reasonable protections that should be put in place due to the size of the data center customer's load and the impacts it could cause to the Company and its other customers." (Motion in Limine, p 5.) Responses opposing the Company's motion in limine were filed by ABATE, Data Center Coalition, MNSC, the AG, and CEO. At the prehearing, in addition to the routine schedule setting and addressing other matters, the ALJ heard argument on the motion in limine. During argument, Consumers' counsel explained that the Company no longer was seeking to exclude evidence offered by other parties regarding the development of a new rate for large customers or data centers. (1 TR 25.) Aside from this, the Company maintained its position seeking a ruling that multiple other issues be excluded as irrelevant. The ALJ granted the motion in part and denied in part, ruling that evidence and argument regarding whether or not the Company should serve data center load and the issue of the development of new data center rates should be granted, and denied the motion in limine with respect to issues pertaining to the impact of data centers on other utility requirements and requirements for data centers to meet the Michigan sales tax exemption. (1 TR 50-51.) Following this, the Company sought to appeal the ALJ's ruling to the Commission and filed its Application for Leave to Appeal the Administrative Law Judge's April 16, 2025 Ruling, with timely responses filed by ABATE, MNSC, CEO, and the AG.

II. **Argument**

A. **The Company's proposal**

The Company's position in this case is provided by its witness, Laura M. Connolly. Witness Connolly explained that the Company "had seen an influx in requests to serve new data center load over the last 12 months" totaling 15 gigawatts of electric load in the economic development pipeline, and defining data center load as "a centralized facility used for the management, storage, processing, and distribution of data with a load of 100 MW or more at a single site or on an aggregated (more than one site in the Company's service territory) basis." (3 TR 81.) Given witness Connolly's characterization, she further asserted that protections must be implemented for the Company's other, non-data-center customers in the event that the data-center-related assets result in stranded asset costs. She stated, "the Company must put tariff provisions in place for data centers to protect other customers from stranded assets and increased costs should the data center load not materialize after resources are committed to serve them or the load is not in place for as long as expected." *Id.* Highlighting the difference between new data center customers, and other existing large-load customers, witness Connolly explained that the Company's current largest rate GPD customer is approximately 28MW in size whereas expected loads for data centers will likely exceed 1000MW. (3 TR 86.) To implement the Company's proposed protections, witness Connolly provided that the Company sought approval to add the following language to the Rate GPD Tariff:

15-year minimum contract term, commencing after the negotiated ramp up period;

A Minimum Billing Demand Requirement;

Financial Security Stipulations;

Exit fee requirement;

One time reduction to Contract Capacity at the Company's sole discretion;

Suspension and/or Contract amendment if the customer uses 1,000 kW or more above Contracted Capacity; and

Upfront administrative fee for project proposal. [3 TR 82.]

Witness Connolly reiterated that this language would provide protections to all customers against the potential for stranded assets from data center load in the event it does not materialize after the Company has already made the necessary investments to serve that expected load. (3 TR 88.) For example, the Company asserts that the requirement for a 15-year minimum contract term "ensures that the customer that is causing the assets to be procured is committing to taking service for, and paying for, the assets in place to serve them." (3 TR 83.) In a similar vein, the Company also argues that "establishing an upfront administrative fee allows the utility to focus on those prospective customers that are most serious about investing in Michigan." (3 TR 85.) Furthermore, the Company also asserts that the Rate GPD language changes should be limited to load above 100MW because of the unique size, scale, and infrastructure requirements as well as the relative mobility and lack of associated commercial activity appurtenant to such installations. (3 TR 86-87.) Given these factors, data center customers inherently

pose more risk than other large load customers and the requested changes to the rate should be applied specifically to them. *Id.*

In her rebuttal testimony, witness Connolly explained the Company's adjustments to its initially proposed tariff changes, reflected in its draft tariff in Exhibit A-2:

> Change the provision from "Data Center" to "Large Load";
>
> Update the eligibility to 100 MW at a single site or two or more sites, each with a load of 50 MW or greater owned by the same entity and located in Consumers Energy's service territory;
>
> Define the collateral amount to be equal to the exit fee;
>
> Apply exit fee during ramp up fee if applicable;
>
> Allow a one-time 15% reduction in contract capacity with 48 months advance notice;
>
> Five-year contract renewal extensions with a minimum of four years advance notice of plans to terminate contract or extend the contract;
>
> Revised financial security language. [3 TR 102-103.]

B. **Staff**

The Michigan Public Service Commission Staff also recognized the characteristics and unique issues related to potential data center customer load. Staff witness David W. Isakson explained that large load customers (LLCs), such as data centers, are unique compared to the existing customer base because they represent large load additions from single customers. Generally, natural load growth that resembles the existing customer base could be served by the Company without dramatic changes in rates or without presenting significant risk if

individual customers exit service. (4 TR 292.) However, large load customers as described in the instant case represent a single point of potential failure that would impact existing customers. The unique size of an LLC's load makes them riskier to serve than other customer load because there are relatively fewer potential customers that could take the place of an LLC if they exit service. (4 TR 294.) Witness Isakson explained that while an LLC could begin service on the Company's Rate GPD immediately, data center customers are specifically not eligible for Rate LED, the Company's economic development rate. (4 TR 293.) The tariff provisions proposed by the Company are intended to provide additional revenue security from LLCs in order to minimize any impact of potential stranded assets. The added guarantee of revenue would also help to insulate the Company should the Commission not allow recovery of stranded assets costs in the future.

Regarding the likelihood of stranded assets, witness Isakson stated that stranded assets are those which are retired or no longer used and useful before the end of their useful life. (4 TR 297.) Due to the size of LLC loads the infrastructure used to serve them may not ever be used and useful to other customers and therefore more likely to become stranded assets compared to infrastructure used to serve existing customers. (4 TR 298.) Additionally, factors outside of either the Company's or the LLC could be the root cause of a stranded asset, such as unforeseeable economic downturns. (3 TR 97.) And, even with extra tariff provisions in place, LLCs may still exit service before the useful life of the assets needed to serve them is over. (4 TR 300.) These concerns are significant and

immediate, given that the Company stated that there are data center/LLC projects in the economic development pipeline. Therefore, Staff emphasizes that the proper lens of analysis for Staff's and the Company's recommendations in this case is the mitigation of harm to existing customers if an LLC *leaves service* rather than what will happen when LLC load comes online. The issue of the recovery of stranded assets would be addressed if and when they occur.

1. **Financial Security**

In order to mitigate the potential risk of creating stranded assets or any other harm to existing customers, the Company must ensure some additional financial security from LLCs. There are no currently approved tariff provisions on Rate GPD that would properly ensure financial security from LLCs, but the Company's Extraordinary Facilities Requirement allows the Company to make special contractual arrangements if it deems a customer has unacceptable credit risk or any other reason "within the sound discretion of the Company." (4 TR 298-299.)

The Company proposes to amend the Rate GPD tariff to allow the Company to require collateral for up to the entirety of the projected cost of providing service for the term of the LLCs contract. (4 TR 299.) This proposal gives the Company discretion to completely isolate the cost of serving an LLC, which represents the maximum amount of financial security if it requires collateral for all of the LLC's cost, but only if it is actually required by the Company. *Id.* This implies that the Company is solely responsible for determining the financial risk that the LLC poses

to other customers. (4 TR 300.) This approach also creates risk for the Company because if serving an LLC creates a stranded asset and the Company did not require collateral when it otherwise could have, then the Commission may rule that the Company is not eligible for cost recovery of the asset(s) because it judged the LLC's financial risk imprudently. (4 TR 300-301.) Under the Company's proposal it would have to estimate both the risk of the LLC leaving service and whether or not the Commission would approve any related cost recovery. (4 TR 301.)

Staff proposes that the Company should take complete cost responsibility of any stranded costs if it alone is allowed to determine the financial security of potential LLCs. (4 TR 302.) The Company disagreed with this proposal because it is obligated to serve any customer, including LLCs, and the Company's proposals in the instant case do not completely eliminate the risk of stranded assets. (3 TR 98.) The Company also argued that the Commission should not prematurely opine on the recovery of future stranded costs. (3 TR 99.)

Staff maintains that stranded asset costs associated with LLCs are in no way created by existing customers, and neither is the potential underestimation of risk made by the Company in applying collateral requirements. (4 TR 302-303.) Staff's proposed modifications to the Company's tariff amendment proposals would not require the Commission to potentially disallow cost recovery of stranded asset costs because, among other things, the collateral requirement would be clearly defined by the tariff. (4 TR 303.)

2. Other states

Other state regulatory bodies have and are currently considering similar measures to mitigate the potential risk of data center and LLCs leaving service before sufficient revenue has been collected. (4 TR 303.) Staff provided a policy brief produced by Lawrence Berkeley National Lab that outlines regulatory activity across the country related to the issues discussed in the instant case. (Exhibit S-2.)

Indiana regulators recently approved a large load customer tariff. (4 TR 304; Exhibit S-3. Indiana's tariff does not limit its provisions to only data centers but instead defines eligible LLCs as those with contract capacity greater than or equal to 70MW at a single site or 150MW in aggregate. (4 TR 305.) The tariff also requires a contract term of 12 years, requires an exit fee, allows for capacity reduction, and a 5-year ramp up period, all of which are similar to the Company's proposals. *Id.* The Indiana tariff differs from the Company's proposal regarding collateral, as it requires 2 years' worth of revenue equal to the LLC's non-fuel bill and allows for exemptions depending on the LLC's creditworthiness; all of which are explicitly laid out in the tariff. (4 TR 306.) Staff relied on the Indiana tariff, among other things, to develop its proposed modifications to the Company's tariff amendment proposals. (4 TR 303.)

3. Staff recommends 8 modifications to the Company's Rate GDP tariff proposal.

As identified in Section II.A above, the Company proposed language to modify the tariff language for Rate GDP. Staff recommended 8 modifications to the Company's proposal:

1. Remove the definition of “Data Center” from the tariff and update the availability of the new provision to apply to all new large load customers with a load of greater than or equal to 100 MW.

2. Include a more detailed, transparent definition of the collateral requirement and acceptable forms of payment. Define the collateral amount to be equal to the exit fee.

3. In the event of a large load customer’s request to increase or decrease its contracted capacity, require the Company to make an *ex parte* showing of no harm to other customers.

4. Require the Company to make every effort to reduce the exit fee with offsetting revenue.

5. Require the large load customer to notify the Company at least 3 years prior to an expected capacity reduction or exit from service.

6. Do not allow the customer to reassign its capacity obligation to another entity without approval by the Company.

7. At the conclusion of the large load customer’s contract term require the contract to be extended for 3 years, recurring at every completion of the previous contract term, with all the tariff provisions remaining in effect, absent action by the customer.

8. Require the Company to reconcile the project proposal fee to actual costs after they have been incurred and to return or collect any difference by the end of the ramp-up period.

9. Require the exit fee to apply during the ramp-up period. [4 TR 307-308.]

Staff’s recommendations are discussed below in detail.

a. **Eligibility for customers to take service under the proposed “new” Rate GDP**

Staff recommends removal of the Company’s proposed definition of data center customers and instead make the availability of the LCC provision apply to all customers with a load greater than or equal to 100 MW. Staff argued that the size of LLC’s load is what makes them unique customers and thus appropriate for

special tariff provisions. (4 TR 308.) A customer's end-use does not necessarily mean they should be subject to special tariff terms, so whether or not an LLC uses energy to power a data center is not relevant. *Id*. DCC and MEIU also made the same proposal as Staff, though MEIU recommends a threshold of 25MW. (5 TR 614, 937.) The Company and DCC agreed to Staff's modification on rebuttal. (3 TR 91; 5 TR 675.)

ABATE disagreed with Staff's recommendation to apply the LLC tariff provision to any customer with greater than or equal to 100MW of load, arguing that it is overly simplistic and does not account for differences in the risk of different types of customers with such large load. (5 TR 838-839.) Staff, however, argued that the size of the customer's load and its potential impact on other customers, if and when a stranded asset is created, is what makes LLCs unique and why applying new tariff provisions for them is appropriate. (4 TR 308-309.) Whether or not the load is used for data center operation or not does not negate the impact that an exit from service would have on all other customers. For these reasons Staff recommends the Commission approve Staff's LLC provision's requirement that eligibility apply not only to data center load, but all customer load greater than or equal to 100MW.

The AG proposed to limit the availability of the proposed tariff amendment to customers with a load factor of 80%. (5 TR 981.) The AG argues that the minimum load factor should be consistent with the proposed minimum billing demand. (5 TR 982.) Staff disagrees because limiting eligibility by load factor may inadvertently

exclude some LLCs from the new provision even though the impact of those customers exiting service early could still be harmful to all other customers. (4 TR 322.) For this reason, the Commission should reject the AG's proposal to limit the availability of the proposed LLC provision by load factor.

MNSC[1] proposes the same limitation of availability but limited to customers with a load factor of 75%. (5 TR 879.) MNSC advocated for a lower eligibility threshold for the LLC provision of 50MW compared to the Company's proposed 100MW. (5 TR 879.) MNSC argues that data centers have a unique load profile, and the LLC provision should require a minimum load factor of 75% for LLCs with between 50MW and 100MW of load. *Id.* Staff did not take a position on the appropriate minimum load for LLCs to be eligible for the LLC provision, but did not disagree with the Company's proposal of 100MW. However, Staff continues to disagree that load factor should be considered for the same reasons that the AG's load factor proposal should be rejected.

b. **Financial Security and Collateral**

The Company proposed to address financial security by including the following tariff language in its proposed tariff:

> Consumers Energy is authorized to require additional financial security from Data Center customers receiving service under this rate,

[1] Rebuttal testimony of Staff witness David W. Isakson accidentally referred to MNSC witness Caroline Palmer's direct testimony as "confused" as to why the Company's proposed minimum billing demand did not also require a minimum load factor. The direct testimony of AG witness Michael W. Deupree described the Company's proposal as "confusing," and not MNSC witness Palmer. (5 TR 981.) Staff regrets the error.

> including other collateral in amounts up to the projected cost of providing service for the term of the rate contract. The authorization in this paragraph does not limit the Company's other authority to impose other financial security requirements from customers. [Exhibit A-1.]

Staff argues that the Company financial security language proposal is too broad and gave the Company too much discretion in when to apply it to LLCs. (4 TR 309.) Staff recommends utilizing language from the Indiana tariff regarding how collateral may be provided by the customer in the new LLC provision. (4 TR 311-312.) This would provide a clear expectation to the LLC for providing collateral and apply the same level of financial security for all LLCs rather than allowing the Company to make such a determination on a case-by-case basis. (4 TR 312.) Staff also argues that allowing the Company sole discretion in determining the collateral requirement of LLCs is unfair to both parties because it placed excess risk on the Company, as previously discussed in this brief, and the LLC would have no obvious recourse to argue against its collateral obligation as determined by the Company. (4 TR 309.)

In order to give LLCs and the Company clear requirements for collateral Staff recommended that the collateral amount should be defined in the tariff as equal to the exit fee. *Id.* The AG agreed that more specific collateral requirements need to be included in LCC tariff provisions. (5 TR 985.) Because the exit fee is calculated as less than the full amount of revenue that the Company expects to receive from LLCs, the collateral requirement would also be set as a lesser amount than total expected revenue. This means that Staff's recommend collateral amount offsets some of the burden that providing collateral would place on an LLC. (4 TR

310.) The Company's proposal allows it to impose a collateral amount greater than the exit fee, but also at its discretion. *Id.* Staff recognizes that other states require a lesser collateral requirement and points out that the Commission may consider setting the requirement to half of the exit fee instead. (4 TR 310-311.) Staff recommends that the collateral amount should be recalculated annually with reimbursement to the customer if payment was made in cash. (4 TR 311.) The Company agreed with Staff's recommendations regarding collateral amount and payment options. (3 TR 91.) Staff's proposal also satisfies the AG's recommendation that more specific language regarding collateral be included in the tariff proposal. For these reasons the Commission should approve Staff's modification regarding collateral as found on Staff Exhibit S-1.

In the Company's rebuttal testimony, witness Connolly states that she disagreed with Staff's recommendation that Commission approval of its proposed financial security proposal be conditioned on the Company taking complete cost responsibility for stranded assets. (3 TR 97.) As part of her reasoning, she stated that the Company has a duty to serve customers in its service territory, which would include data centers, and as such it may need to procure power supply resources. *Id.* Witness Connolly's assertions only further highlight the impact and importance of utility discretion within this process.

Staff agrees with witness Connolly that the risks of stranded costs are of significant concern in this case. Staff also agrees with witness Connolly that the utility has a duty to serve customers in its service territory. This duty to serve is

further conditioned on a customer taking service pursuant to the applicable tariffs. The focus of this case centers on the utility proposed conditions of service in its tariff – not the duty to serve. The proposed conditions offered by the Company in its application were of its own complete discretion. In filing the application in this case, the Company made the choice to seek Commission approval of a condition of service that affords the Company full discretion as to whether or not collateral would be required for a prospective customer. These choices and proposed discretion, taken together, would expose the utility (and by extension possibly its existing customers) to a mitigatable amount of stranded cost risk. In the alternative, if the utility wanted to protect its existing customers to the highest degree possible, then it would simply require these prospective customers to provide collateral in the full amount of the projected cost of providing service for the term of the rate contract. If the utility does not (chooses not to) require collateral, then the utility would increase the potential for negative financial consequences of stranded costs to its existing ratepayers. Additionally, the public facing nature of a tariff provides certainty for the utility, for existing customers, and for prospective customers that would be subject to this tariff before a prospective customer ever becomes an actual customer that the utility is required to serve.

Witness Connolly also argues that while the Company's proposals could mitigate some of the risk associated with stranded costs, it would not be eliminated in total and the Company might have to rely on power supply resources with terms or depreciable lives in excess of the minimum rate contract term applicable to

proposed data center customers. (3 TR 97-98.) Staff agrees with witness Connolly that the utility may have to rely on new power supply resources to serve these customers. However, the Company also has flexibility as to what power supply resources it secures. If a prospective customer signs a 15-year rate contract, the utility could indeed focus its power supply procurement to terms and depreciable assets/lives that closely align with the 15-year window, as opposed to 20-25-30-year terms or depreciable asset/lives. Staff posits that the closer the Company aligns its supply resources to the contract term, the smaller the potential for negative financial consequences of stranded costs to its existing ratepayers.

However, recognizing witness Connolly's concerns for the Company being penalized in the example she provided, Staff also posits that the Commission could consider reducing the cost exposure to the utility such that, "if the Commission approves the Company's requested authority to determine the methods of financial security of potential large load customers, that such authority be conditional on the Company taking" cost responsibility for the full amount of the projected cost of providing service for the term of the rate contract *less* any portion of the projected cost of providing service provided by (recovered from) the customer during the rate contract.

c. **Contract capacity changes**

The Company proposed to allow for a one-time reduction in contract capacity for an LLC at the discretion of the Company. (3 TR 84.) According to the Company

this proposal would provide flexibility for the LLC because the customer "may not always know their exact load requirements 15 to 20 years out in the future." *Id*.

Staff disagrees and instead recommends that in the event of an LLC's request to increase or decrease its contracted capacity that the Company be required to make an *ex parte* showing of no harm to other customers. (4 TR 307.) Because the Commission is solely responsible for determining the reasonableness and prudence of utility spending, or in this case a reduction in revenue, with regard to the effect on customer rates, it is not appropriate to allow the Company absolute discretion to allow a capacity reduction. (4 TR 313.) Staff recommends that the *ex parte* filing shows that other customers will not be made to pay for any negative effects of the LLC's capacity reduction, including the effect on transmission expense. *Id*.

ABATE also recommends that the Company should be required to make an *ex parte* filing for approval of any proposed reduction or any increase over 5% in contract capacity for LLCs. (5 TR 820.) ABATE explained that allowing a one-time capacity reduction without examination by the Commission would undermine the protections advocated for by parties in this case because such a reduction could lead to a stranded asset. (5 TR 840.)

The AG recommends that the one-time contract capacity reduction be limited to a maximum of 10%, require at least 4 years' notice, only be allowed after 5 years of the contract term, and require a contested case proceeding. (5 TR 991.) The AG notes that other utilities, such as in Indiana, have similar mechanisms to negate cost shifting to other customers. *Id*.

The DCC agreed with the Company's proposal to allow a one-time capacity reduction at the Company's discretion but added that if such a reduction does not create a stranded asset or shift costs to other customers that it should not be limited to a one-time reduction. (5 TR 656.) DCC further recommends that an LLC should be allowed a one-time reduction in contract capacity equal to 15% that would not require the approval of the Company. This reduction would require prior written notice at least 36 months in advance. (5 TR 657.) The Company agreed with DCC's proposal to allow a one-time capacity reduction of 15%. (3 TR 95.) The Company also agreed with the AG's proposal that such a reduction should require four years of advanced notice in order to align with the Company's State Reliability Mechanism planning period. *Id.*

The AG disagreed with DCC's proposal. (5 TR 1017.) ABATE also disagreed with DCC's proposal and reiterated its arguments in favor of *ex parte* filings showing no harm to other customers. (5 TR 839-840.) The Company argued that if a capacity reduction is limited to 15% and requires 4 years of notice, then Commission approval should not be required. (3 TR 95.)

Staff agrees with ABATE and the AG that DCC's proposal to allow a one-time, non-discretionary reduction in contract capacity by no more than 15% should be rejected for the reasons provided by ABATE, namely that the resulting potential for a stranded asset undermines the protections being sought for in this case. Staff recommends that, in order to ensure that other customers will not shoulder any risk

associated with a LLCs change in contract capacity, the Company should be required to make an *ex parte* filing showing that to be the case.

d. **Exit Fee**

Staff recommends that the Company be required to mitigate the exit fee as much as possible. (4 TR 314.) Staff identified that it is possible that the Company may be able to use or sell assets procured to serve LLCs even if the LCC exits service, and that the LLC should not have to pay the full exit fee if the Company can secure offsetting revenues. *Id*. The Company agreed to this modification on rebuttal. (3 TR 91.) No other parties disagreed with Staff's proposal. For these reasons the Commission should approve Staff's modification regarding offsetting revenues for the exit fee.

e. **Notification**

Staff recommends that an LLC be required to notify the Company at least 3 years prior to a capacity reduction or exit from service. (4 TR 314.) Staff reasons that the Company may need significant lead time to address the exit of an LLC due to the unique size of the customer's load. *Id*. The Company indirectly concurred with this proposal by agreeing to the AG's proposal to require at least 4 years of notice prior to a capacity reduction. In a similar vein, DCC advocated for 36-month notice. (5 TR 647.) In order to allow the Company ample time to incorporate any change required to serve a change in LCC load, in particular for inclusion in the Company's integrated resource planning, Staff recommends that LCCs should be

required to provide at least 3 years (36 months) of notice before reducing load or exiting service.

f. Reassignment of capacity

Staff recommends that LLCs should not be allowed to reassign their capacity obligations to another entity without the Company's approval. (4 TR 314-315.) All tariff provisions proposed by the Company and modified by Staff should apply to the new entity following the reassignment. *Id.* The Company agreed with Staff's proposal. (3 TR 91.) No other parties disagreed with Staff's proposal and Staff recommends it be approved by the Commission.

g. Contract Extension

Staff recommends that at the conclusion of the LLCs contract term, it should be extended for 3 years thereafter unless the LLC notifies the Company of its intention to leave service or otherwise reduce its contract capacity. (4 TR 315.) Extending the LLC's contract every 3 years would maintain Staff's notification recommendation and maintain a lower exit fee and collateral. *Id.* Staff understands, however, that the Commission may find it prudent to not require collateral or an exit fee following an LLC's initial contract term.

ABATE recommended a similar proposal for evergreen contract extensions, but for 5 years instead of Staff's proposed 3 years. (5 TR 973.) The AG made the same recommendation. (5 TR 982.)

DCC recommends that Staff, ABATE, and the AG's proposals for contract extensions should be rejected in favor contract extensions that are negotiated between the Company and the LLC. (5 TR 692.) DCC argues that these proposals are a one-size-fits-all approach, and that following the initial contract term an LLC will have made substantial revenue contributions. *Id.*

As explained by Staff, the Commission may find that the customer protections provided by the Company's tariff amendment as modified by Staff may not be necessary following the initial term of the LLC's service contract and does not necessarily disagree with the DCC's recommendation regarding evergreen contract extensions. However, Staff recommends that following the conclusion of the initial term that any notification requirements for capacity reduction be maintained for LLCs.

h. **Ramp-up period**

Staff recommends that the exit fee apply during the ramp-up period. (4 TR 316-317.) This would ensure that other customers remain protected from potential stranded costs after the Company has begun making investments to serve LLCs but before their full load comes online. *Id.*

The AG made the same recommendation. (5 TR 995.) No parties objected to Staff and the AG's recommendation to apply the exit fee during the ramp-up period. For these reasons the Commission should approve Staff's recommendation to apply the exit fee to the ramp-up period.

The AG also recommended that the Company define the ramp-up period in its proposed tariff and recommended that the period should conclude when the LLC reaches its minimum billing demand. (5 TR 983.) Staff disagreed with the AG's definition of the conclusion of the ramp-up period because it is possible that the LLC may never reach its minimum billing demand. (4 TR 322-323.) In this case the LLC may not be subject to whatever customer protections that are ultimately ordered by the Commission. A simple solution would be to define the ramp-up period as the lesser of 5 years or when the LLC's monthly peak demand equals or is greater than the minimum billing demand. For these reasons, Staff recommends the Commission reject the AG's definition of the conclusion of the ramp-up period and instead define it as described by Staff.

4. A broad record provides the Commission the best array of proposals and related analysis on which to base its decision.

Staff witness Isakson explained that the Commission was likely to see a variety of proposals to address and/or mitigate the potential impact of LLCs taking new service on the Company's system in the instant case. (4 TR 299.) Staff noted that the Commission may approve whatever tariff provisions it deems appropriate to provide a reasonable level of risk for both the Company and existing customers. *Id*. Stated differently, there is no correct answer or precise amount of revenue guarantee or rate design to completely eliminate any risk of the downsides to these unique customers leaving service early or creating stranded assets. (4 TR 321.) The Company acknowledges this in its rebuttal. (3 TR 98.) Ultimately, the

Commission must decide what level of risk is acceptable, and the range from which the Commission may choose tariff provisions runs from requiring the LLC to pay irrevocable collateral equal to its total cost to serve representing the maximum for risk mitigation but the most onerous on LLCs themselves, and simply allowing LLCs to take service on Rate GPD as the tariff stands today as the minimum. (4 TR 299, 295-296.)

As described by Staff witness David W. Isakson during his cross examination by counsel for the AG, "[t]he point of staff's case was to give the Commission a broad array of options to choose from. Because picking out the number for minimum billing demand, as I say in my rebuttal testimony, staff's discussion is to highlight that there is no right answer, per se, except for the one that the Commission picks." (4 TR 394.)

C. Staff's response to other parties' positions

The parties in this case addressed a variety of issues related to the Company's tariff modification proposal. Staff responds to some of these parties' issues below.

1. Potential effects of data center load on various statutory requirements should not be dealt with in the instant case.

Various witnesses identified potential impacts of data center load. The CEO witness Saad Siddique lists potential impacts of such load on the statutory requirements for clean and renewable energy supply, such as currently approved

plans being insufficient and increasing costs and risks of meeting the requirements. (5 TR 775-782.) Witness Siddique recommends that, to deal with these impacts, the Commission require "clean energy sourcing plans" be required of potential data center customers under a modified version of the Company's proposed data center tariff provision, which would inform the Company's analysis of how the load would affect compliance with clean and renewable energy standards. (5 TR 783.) CEO witness Siddique also proposes the provision explicitly mention that data center customers can take advantage of the Company's Voluntary Large Customer Renewable Energy Program, or something similar, to "access new, incremental, time-matched, deliverable clean energy to help serve their new load requirement." (5 TR 784.)

Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and United (collectively MEIU) witness John D. Albers similarly points out ways such load could affect statutory obligations such as those associated with the Integrated Resource Plan (IRP), data center tax exemptions, and clean and renewable energy supply. (5 TR 933-935.) MEIU witness Albers recommends replacing or supplementing the Company's proposed data center tariff provision with a "clean transition tariff" which would allow prospective customers to choose which generation, transmission, and/or distribution resources would be used to serve them, whether procured by the utility, through contract, behind the meter, or collocated. (5 TR 937-938.) MEIU witness Albers also proposed the clean transition tariff provide prospective customers options to offset their load requirements by

providing additional funding for current demand response (DR), demand flexibility, virtual power plant (VPP), or energy waste reduction (EWR) programs, as well as requiring the Company to implement grid-enhancing technologies and dynamic transformer ratings. (5 TR 940-941.) In addition, MEIU witness Albers proposes duplication of the Company's existing "External Power Purchase Agreement" voluntary green pricing (VGP) option outside of the VGP and requiring the Company to issue requests for proposals (RFP) for the generation necessary to serve specific customers. (5 TR 943-944.)

AG witness Michael W. Deupree identifies ways data center load could impact statutory obligations for renewable energy supply as well as data center tax exemption requirements. (5 TR 991-994.) AG witness Deupree recommends the tariff provision require the Company to contract with customers to procure at least 60% of the generation required to serve their load from renewables within MISO Zone 7. (5 TR 992-993.)

MNSC witness Douglas B. Jester addresses statutory goals for clean and renewable energy and the impact data center load could have on them as well as requirements for data center tax exemptions in statute. (5 TR 858-860.) MNSC witness Jester claims the Company's proposed tariff provision should be modified to explicitly allow customers to meet the data center tax exemption requirements by having customer-specific resource portfolios consisting of no less than 60% renewables on an energy basis. (5 TR 859-860.)

Staff disagrees with these proposals for the purposes of the present case. (4 TR 414.) Each of the proposals made by the intervenors, as well as underlying concerns and considerations about data center and large customer load that led to those proposals, are better considered in other cases. (4 TR 414-415.) As stated by Staff witness Nicholas M. Revere, "[m]any of the issues identified by the intervenors have existing processes through which they are considered as part of a holistic case, rather than only as they apply to customers under the provision, rendering the requested solutions duplicative, unnecessary, or inappropriately narrowed." (4 TR 415.) Considerations regarding necessary generation to serve the contemplated customers and how that may or may not meet with statutory provisions are dealt with in integrated resource plan (IRP) cases, renewable energy plan (REP) cases, and capacity demonstration cases. *Id.* Each of these cases has been structured by the Commission "to consider the resources and plans that are most appropriate to ensure compliance with" the relevant statutes. *Id.* As stated by Staff witness Revere, "[c]onsidering such issues outside of the context of those established processes risks failing to consider everything appropriate in determining how best to comply with those statutes," which would be inappropriate and inapposite to the statutes that lead to those processes. *Id.*

Other issues not contemplated by intervenors will also be potentially affected by the addition of loads of the size contemplated in the instant case, such as EWR, which also have processes established according to statute to properly consider any potential impact. *Id.*

As to the data center tax exemption statute, Staff is not taking a position on the actions that may be required of the Company to comply, but Staff's position is that the Company's proposed data center provision be applied not just to data centers, but any load above a certain size as discussed further elsewhere in this brief, and compliance with the tax exemption statute should therefore be dealt with in a case other than the instant. *Id.*

Proposals to duplicate existing VGP options outside of the VGP or specifically list options available under the VGP within the provision contemplated in the instant case are unnecessary, "any prospective customer under the provision will be made aware of their options under the VGP as part of conversations with the Company regarding potentially being served by the Company," and there is no support for the claim that the VGP may be undesirable for certain customers even if the option outside the VGP is identical, as proposed. 4 TR 415-416.

MEIU witness Albers' proposal to allow customers under the contemplated provision to effectively "'buy down' their contribution to the increased requirements under the various statutes by paying for other customers to effectively lower the load that is covered by it" is also more suited to a separate proceeding "with a wider scope and the ability to consider such options in the context of alternatives;" this also applies to proposals related to grid-enhancing technologies and dynamic transformer ratings. (4 TR 416.)

For the reasons given above, issues related to statutory adherence are best dealt with in other cases, particularly when a well-established method for doing so already exists.

2. Whether or not load served under the contemplated provision should be treated differently from other load is more appropriately dealt with in other cases.

Determining whether or not the manner in which load is served under this provision differs from other load enough to be distinguishable and therefore "treated as if they are being served individually rather than as a part of the Company's overall load" is also better accomplished in future cases in order to properly consider all aspects of the claim, including whether such discrimination is due; for the purposes of the instant case such a determination need not and should not be made. *Id.*

Intervening parties' witnesses seem to be operating under the assumption that "any resources built to accommodate load under the provision would be more expensive than the resources that would otherwise be built to serve customers," an assumption unsupported by evidence in the instant case; given the scale of the generation that would be required to serve the load, it is possible that such generation would be cheaper than what would have been built absent the load due to economies of scale. (4 TR 416-417.) Also, the Company currently "plans its generation to serve the entirety of the load it is responsible for, not for individual customers," and "under standard ratemaking, costs are allocated to customers based on measures of how they contribute to the load that needs to be served by the

Company in total." (4 TR 417.) MNSC witness Jester notes the Company's "long-term industrial load retention rate being based on a specific generating plant as an example of how the costs of certain plants may be assigned to individual customers," but that rate is "more the exception that proves the rule as it required passage of legislation to enable something different than the standard." (5 TR 862, 4 TR 417.) Whether plants are built to serve existing load or the load of new customers, "it is almost axiomatic that a new generating plant will be more expensive than existing plants due to inflation of costs and depreciation of existing assets over time (outside of massive technological shifts)." (4 TR 417.) This, however, does not change the potential that such new plants could be cheaper than they otherwise would have been if they are larger than would have been necessary absent to the addition of substantial load, as discussed previously. It is also true that the "time-matching" of generation to load mentioned by intervening witnesses, such as CEO witness Siddique as discussed previously, is not realistic, "particularly given the resources likely built under the statutory requirements." *Id.*

For these reasons, "the concept that customers under the provision should pay directly for plants that 'serve them directly' should be rejected" for the purposes of the instant case and be considered in light of more evidence in other cases. *Id.* For the same reasons, claims that customers under the provision would be "subsidized" by other customers is not supported by evidence and should also be rejected for the purposes of the instant case, and reexamined if appropriate in other cases with more evidence. *Id.*

3. Staff disagrees with MEIBC's 50% ownership model for future competitive solicitations for wind, solar and battery storage resources.

Michigan Energy Innovation Business Council's (MEIBC) witness John D. Albers recommends that the Company be limited to 50% Company-owned resources for all future competitive solicitations for wind, solar and battery storage resources. He opines that the remaining 50% should be procured through third-party owned power purchase agreements (PPA). (5 TR 947.) This logic has no bearing in the current market for renewable resources. As explained by Staff witness Jesse J. Harlow, he has audited all competitive solicitations resulting in Commission approved contracts since 2009 and based on this experience, does not see significant cost savings to ratepayers when comparing PPAs to Company-owned resources. (5 TR 1027.) While witness Harlow agrees that a 50/50 split was appropriate in the early years of Public Act 295 of 2008 when Michigan utilities had little experience building renewable generation, this requirement is no longer necessary as evident by the statutory requirement to maintain a 50/50 ownership split being rescinded with Public Act 342 of 2016. (5 TR 1028).

Mr. Albers relies on a statement in a single Commission Report, *2016 MPSC Report on the Implementation and Cost 23 effectiveness of the PA 295 Renewable Energy Standard* that stated PPAs have been lower cost than comparable Company-owned resources. (5 TR 948.) While this was true for that year, Staff witness Harlow clarified that the cost comparisons between PPAs and Company-owned resources flipped back and forth in each and every year that the annual Commission Reports tracked these numbers from 2011-2018. (5 TR 1027.) While

Staff believes that it is imperative that the Company include third-party PPAs in all future competitive solicitation for new resources, Staff believes that the Company should be selecting the most economical and viable resources regardless of the ownership structure and not be limited by an arbitrary 50/50 ownership requirement. (5 TR 1029.)

III. **Conclusion**

For the reasons presented in Staff's direct testimony, exhibits, rebuttal testimony, and this initial brief, Staff requests the ALJ and Commission adopt Rate GDP tariff modifications in accordance with its recommendations. Staff's recommendations will balance providing necessary protections to existing ratepayers from certain unique risks posed by data center LLCs while also not being so cumbersome or onerous such that they represent an undue burden on these unique customers.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Amit T. Singh (P75492)
Adam M. Cozort (P78363)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

DATED: August 21, 2025

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of **Consumers Energy Company** for Ex Parte Approval of Certain Amendments to Rate GPD.	Case No. **U-21859** (e-file paperless)

______________________________________/

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

Cherie A. R. Shea, being first duly sworn, deposes and says that on **August 21, 2025,** she served a true copy of the **Michigan Public Service Commission Staff's Initial Brief** upon the following parties **via email only**:

Consumers Energy Company
Anne M. Uitvlugt
Bret A. Totoraitis
anne.uitvlugt@cmsenergy.com
bret.totoraitis@cmsenergy.com

Administrative Law Judge
Hon. Katherine E. Talbot
talbotk@michigan.gov

Association of Businesses Advocating Tariff Equity
Stephen A. Campbell
Michael J. Patwell
Jessica York
James R. Dauphinais
scampbell@clarkhill.com
mpatwell@clarkhill.com
jyork@consultbai.com
jdauphinais@consultbai.com

Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan
Christopher M. Bzdok
Tracy Jane Andrews
Breanna Thomas
John R. Liskey
chris@tropospherelegal.com
tjandrews@tropospherelegal.com
breanna@tropospherelegal.com
john@liskeypllc.com

Data Center Coalition
Michael G. Oliva
Nikhil Vijaykar
Justin Bieber
Travis Murray
moliva@fosterswift.com
nvijaykar@keyesfox.com
jbieber@energystrat.com
tmurray@keyesfox.com

Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and Advanced Energy United ("MEIU")
Justin K. Ooms
Laure A. Chappelle
Timothy J. Lundgren
jooms@potomaclaw.com
lchappelle@potomaclaw.com
tlundgren@potomaclaw.com

The Ecology Center, The Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar
Daniel Abrams
Alondra Estrada
Katie Duckworth
dabrams@elpc.org
aestrada@elpc.org
kduckworth@elpc.org

Attorney General Dana Nessel
Michael E. Moody
Lucas Wollenzien
moodym2@michigan.gov
wollenzienl@mcihgian.gov

Microsoft Corporation
Jennifer U. Heston
jheston@fraserlawfirm.com

____
Cherie A. R. Shea

Subscribed and sworn to before me
This **21st** day of **August, 2025**.

____
E. M. Fielder-Attia, Notary Public
State of Michigan, County of Jackson
Acting in the County of Eaton
My Commission Expires: 07-09-2031