



Via Electronic Case Filing

August 21, 2025

Executive Secretary Lisa Felice  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Post Office Box 30221  
Lansing, MI 48909

**RE: Case No. U-21859**

Executive Secretary Lisa Felice,

Please find attached the following for paperless filing in the above captioned matter:

- Data Center Coalition's Initial Brief
- Proof of Service

Thank you for your consideration.

Sincerely,

/s/ Nikhil Vijaykar

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CC: Parties to Case No. U-21859

**STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the Application of	)	Case No. U-21859
Consumers Energy Company for <i>Ex</i>	)	
<i>Parte</i> Approval of Certain Amendments	)	ALJ Katherine E. Talbot
to Rate GPD	)	

**DATA CENTER COALITION’S INITIAL BRIEF**

August 21, 2025

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## SUMMARY OF RECOMMENDATIONS

- **Applicability:** Any changes to Rate GPD approved by the Commission in this docket should be made applicable to new large loads with a contract capacity of 100 MW or greater on a non-discriminatory basis, without regard to the customer's end use.
- **Minimum Contract Term and Minimum Billing Demand:** The Commission should reject Consumers Energy's proposal to implement a 15-year minimum contract term in conjunction with a minimum billing demand equal to 80% of the customer's contract capacity. In its place, the Commission should adopt a mandatory minimum contract term of 10 years and a monthly minimum billing demand equal to 70% of the customer's contract capacity.
- **Financial Security:** The Commission should not adopt Consumers Energy's proposed financial security requirements and should instead adopt DCC's financial security framework as described in this brief and in the rebuttal testimony of DCC witness Ramirez.
- **Exit Fee:** The Commission should reject Consumers Energy's proposed exit fee, and should instead adopt an exit fee amount calculated as the minimum billing demand multiplied by the lesser of 60 months or the remaining months in the contract term. The Commission should further require any customer terminating a contract prior to the expiration of the minimum contract term to provide 36 months of advance written notice. Finally, the Commission should require Consumers Energy make every attempt to mitigate the exit fee by securing offsetting revenues and/or otherwise mitigate costs.
- **Capacity Reduction:** The Commission should permit large load customer a one-time 15% reduction to contract capacity with a 36-month advance written notice. Customer should be permitted to reduce their contract capacity by greater than 15% or without a 36 month advance written notice, subject to Consumers' ability to reassign the capacity (greater than 15%) to another large customer or otherwise reduce costs. Otherwise, the customer should be allowed to reduce capacity beyond 15% or without 36-month written notice only if the customer pays an exit fee (consistent with the exit fee terms described above) applied to the requested capacity reduction amount greater than 15%.
- **Annual Reporting:** Any annual reporting requirements adopted by this Commission should explicitly protect confidential customer information from disclosure.

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**DATA CENTER COALITION’S INITIAL BRIEF**

**I. INTRODUCTION**

This case presents the Michigan Public Service Commission with a compelling issue of first impression: How should the Commission seize on the massive opportunities that data centers and other large loads will unlock for Consumers Energy Company, its customers, and the State, while protecting smaller customers from the risk of stranded assets?

Both sides of the scale—opportunity and risk—bear emphasis. With respect to the opportunity: data center companies are poised to make billions of dollars of investments in the Company’s service territory, bringing jobs, tax revenues, predictable load, and significant new revenues with them. In order to provide service to those customers, however, Consumers Energy will be required to invest in generation, transmission and distribution infrastructure. While no party to this case is certain exactly what those infrastructure investments will cost, those investments are likely to be considerable. Therefore, to the extent large load does not materialize at the levels Consumers Energy anticipates, the Company’s customers face a risk of stranded costs.

One of the ways the Commission can balance these opportunities and risks is to establish a standardized set of tariffed terms and conditions that encourage large load customers to take service in the Company’s service territory but require long-term commitments as a condition of service. All parties to this proceeding support a tariffed approach, but the parties disagree with respect to certain important details. Unfortunately, Consumers Energy proposes a set of terms and

conditions for large load customers but offers no supporting analysis of forecast costs, revenues, load, demand, or risk that would help this Commission evaluate the reasonableness of the Company's proposed protections. Instead, Consumers Energy offers a mere 11 pages of direct testimony from its Director of Regulated Pricing who provides cursory explanations for the Company's proposals.

In contrast, the Data Center Coalition (DCC) recommends a set of substantial commitments and robust customer protections anchored in its expert witnesses' quantitative analysis of the Company's data, rigorous review of industry best practices, and careful survey of approaches taken by peer utilities and jurisdictions to address large loads, among other factors. Based on the totality of those efforts, in many instances, DCC recommends modest but critical modifications to the Company's proposed terms and conditions. The Commission should approve those modifications, because they would provide prospective large load customers with reasonable flexibility without unduly compromising the Company's core objective of stranded cost mitigation.

A notable exception to DCC's modest set of modifications is its financial security proposal. Consumers Energy has not offered *any* analytical basis for its extraordinarily onerous financial security proposal, nor does it appear to have considered the implications of that proposal—which, plainly stated, would be to shut out a significant segment of the market from its service territory. The Commission should not adopt the Company's financial security proposal. Instead, the Commission should adopt DCC's financial security proposal, which is based on a comprehensive risk-based framework and will avoid unnecessarily deterring low-risk, high-value projects from locating in the Company's service territory.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

Consumers filed its Application for *Ex Parte* Approval of Certain Amendments to Rate GPD (Application) on February 7, 2025, initiating this proceeding. The Company's Application

raises many important questions regarding the Company's anticipated service to a projected pipeline of data center customers. Among them: how should the Company's tariffs evolve in order to insulate customers from the risk of stranded assets if projected large load fails to materialize? And, how should the Company balance important customer protections with its obligation to provide service on reasonable terms to new large customers that have the potential to bring significant benefits to the electric system and the State? The Commission agreed the questions Consumers' Application raised warranted scrutiny and rejected the Company's request for *ex parte* treatment, setting the matter for a contested case proceeding instead.<sup>1</sup>

A broad and diverse set of parties filed testimony in this proceeding, including parties representing residential customers (the Attorney General); industrial customers (Association of Businesses Advocating Tariff Equity (ABATE)); data center customers (DCC), energy businesses (Michigan Energy Innovation Business Council/Institute for Energy Innovation/Advanced Energy United (MEIU)); environmental and clean energy interests (Michigan Environmental Council/Natural Resources Defense Council/Sierra Club/Citizens Utility Board (MNSC), Clean Energy Organizations (CEO)), the Commission (Michigan Public Service Commission Staff), and of course the Company itself. The filed testimony demonstrates that parties share the objective of protecting the Company's customers from the risk of stranded assets, and further, agree that Consumers should address that risk by established a tariffed set of standardized terms and conditions for large customers, even if parties do not agree on the exact tariff provisions the Commission should approve.

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<sup>1</sup> *In the matter of the application of Consumers Energy Company for ex parte approval of certain amendments to Rate GPD*, Public Service Commission Case No. U-21859, Order at 3 (Mar. 13, 2022). (Rate GPD Case).

DCC is the only party representing data center interests to file testimony in this proceeding. DCC supplied a set of recommended tariff amendments (Exhibit DCC-3 (JB-3)) that would require unprecedented and standardized commitments from new large load customers, while keeping the Company's service territory "open for business" to a spectrum of data center companies by avoiding impractical and prohibitive conditions of service. An evidentiary hearing was held during the last week of July and first week of August, during which the Administrative Law Judge (ALJ) received DCC's and other parties' testimony and exhibits into evidence.

### **III. LEGAL STANDARD AND BURDEN OF PROOF**

MCL 460.6a(1) provides that an electric utility shall not alter, change, or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, without first receiving Commission approval. The Commission cannot approve a utility's application to amend its tariffs unless it finds the amendments to be prudent, reasonable, and in the public interest.<sup>2</sup>

In Commission proceedings, the applicant bears the burden of proving its proposals satisfy the legal standard by a preponderance of the evidence.<sup>3</sup> Preponderance of the evidence means "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth."<sup>4</sup> Further, the Commission has stated that the applicant must provide "thorough, detailed and meaningful" evidence in order for the Commission to approve the utility's

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<sup>2</sup> Case No. U-21859, Order at 3 (Mar. 13, 2025). *See also*: Case No. U-18101, *In the matter of the application of Wisconsin Public Service Corporation for authority to amend its Cp-1M tariff*, Order at 2 (Aug. 23, 2016) (approving proposed tariff changes found to be prudent and reasonable); and Case No. U-17752, *In the matter of the application of Consumers Energy Company for authority to amend its renewable energy plan approved in Case Nos. U-15805, U-16543, U-16581, and U-17301*, Opinion and Order at 3 (June 9, 2016) (approving proposed tariff changes found to be reasonable and in the public interest).

<sup>3</sup> *See* Consumers Energy, Case No. U-18322, Order at 6 (Mar. 29, 2018).

<sup>4</sup> *People v. Pugh*, 48 Mich. App. 242, 245 (1973).

proposals.<sup>5</sup> Michigan courts have long held that unproven allegations do not substitute for evidence, and that courts cannot base judgment on conjecture.<sup>6</sup>

Here, Consumers Energy has the burden of supplying thorough, detailed and meaningful evidence supporting the justness and reasonableness its proposed revisions to Rate GPD. In the absence of such evidence, the Commission must reject the Company's proposals. Moreover, the Commission's authority is not limited to approving or rejecting Consumers' application and its proposed amendments to Rate GPD. While the Commission does not have the authority to make management decisions for utilities,<sup>7</sup> the Commission has broad authority to regulate rates under chapter 460 of the Michigan Compiled Laws.<sup>8</sup> The Commission has exercised that authority to, for example, require the amendment of a tariff provision;<sup>9</sup> require the utility to work with stakeholders to carry out an investigation or a study;<sup>10</sup> and direct the applicant utility to provide the Commission with reports, information or analysis.<sup>11</sup>

As discussed in this brief, Consumers Energy has not met its burden with respect to several of its proposed large load customer requirements, because it has failed to supply thorough, detailed or meaningful evidence supporting the justness and reasonableness of those proposals. The Commission should exercise its authority to modify several of those proposals consistent with DCC's recommendations.

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<sup>5</sup> See Consumers Energy, Case No. U-16794, Order at 13 (June 7, 2014) (“in the absence of thorough, detailed, and meaningful evidence, the Commission's hands are tied.”).

<sup>6</sup> *Van Auken v. Monroe*, 38 Mich. 725 (1878); *Holgate v. Chrysler Corp.*, 279 Mich. 24 (1937).

<sup>7</sup> *Union Carbide Corp. v. Pub. Serv. Comm'n*, 431 Mich. 135, 148-150 (1988).

<sup>8</sup> *In re Consumers Energy Co.*, 913 N.W. 2d 406, 413 (Mich. Ct. App. Dec. 28, 2017).

<sup>9</sup> See *DTE Electric Co.*, Case No. U-20162, Order at 105-106 (May 2, 2019).

<sup>10</sup> See *Ind. Mich. Power Co.*, Case No. U-18404, 2019 WL 2448491 at \*7, Order (June 7, 2019).

<sup>11</sup> MCL 460.55; see *DTE Electric Co.*, Case No. U-18014, Order at 40 (Jan. 31, 2017).

#### IV. ARGUMENT

##### A. The Record Supports a 10 Year Minimum Term and 70% Minimum Billing Demand For Large Load Customers

A core feature of the Company’s proposed suite of large load customer requirements is a long-term contract coupled with a “minimum billing demand”—a floor on the demand-based charges the customer will contribute.<sup>12</sup> Those terms combine to guarantee the Company will receive billions of dollars in revenues from a large load customer over its minimum contract term. For example, as illustrated in the table below (which reproduces Table JB-1 from the direct testimony of DCC witness Bieber), at Consumers’ current Rate GPD charges for Voltage Level 1 customers (GPD 1), and under Consumers’ proposed minimum contract term and minimum billing demand, a 500 MW data center load would commit to minimum billing demand payments of \$119.7 million per year, or approximately \$2.2 billion in total over the customer’s minimum contract term.<sup>13</sup>

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<sup>12</sup> Under the Company’s “minimum billing demand” proposal, the large load customer would be required to pay On Peak Demand (i.e., generation), Transmission Demand, and Max Demand (i.e., distribution) charges based on the greater of the customer’s actual usage or an established percentage (*i.e.*, a floor) of the Contract Capacity amount. Tr. Vol. III at 83 (Connolly Direct Testimony).

<sup>13</sup> It is also important to note that the actual revenues received by the Company would be higher for customers whose loads regularly exceed the Minimum Billing Demand.

**Table JB-1<sup>14</sup>**  
**Consumers Minimum Billing Demand Example**  
**At Consumers Current Rate GPD 1 Charges**

<b>Generation On Peak Demand</b>	
On-Pk Billing Demand June-Sept (\$/kW-Mo)	17.15
On-Pk Billing Demand Oct-May (\$/kW-Mo)	14.95
<i>Weighted Average (\$/kW-Mo)</i>	<b>15.68</b>
<b>Transmission Demand</b>	
On-Pk Billing Demand June-Sept (\$/kW-Mo)	8.63
On-Pk Billing Demand Oct-May (\$/kW-Mo)	8.04
<i>Weighted Average (\$/kW-Mo)</i>	<b>8.24</b>
<b>Distribution Max Demand</b>	
Maximum Demand (\$/kW-Mo)	<b>1.02</b>
Total Demand Rate (\$/kW-Mo)	<b>24.94</b>
Contract Capacity (MW)	500
Minimum Billing Demand %	80%
Annual Minimum Demand Revenue (\$)	119,712,000
Minimum Contract Term (Years)	15
Rate GPD Annual Escalation*	2.7%
<hr/>	
<b>Minimum Demand Revenues Over Contract</b>	<b>2,176,652,957</b>

\*Rate GPD annual escalation based on actual Rate GPD 1 escalation between 2018 to 2025.

No party to this proceeding, including DCC, objects to the Company requiring large load customers to enter into long-term contracts with minimum billing demands as a condition of receiving service. As DCC witness Bieber observes, “[i]n response to the influx of new large load requests received by Consumers and the need to protect other customers from stranded costs, it is reasonable for the Commission to adopt policies that accommodate load growth in a thoughtful and deliberate manner.”<sup>15</sup> The parties disagree, however, with respect to the appropriate length of the minimum contract term and the appropriate level for the minimum billing demand. The

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<sup>14</sup> Tr. Vol. V at 632 (Bieber Direct Testimony).

<sup>15</sup> *Id.* at 613.

Company proposes a 15-year minimum contract (in addition to a load ramp period of up to five years) and an 80% minimum billing demand.<sup>16</sup> But, despite being the party with the burden of proof in this proceeding, the Company offers no quantitative analysis or other substantial evidence demonstrating its proposed minimum contract term or minimum billing demand reasonably reflects the level of incremental infrastructure cost it expects to incur, or the risk those costs will be stranded.

Instead, with respect to the Company's proposed minimum contract term, witness Connolly generally references the typical depreciation lives of the Company's self-built supply assets and the typical terms of its power purchase agreements (PPA).<sup>17</sup> But witness Connolly never explains *why* those depreciation lives or PPA terms are relevant to the minimum obligations the Commission should establish for large load customers. The Company's explanation of its minimum billing demand proposal is similarly devoid of analysis or reasoning. With respect to the Company's minimum billing demand requirement, witness Connolly offers merely that the Company intended to model the level approved in an Indiana settlement,<sup>18</sup> and concedes the Company did not consider any other level.<sup>19</sup>

In an effort to fill a gap in the evidentiary record and provide the Commission with a quantitative basis for establishing reasonable minimum contract and minimum billing demand terms, DCC conducted discovery aimed at understanding the incremental infrastructure costs Consumers anticipates in order to serve the load in its queue. Based on the limited information the Company produced in response to that discovery, Mr. Bieber conducted a quantitative analysis to

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<sup>16</sup> Tr. Vol. III at 83 (Connolly Direct Testimony).

<sup>17</sup> Connolly Direct at 6.

<sup>18</sup> Consumers Response to Discovery U21859-AG-CE-0013, reproduced in Exhibit DCC-1 (JB-1).

<sup>19</sup> Consumers Response to Discovery U21859-MNSC-CE-0037, reproduced in Exhibit DCC-1 (JB-1).

evaluate the combination of minimum contract term and minimum billing demand that would be required to provide the Company with revenue coverage sufficient to reasonably mitigate the risk of stranded assets.

In response to DCC discovery, the Company explained that it has not assessed the generation investment that would be required to serve new data center loads, but has engaged with the Transmission Owner to evaluate 2.65 GW of large load additions based on advanced discussions with economic development and data center projects that are considered to be more probable prospects.<sup>20</sup> Based on those discussions, the Company estimates 2.65 GW of incremental large load additions would necessitate a transmission infrastructure investment of \$730-780 million. DCC witness Bieber's analysis compares the incremental long-term revenue requirements associated with estimated transmission investments compared to the incremental long-term revenues from Rate GPD transmission charges that would result from a minimum billing demand coupled with a minimum contract term, holding all else equal. Witness Bieber's analysis focuses squarely on transmission costs because, as mentioned above, the Company has not estimated the generation costs it might incur to serve large loads, and because, with respect to distribution costs, existing tariffs allow the Company to charge a monthly extraordinary facilities charge or to require Contributions in Aid of Construction (CIAC) when extraordinary facilities are required to interconnect a customer.<sup>21</sup>

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<sup>20</sup> Consumers Response to Discovery U21859-DCC-CE-0052, reproduced in Exhibit DCC-1 (JB-1).

<sup>21</sup> Consumers Energy Company Rate Book For Electric Service, M.P.S.C. No. 14 – Electric, Original Sheet No. C-3.00. In response to discovery, Consumers explains that the Company may collect the cost of distribution facilities from customers via a refundable Customer Advance or a non-refundable CIAC. CIAC is removed from the plant balance that is allocated to customer classes in a class cost of service study, while Customer Advances are treated as a deduction to rate base and are currently allocated to customers based on distribution plant in service. Consumers Response to Discovery U21859-MNSC-CE-0078, reproduced

The table below (Table JB-2 in Mr. Bieber’s direct testimony) compares the net present value (NPV) of minimum transmission revenues the Company would receive from 2.65 GW of hypothetical large load additions with the NPV of the incremental transmission revenue requirement associated with the transmission infrastructure investments required to serve that level of load (based on the Transmission Owner’s estimates).

**Table JB-2**  
**Minimum Transmission Revenues**  
**Compared to Incremental Transmission Cost**

<b><u>Minimum Transmission Revenues</u></b>	<b>Consumers Proposal</b>	<b>DCC Proposal</b>
Minimum Contract Term (Years)	15	10
Minimum Billing Demand (%)	80%	70%
Large Load Additions (MW)	2,650	2,650
GPD 1 Rate (\$/kW)(weighted avg summer/winter)	8.24	8.24
Annual Minimum Demand Charges (\$)	209,540,800	183,348,200
Proxy Discount Rate (%) <sup>1</sup>	7.75%	7.75%
GPD Rate Annual Escalation <sup>2</sup>	2.7%	2.7%
NPV of Minimum Demand Charges (\$)	2,128,467,959	1,383,574,528
<b><u>Incremental Transmission Revenue Requirement</u></b>		
Estimated Capital Cost (\$) <sup>3</sup>	755,000,000	755,000,000
Depreciable Life (Years)	40	40
Proxy Discount Rate (%) <sup>1</sup>	7.75%	7.75%
NPV of Incremental Revenue Requirement (\$)	1,046,650,362	1,046,650,362
<b>Minimum Transmission Revenue Less Incremental Revenue Requirement</b>	<b>1,081,817,598</b>	<b>336,924,166</b>

<sup>1</sup> Discount rate equal to Michigan Electric Transmisison Company rate of return ER23-2791.

<sup>2</sup> Rate GPD annual escalation based on actual Rate GPD 1 escalation between 2018 to 2025.

<sup>3</sup> Estimated capital cost equal to the middle of the Transmission Owner's estimated range of capital costs.

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in Exhibit DCC-1 (JB-1). Witness Bieber also explains that distribution costs to interconnect a large load addition can vary significantly depending on the location of the load. Tr. Vol. V at 635 (Bieber Direct Testimony).

As the table above shows, the NPV of the minimum transmission revenues resulting from Consumers' proposed combination of the minimum contract term and minimum billing demand would exceed the estimated transmission revenue requirement by approximately \$1.1 billion—**more than double** the NPV of the estimated incremental transmission revenue requirements. In contrast, a 10-year minimum term coupled with a 70% minimum billing demand produces a transmission revenue (NPV) of \$336.9 million over the estimated transmission revenue requirement. In other words, a 10 year minimum contract term coupled with a 70% minimum billing demand would provide the Company comfortable transmission cost coverage, whereas Consumers' proposed terms would produce a grossly disproportionate mismatch between costs and revenues.

Moreover, while Mr. Bieber's analysis demonstrates that a 10-year minimum contract term and a 70% minimum billing demand would generate a reasonable level of revenue for Consumers to recover a reasonable estimate of project transmission costs, this analysis only reflects the *minimum* level of revenues that would be collected from large customers. In practice, many large customers may have actual demands that exceed the minimum billing demand. Additionally, given the substantial infrastructure investments required for large load facilities and the challenges associated with securing electric capacity for such loads, many large customers may remain in service well beyond the minimum contract term. Further, if a customer's actual load were lower than the minimum billing demand, the excess capacity creates an opportunity for Consumers to generate incremental revenues through market sales.

The Company and certain intervenor parties suggest that the Commission should establish a contract term that reflects the lives of the supply assets (self-build or contracted) procured to serve incremental load. In response to DCC discovery, however, the Company concedes that it is

not necessary for the Minimum Contract Term to equal the life of the generating assets procured to serve the customer class to which that customer belongs.<sup>22</sup> Moreover, as witness Bieber's testimony demonstrates, a 10 year minimum contract term coupled with a 70% minimum billing demand would generate a reasonable level of revenues for Consumers to recover its expected transmission investment despite the difference between the contract term length and the depreciable life of the transmission assets.<sup>23</sup> The Commission should therefore approve DCC's proposed 10-year minimum contract term and 70% minimum billing demand, as those terms would not only require meaningful commitments from large load customers, but also—as DCC's analysis demonstrates—produce a level of revenues that sufficiently mitigates the risk of stranded costs associated with the investments required to serve those customers.

**B. The Commission Should Not Approve Consumers Energy's Proposed Financial Security Terms**

*1. Financial Security Requirements Should Be Proportionate To Risk, Else Those Requirements Can Present An Unnecessary Barrier to Low-Risk, High-Value Projects*

Financial security, in the context of this proceeding, refers to assets, credit instruments, collateral, or contractual assurances customers (typically, large customers) provide the utility.<sup>24</sup> Financial security serves to mitigate the risk of non-payment or stranded assets, helping ensure that the cost of service is recovered and not shifted to other ratepayers.<sup>25</sup> DCC supports requiring financial security from large load customers as a means of protecting utilities and their customers from potential financial risks, including stranded assets, project delays, and customer default. Large load projects often require substantial infrastructure investment. If such projects are

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<sup>22</sup> Consumers Response to Discovery U21859-DCC-CE-0096, reproduced in Exhibit DCC-1 (JB-1).

<sup>23</sup> Consumers Response to Discovery U21859-DCC-CE-0097, reproduced in Exhibit DCC-1 (JB-1).

<sup>24</sup> Tr. Vol. VI at 1047 (Ramirez Corrected Direct Testimony).

<sup>25</sup> *Id.*

canceled, delayed, or significantly reduced, the resulting sunk costs may ultimately be shifted to other ratepayers in the absence of adequate protections. Financial assurances such as collateral, guarantees, or prepayments work in tandem with others rate payer protections such as capacity reduction penalties and exit fees. These mechanisms collectively ensure that customers assume appropriate responsibility for the risks they introduce and that the utility can recover its costs.<sup>26</sup>

As DCC witness Ramirez—a Director at Energy and Environmental Economics (E3) and prior Program Development Director at NV Energy—recommends, however, the Commission should seek to establish financial security requirements that are proportionate to the specific risks associated with the customer subject to those requirements.<sup>27</sup> Many large load customers, for instance, are backed by financially stable sponsors and supported by long-term commercial commitments. A rigid or punitive approach may unintentionally deter low-risk, high-value projects.<sup>28</sup> A more effective strategy involves structuring security requirements that evolve over time, beginning with a collateral ramp reflective of utility investments, full collateral held during any ramp period and the reduction of collateral once at full contracted capacity as the risk to both the utility and customers diminishes over the contract term.<sup>29</sup> This staged approach appropriately reflects the risk profile from the utility’s perspective.<sup>30</sup> Further, tailoring credit requirements to a project and customer-specific risk enhances transparency, reduces unnecessary capital constraints, and supports responsible growth.<sup>31</sup> Ultimately, DCC submits the goal of financial security

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<sup>26</sup> *Id.* at 1050.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

requirements should be to strike a balance between protecting ratepayers and enabling scalable, long-term development that delivers benefits to the electric system.

Financial security requirement should also be flexible so as to accommodate a range of business structures without compromising customer protection.<sup>32</sup> Offering a range of credit tools, such as milestone-based collateral structures, surety bonds, guarantees, or upfront financial contributions, can provide necessary flexibility while maintaining financial discipline.<sup>33</sup> In addition, flexibility in financial security frameworks can improve how customers perceive investment risk in the utility's service territory.<sup>34</sup> While stricter requirements may appear to reduce risk, excessive collateral obligations can, in practice, deter investment.<sup>35</sup> When combined with uncertain project timelines, these obligations can significantly increase carrying costs for customers.<sup>36</sup> This may lead to otherwise viable projects being abandoned or removed from interconnection queues, which in turn increases the risk of stranded assets and undermines the very protections the financial requirements aim to ensure.<sup>37</sup>

2. *Consumers Energy's Financial Security Proposal Does Not Reflect Best Practices*

In its Application, Consumers Energy proposes the authority to require data center customers to provide collateral equal to up to 100 percent of the projected cost of service over a 15-year contract term if not deemed creditworthy. The Company revises its proposal in rebuttal testimony, and proposes the authority to require large load customers to provide collateral in the

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<sup>32</sup> *Id.* at 1051.

<sup>33</sup> *Id.* at 1050.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

amount of the maximum potential exit fee under the customer’s contract, recalculated annually.<sup>38</sup> The Company also proposes to allow customers to reduce their collateral over the course of the contract term.<sup>39</sup> The Company’s rebuttal proposal largely follows the lead of Staff’s direct testimony.

While the Company’s rebuttal proposal (and Staff’s financial security proposal) is an improvement over the proposal the Company presented in its Application, the Commission should not approve it, because it remains excessive and will deter a segment of the data center market—including creditworthy entities actively taking service in other jurisdictions—from locating in the Company’s service territory. Importantly, the Company’s proposal does not reflect any rigorous assessment of the risk associated with data center customers, and instead, appears to simply correspond to the maximum possible exposure under the terms of the customer contract.

Notably, the Company’s approach is out of step with the approaches taken by other utilities and jurisdictions seeking to mitigate the risks associated with large load customers. In Indiana, the Commission last year approved a unanimous settlement establishing a set of terms and conditions for large load customers (modifications to Indiana Michigan Power Company’s Tariff Industrial Power (IP))— on which the Company and Staff heavily lean in this proceeding. That settlement requires large load customers provide 2 years of minimum demand charges as collateral, and permits certain exemptions from that requirement for creditworthy customers.<sup>40</sup> More recently, in Kansas, parties—including several of the same entities that are parties to this case—submitted a unanimous settlement that would, if approved by the Kansas State Corporation Commission, establish a set of terms and conditions for large load customers taking service in Evergy Kansas’

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<sup>38</sup> Exhibit A-2 (LMC-2).

<sup>39</sup> Tr. Vol. III at 97 (Connolly Rebuttal Testimony).

<sup>40</sup> Tr. Vol. VI at 1064 (Ramirez Corrected Rebuttal Testimony).

service territory. That settlement, again, requires customers to provide collateral in the amount of 2 years of minimum demand charges, and permits several tiers of exemptions from that requirement for creditworthy customers.<sup>41</sup> While these approaches are far from binding on this Commission, they illustrate an important principle: utilities have proposed, and Commission have approved, collateral requirements substantially lower than the maximum exit fee exposure under the large load customer's contract.

Importantly, the Company's collateral proposal is not comprehensive, and does not reflect best practices. In her testimony, DCC witness Ramirez discusses a set of best practices for managing financial security for large load customers, particularly where utilities face significant capital investment and risk of stranded costs.<sup>42</sup> These practices aim to ensure cost recovery, support responsible load growth, and promote fair treatment of all customers. A key principle undergirding those practices is the alignment of financial security requirements with the utility's actual risk exposure. This involves using a phased or milestone-based structure in which collateral levels adjust based on the project's stage and the utility's financial commitment. Early-stage projects, which carry higher risk, should provide greater upfront security that can be reduced as the project advances through permitting, financing, construction, and operation. A milestone-based approach to financial security ties the level and type of collateral to key stages in the development of a large load project and the customer's lifecycle. Rather than imposing a fixed collateral requirement, this

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<sup>41</sup> Kansas State Corporation Commission, *In re Application of Evergy Kansas Metro, Inc., Evergy Kansas South, Inc., Evergy Kansas Central, Inc. for Approval of Large Load Power Service Rate Plan and Associated tariffs*, Docket No. 25-EKME-315-TAR, Joint Motion for Approval of Unanimous Settlement Agreement and Amendment of the Procedural Schedule (Aug. 18, 2025) (see Attachment 1, Unanimous Comprehensive Settlement Agreement "Evergy Large Load Settlement"). DCC filed a motion for administrative notice of the Evergy Large Load Settlement on August 21, 2025. That motion is pending at the time this brief was filed.

<sup>42</sup> Tr. Vol. VI at 1057-1063 (Ramirez Corrected Rebuttal Testimony).

approach adjusts financial security obligations as the utility's exposure evolves over time. Under the milestone-based approach, collateral requirements should begin when the utility starts making financial commitments on behalf of the customer and increase as those investments grow. At the customers' facility commercial operation date and throughout the load ramp period, full collateral should be held to incentivize customers to meet their ramp targets and to mitigate the risk of underutilized assets. Once the customer has fully ramped their load, collateral should be gradually reduced to reflect the declining risk to the utility and ratepayers. This reduction should continue month by month as the customer meets its contractual obligations, aligning financial security with actual performance and risk. The milestone-based framework offers a transparent, scalable, and disciplined way to manage financial security. It balances ratepayer protection with flexibility for responsible, creditworthy customers and aligns financial obligations with both project risk and utility investment timing.<sup>43</sup>

Ms. Ramirez explains another best practice is offering a standardized set of acceptable collateral instruments. Utilities should accept various forms of security, such as surety bonds; guarantees from a parent, affiliate, tenant, or other entity with a financial interest in the customer; sponsor support agreements; and contributions in aid of construction. A standardized menu of acceptable collateral instruments is essential to a transparent and effective financial security framework for large load customers. It provides clarity and consistency by listing approved financial tools that customers may use to meet collateral obligations. This approach promotes fairness and allows customers to select instruments that align with their financial structure, while ensuring the utility remains protected. Common collateral instruments include letters of credit, guarantees, surety bonds, and cash deposits. Letters of credit must be issued by a U.S. bank or a

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<sup>43</sup> *Id.* at 1058-1059.

U.S. branch of a foreign bank with a minimum credit rating, typically BBB- or higher from S&P and a Baa3 or higher from Moody's. These letters must meet requirements for term length and automatic renewal. Parent or affiliate guarantees must come from entities with sufficient credit quality and liquidity to support the obligation. Surety bonds, issued by qualified insurers, can be a cost-effective option. Cash collateral, though less flexible, offers strong security and is universally accepted. Including these instruments, along with clear eligibility standards, ensures the utility's financial exposure is adequately managed without imposing excessive burdens on customers. The availability of multiple options supports a range of financial profiles and simplifies compliance and enforcement. This structure helps maintain equitable treatment, operational efficiency, and a balanced approach to risk management.<sup>44</sup>

Avoiding redundancy is another best practice. Utilities should not impose overlapping forms of security that address the same risk, such as combining contributions-in-aid-of-construction (CIAC), exit fees, and demand guarantees without clear justification. Credit frameworks should include evaluation tools, such as a credit efficiency index or "scorecard", to assess the adequacy of existing protections and calibrate requirements appropriately.

Collateral exemptions are also an important aspect of the best practices Ms. Ramirez presents. Collateral exemptions are appropriate because financial security requirements should reflect the actual risk posed by each customer. Applying uniform collateral across all large load customers can lead to overcollateralization and create unnecessary barriers, particularly for financially stable and low-risk entities. Exemptions should be based on objective criteria as discussed in the previous answer. For example, a customer with an investment-grade rating and liquidity exceeding ten times the required collateral should not be subject to the same obligations

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<sup>44</sup> *Id.*

as a customer with speculative credit and low liquidity. Customers without formal ratings but with strong liquidity and financial transparency should also qualify for partial exemptions. Establishing structured, risk-based exemptions allows utilities to maintain necessary protections while promoting fairness and investment. A balanced exemption framework ensures accountability, avoids unnecessary cost burdens, and protects ratepayers without discouraging viable large load development.<sup>45</sup>

Scalability and adaptability are also essential for managing the increasing number and diversity of large load customers, including data centers, electric vehicle charging hubs, hydrogen production facilities, and other emerging technologies. A scalable credit framework enables utilities to apply consistent processes across a wide range of project sizes and customer types. This promotes efficiency, reduces administrative burden, and supports fair and timely evaluation of interconnection requests. Adaptability ensures that the credit framework remains responsive to changes in market conditions, regulatory objectives, and customer risk profiles. As new customer categories emerge or financial conditions evolve, utilities must have the ability to adjust credit thresholds, collateral requirements, and exemption criteria without overhauling the entire policy structure. This flexibility allows utilities to maintain a consistent approach while addressing unique risk characteristics in a practical and efficient manner.<sup>46</sup>

Together, scalability and adaptability provide the foundation for a stable, transparent, and future-ready credit policy. They allow utilities to protect ratepayers from financial exposure while facilitating the reliable and equitable integration of large loads into the electric grid. Importantly, credit policies should not be limited to near-term concerns or tailored narrowly to one customer

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<sup>45</sup> *Id.* at 1060-1061.

<sup>46</sup> *Id.* at 1062-1063.

segment. Rather, they should be designed with a long-term, system-wide perspective that supports the anticipated growth and diversification of large load interconnections. A forward-looking framework that is both scalable and adaptable will enable utilities to manage emerging risks effectively while supporting innovation, investment, and sustained grid reliability.<sup>47</sup>

Finally, transparency and consistency are essential best practices. Utilities should define clear credit evaluation criteria, including liquidity thresholds, credit ratings, and exemption standards. Frameworks must also be scalable and adaptable to accommodate growing and evolving large load interconnection requests. Together, these practices provide a disciplined and balanced approach that protects ratepayers, supports infrastructure investment, and ensures a fair and efficient interconnection process. While Consumers Energy's financial security proposal does not reflect these best practices, the alternative framework DCC offers is consistent with the practices above.<sup>48</sup>

### 3. *The Commission Should Adopt DCC's Collateral Recommendations*

Based on the best practices discussed above and in DCC witness Ramirez's testimony, and the recent approaches taken by utilities in other states, DCC recommends the following financial security requirements for large load customers:<sup>49</sup>

**Collateral Amount and Duration:** Large Load customers should be required to post collateral equal to two years of non-fuel revenue. However, rather than requiring that customers post the full collateral requirement at once, the collateral requirement should scale up as Consumers makes capital investments to serve the customer, to reflect the increasing risk to the Company and its

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 1065-1066.

customers. This level of collateral provides sufficient "skin in the game" to demonstrate the customer's commitment to project development. Maintaining the collateral during the ramp period also serves as an incentive for the customer to achieve full load ramp, thereby minimizing the risk of cost shifts to other customers. While instances of customer default are rare, in such cases, two years of non-fuel revenue would be sufficient to cover the costs associated with underutilized assets until the capacity can be reassigned to a new customer and that customer becomes operational.<sup>50</sup>

**Ramp-Down Schedule:** After one year of operations at contracted capacity, collateral should be reduced by 10 percent annually, reaching zero by the end of the contract term. If the contract is extended, no new collateral should be required unless additional utility investments are necessary. The 10 percent reduction annually mirrors the reduced risk to Consumers and ratepayers of stranded assets.<sup>51</sup>

**Credit Rating-Based Exemptions:** Customers whose guarantor has a credit rating of at least BBB (S&P) or Baa3 (Moody's), and liquidity of at least five times the collateral amount, should be eligible for a 50 percent exemption. These entities should be required to certify their rating and liquidity annually. Customers without formal ratings should be allowed to qualify for a 30 percent exemption if their guarantor meets the same rating threshold, is not on a credit watch, and maintains five times liquidity, subject to the same annual certification.<sup>52</sup>

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<sup>50</sup> *Id.* at 1065.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 1066.

**Acceptable Forms of Collateral:** Customer should be permitted the option of posting collateral in the form of a guarantee from a parent, affiliate, tenant or other entity with a financial interest in the customer; a letter of credit; a surety bond, or cash.<sup>53</sup>

**Collateral in the form of Cash:** Collateral posted in cash should accrue interest while held by Consumers.<sup>54</sup>

**Use of Collateral Proceeds:** If Consumers draws on posted collateral, the proceeds should be used to offset costs for remaining ratepayers to ensure the financial security serves its intended purpose to offset costs for all ratepayers.<sup>55</sup>

The financial security framework DCC recommends protects ratepayers while avoiding excessive financial obligations for large customers. It ensures recovery of utility costs through a fair, risk-based mechanism that supports investment and operational equity. The Commission should not approve the Company's proposed financial security requirements and should adopt DCC's proposed financial security framework.

**C. Consumers' Proposal to Charge an Exit Fee is Reasonable, But the Level Of Its Proposed Fee Is Excessive and Should Be Modified.**

Consumers proposes an exit fee that would be imposed on a large load customer in the event that customer were to stop taking service from the Company during the customer's contract term.<sup>56</sup> Consumers proposes to calculate the exit fee by multiplying the large load customer's

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Tr. Vol. III at 84 (Connolly Direct Testimony).

minimum billing demand requirement by the number of months remaining in the term of the customer's contract as of the date the customer ceases to take service from the Company.<sup>57</sup>

The Commission should accept Consumers' proposal to charge an exit fee in the event a large load customer ceases taking service before the end of its contract term. An exit fee can help protect the Company and its customers in the event a large load customer's plans change significantly and the customer is required to terminate its contract and exit the Company's service territory.

However, the Commission should make two modest changes to the Company's proposal. First, the Commission should require Consumers Energy to make all reasonable efforts to mitigate any exit fee, consistent with Staff's recommendation, such that the exit fee serves its purpose as a customer protection and does not act as a penalty. Second, the Commission should reduce the exit fee to the equivalent of 60 months of minimum charges, because that level is sufficient to reasonably mitigate the risk of stranded assets associated with contract termination.

*1. Consumers Should Be Required to Mitigate the Exit Fee Using All Available Methods and Resources, Consistent with Staff's Recommendation*

In its rebuttal testimony, Consumers agrees to make efforts to reduce a customer's exit fee with offsetting revenue obtained from other new large load customers.<sup>58</sup> Consumers states, however, that "[o]ther revenues should not be used to offset an exit fee under the Company's proposal."<sup>59</sup> The Commission, however, should nevertheless require Consumers' make efforts to mitigate any exit fees necessitated by a large load customer's departure with all other reasonably

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 93-94 (Connolly Rebuttal Testimony). Somewhat oddly, Consumers implies here that it will only obtain offsetting revenue from "other new *data center* customers with loads greater than 100 MW," instead of any large load customer with load greater than 100 MW, despite agreeing in rebuttal to make the revised Rate GPD provisions applicable to all new large load customers.

<sup>59</sup> *Id.*

available forms of revenue. Arbitrarily rejecting reasonable methods of mitigation risk transforming the exit fee into a punitive measure.

DCC appreciates Staff's assessment that the Company should be required to mitigate the exit fee as much as is prudently possible.<sup>60</sup> As Staff witness Isakson suggests, the Company could mitigate an exit fee by selling any unused capacity it may have purchased on the wholesale market to supply the departed large load customer back to the wholesale market or to one or more new or existing customers in need of capacity.<sup>61</sup> DCC supports this mitigation measure, as either form of sale would generate revenue that would keep existing customers' rates unaffected without requiring an exit fee—or requiring only a reasonably reduced exit fee—from the departed large load customer.<sup>62</sup> Additionally, as DCC witness Bieber suggests, the Company could mitigate the departed customer's exit fee by utilizing what would otherwise become excess energy and capacity within its own system to generate market revenues, or it could reduce operating costs by scaling back the use of underutilized assets.<sup>63</sup> Stated differently, the Company has multiple options available to mitigate any potential exit fees it would otherwise need to charge, and it should be required to make use of all options at its disposal.

Consumers claims that it could take more than 60 months for the Company to adjust its plans and fully recover the cost of any stranded assets that might be created from a departing customer's exit during the contract period, but Consumers conditions this on the notion that a customer could cease taking service with little to no notice.<sup>64</sup> But it is essential for the Commission to remember that witness Bieber's recommendation is for the exit fee to apply to the extent

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<sup>60</sup> Tr. Vol. IV at 314 (Isakson Rebuttal Testimony).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Tr. Vol. V. at 646 (Bieber Rebuttal Testimony).

<sup>64</sup> Tr. Vol. III at 94 (Connolly Rebuttal Testimony).

Consumers is unable to reassign capacity or otherwise mitigate costs brought on by the departure of a large load customer.<sup>65</sup> Given that Consumers has a queue of approximately 15 GW of data center service requests,<sup>66</sup> DCC witness Bieber recognizes that there is a high likelihood that Consumers could find another large load customer to make use of any capacity made available by a customer's departure from service.<sup>67</sup> DCC witness Bieber further recognizes that Consumers' ability to mitigate the risk and cost of any potential stranded assets is supported by the diversity of requests within Consumers' queue for service. For example, Consumers has indicated that its queue included requests for staggered in-service dates, declared as far ahead as 2029.<sup>68</sup> This suggest that Consumers will have a sizeable queue of large load customers able to make use of any available capacity—thus mitigating stranded cost risks and exit fees—for the foreseeable future. Thus, Consumers should not have any difficulty reallocating unused capacity and mitigating exit fees. In the event a customer pays an exit fee prior to Consumers being able to mitigate the exit fee, the mitigation requirement should be ongoing, and the customer should be eligible for a pro rata refund of its exit fee.<sup>69</sup> This provision would ensure the operation of the exit fee stays in keeping with a protective measure, not a punitive one.

For all the reasons discussed above, Consumers should be required to make reasonable efforts to mitigate any potential exit fee with offsetting revenue, reassignment of unused capacity, and other means on an ongoing basis. Consumers' stated goal in seeking to charge an exit fee is, after all, to protect other customers from the cost of stranded assets created by a large load

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<sup>65</sup> See Tr. Vol. V at 644 (Bieber Direct Testimony).

<sup>66</sup> Tr. Vol. III at 83 (Connolly Direct Testimony).

<sup>67</sup> See Tr. Vol. V at 645 (Bieber Direct Testimony).

<sup>68</sup> See *id.*

<sup>69</sup> See *id.* at 654.

customer's early exit from Consumers' system.<sup>70</sup> Requiring the Company to make reasonable efforts to mitigate the exit fee is consistent with this objective.

2. *The Commission Should Adopt DCC's Proposed Exit Fee Because It Would Encourage Customers to Honor Their Contract Commitments And Sufficiently Mitigate the Risk of Stranded Costs*

The Commission should adopt an exit fee equivalent to the customer's minimum billing demand multiplied by the lesser of 60 months or the remaining months left in the contract term (with 36 month's notice).<sup>71</sup> DCC's proposed exit fee would both create strong incentives for customers to honor their commitments and reasonably mitigate customers' exposure to stranded costs in the event a large load customer terminates its contract. In contrast, Consumers' proposal would permit the Company to collect a fee far in excess of the level required to protect its customers.

The Commission recently addressed a similar situation, regarding DTE Electric Company's (DTE) proposed termination fee for customers with an annual enrollment of 80,000 MWh or more in DTE's MIGreenPower program.<sup>72</sup> The Commission found that the termination fee, which would have allowed DTE to collect the MIGreenPower subscription fee for all remaining years of a customer's contract, could allow the Company to collect up to five times the dollar value the contract would have held had a default not occurred.<sup>73</sup> Importantly, the Commission found that DTE's proposed termination fee went beyond what is reasonable to protect ratepayers and crossed into the realm of penalizing the defaulting party, and therefore, the

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<sup>70</sup> Tr. Vol. III at 84 (Connolly Direct Testimony).

<sup>71</sup> Tr. Vol. V at 644 (Bieber Direct Testimony).

<sup>72</sup> *In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determinations, and/or approvals necessary for DTE ELECTRIC COMPANY to comply with Section 61 of 2016 PA 342*, MPSC Case No. U-21172, Order at 21 (Apr. 25, 2024).

<sup>73</sup> *Id.*

Commission rejected the proposed termination fee.<sup>74</sup> Here, the Company's proposed exit fee is similarly in excess of the level necessary to protect customers, and therefore the Commission should modify it in favor of DCC's proposal.

As DCC witness Bieber explains, even in an extreme scenario, where a departing customer provides notice of its termination immediately after its minimum contract term has begun, the customer would still be subject to eight years of Minimum Billing Demand payments (minimum billing demand payments for the 36 month notice period and the 60 month equivalent exit fee).<sup>75</sup> Witness Bieber illustrates the financial impact of this scenario in Table JB-3.<sup>76</sup> An illustrative departing customer—with a 500 MW contract capacity—would still be accountable for and required to provide \$838 million in revenues over those eight years.<sup>77</sup> It is unlikely that *any* customer would sacrifice nearly one billion dollars to exit service early unless it had no other option. Thus, witness Bieber's proposed exit fee structure provides a strong incentive for customers to honor their contractual commitments, while mitigating the risk of stranded assets to other customers.

DCC witness Bieber's testimony also demonstrates DCC's exit fee would reasonably mitigate the risk of cost shifting in the event of a contract termination, whereas the Company's proposed exit fee is excessive. As Table JB-3 of Mr. Bieber's testimony demonstrates, the departing customer's exit fee revenues over 60 months are \$524 million.<sup>78</sup> Hypothetically, if the same customer was required to pay an exit fee based on 120 months of a remaining contract term—as would be allowed under Consumers' proposed exit fee structure—that exit fee revenue alone,

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<sup>74</sup> *Id.*

<sup>75</sup> Tr. Vol. V at 649 (Bieber Direct Testimony).

<sup>76</sup> *Id.* at 648 Table JB-3.

<sup>77</sup> *Id.* at 649.

<sup>78</sup> *Id.* at 648 Table JB-3.

not including any revenue contributed during the 36-month notice window, would amount to nearly \$1.05 billion.<sup>79</sup> Considering that Consumers' estimate of the cost to cover all transmission infrastructure investment required to serve 2.5 GW of new load is upwards of \$780 million, requiring one departing customer to cover hundreds of millions of dollars more than the cost required for new transmission infrastructure required to serve load five times greater than its load cannot be considered reasonable. In contrast, witness Bieber's proposed exit fee structure—specifically, capping the exit fee calculation at 60 months or the remaining months left on the customer's contract—would reasonably protect Consumers' existing customers from stranded cost risk.

**D. Customers Should Be Permitted to Reduce Capacity Beyond a One-Time Reduction, Subject to a Capacity Reduction Fee.**

The Commission should allow large load customers to reduce their contract capacity beyond a one-time allowance.<sup>80</sup> Further, the Commission should not require Consumers to seek Commission approval for customer capacity reductions where the customer pays an exit fee in association with a contract capacity reduction.

Consumers rightly recognizes that data center customers may not always know their exact load requirements 15 to 20 years out, and that outside considerations can impact their planned load requirements. Accordingly, Consumers proposes to allow a one-time reduction to Contract Capacity, so long as—in the Company's discretion—reduction does not create a stranded asset or otherwise cause cost shifting onto Consumers' other customers.<sup>81</sup> In rebuttal testimony,

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<sup>79</sup> \$524,740,000 x 2 = \$1,047,480,000.

<sup>80</sup> Tr. Vol. III at 84 (Connolly Direct Testimony).

<sup>81</sup> *Id.*

Consumers supports DCC witness Bieber’s proposal for a one-time reduction in contract capacity of 15%.<sup>82</sup>

DCC appreciates Consumers’ support for allowing customers a one-time reduction allowance, but also recommends the Commission allow Contract Capacity reductions—subject to an exit fee—beyond the a one-time allowance. Specifically, customers should be allowed to reduce contract capacity beyond the aforementioned 15% reduction if Consumers determines there will be no adverse impacts to other customers or the Company, or if the customer pays an exit fee applicable to the incremental capacity reduction exceeding the one-time, 15% reduction.<sup>83</sup> Those protections would permit customers necessary flexibility while helping ensure other customers do not bear undue risk associated with that flexibility. The Indiana Utility Regulatory Commission recently approved a settlement establishing terms for large load customers, and that settlement permits customers to reduce contract capacity beyond a one-time 20% capacity reduction, subject to an exit fee.<sup>84</sup>

Permitting customers the flexibility to reduce contract capacity (provided the capacity reduction does not shift costs onto other customers) is reasonable in light of the Company’s circumstances. Consumers currently has a queue with 15 GW of data center service requests sourced from over 30 different data center leads.<sup>85</sup> The Company should therefore be able to repurpose any capacity made available from a customer’s contract capacity reduction. Thus, allowing further Contract Capacity reductions not only benefits the customer seeking reduction,

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<sup>82</sup> *Id.* at 95.

<sup>83</sup> Tr. Vol. V at 658 (Bieber Direct Testimony).

<sup>84</sup> *In The Matter of The Verified Petition of Indiana Michigan Power Company for Approval Of Modifications To Its Industrial Power Tariff – Tariff I.P., Indiana Utility Regulatory Commission, Cause No. 46097, Order of the Commission at 40 (Feb. 19, 2025).*

<sup>85</sup> Tr. Vol. III at 85 (Connolly Direct Testimony).

but could also benefit an additional customer or customers seeking capacity on Consumers' system.

In direct testimony, Staff witness Isakson recommends that the Company be required to make an *ex parte* showing that no harm will come to other customers because of any contract capacity reduction.<sup>86</sup> In any situation where a large load customer is permitted to reduce capacity without payment of an exit fee, *e.g.*, where Consumers is able to mitigate potential adverse impacts to other customers, it is reasonable for the Commission to evaluate proposed mitigation measures. This process would allow the Commission the opportunity to thoroughly assess and confirm that the proposed mitigation measures would sufficiently prevent adverse impact to other customers.<sup>87</sup> However, if the customer reducing capacity pays an exit fee to facilitate its reduction, the exit fee itself should serve to mitigate any potential harm to other customers, and there should be no need for Commission review (*ex parte* or otherwise). Requiring Commission review and approval of contract capacity reductions (including where the customer pays an exit fee) would be an onerous requirement that would inject undue uncertainty into the customer's contract.

In rebuttal testimony, Consumers supports DCC witness Bieber's proposal for a one-time contract capacity reduction of up to 15%.<sup>88</sup> Consumers also states that specific Commission approval of contract capacity reductions executed in alignment with any protective guardrails the Commission puts in place, such as to cap contract capacity reduction or set a minimum-notice requirement, should not be required.<sup>89</sup> Consumers points out that with sufficient notice, the Company will incorporate revised capacity requirements into its existing and planned future filings

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<sup>86</sup> Tr. Vol. IV at 307 (Isakson Direct Testimony).

<sup>87</sup> Tr. Vol. V at 689 (Bieber Rebuttal Testimony).

<sup>88</sup> Tr. Vol. III at 95 (Connolly Rebuttal Testimony).

<sup>89</sup> *Id.*

before the Commission, *e.g.*, Integrated Resource Planning and general rate case filings, which are contested filings that will offer interested parties—and the Commission—a chance to weigh in on capacity reduction issues.<sup>90</sup> This appears to support DCC’s position, described above, that Commission review of contract capacity reductions executed with payment of an exit fee should not be required.

For the reasons discussed, the Commission should allow large load customers the ability to reduce contract capacity beyond the Company’s proposed one-time, 15% reduction, subject to exit fee protections and associated mitigation measures.

**E. The Commission Should Approve Consumers’ Reporting Proposal Subject to Addition of Measures to Protect Confidential Information.**

The Commission should approve Consumers proposed annual reporting requirements, with a critical addition: as DCC witness Bieber recommends, any annual reporting requirements must explicitly safeguard confidential customer information from disclosure.<sup>91</sup>

Consumers proposes to provide an annual report documenting the service it provides to data center customers. Consumers specifically proposes to report on the number of executed rate contracts, the aggregated data center provision MWs and MWhs in service, the number of reductions (and or increases) to contract capacity requested and the associated MW, the number of contract termination notices, and the number of exit fees applied.<sup>92</sup>

DCC does not oppose Consumers’ proposed reporting requirements. However, the Commission should exercise caution and act to ensure that confidential customer information is protected from disclosure. For example, to the extent Consumers Energy has a significant number

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<sup>90</sup> *See id.* at 95.

<sup>91</sup> Tr. Vol. V at 661 (Bieber Direct Testimony).

<sup>92</sup> Tr. Vol. III at 88 (Connolly Direct Testimony).

of data center customers (*i.e.*, five or more), it should aggregate customer data for reporting purposes to protect confidentiality. However, if the Company’s customer pool is too small to allow effective aggregation, Consumers annual reporting should otherwise include appropriate protections to ensure the security of highly sensitive information.<sup>93</sup>

**F. Any Revisions to Rate GPD the Commission Adopts Should Apply Equally to All Large Load Customers, and Should Not Distinguish Between Customers Based on Business Activity**

As data center load growth grows exponentially across the country, utility commissions are confronted with the question of how best to facilitate service to this prominent and energy-intensive new industry while protecting existing customers from harm. This is a difficult problem, but not a novel one. Michigan has regularly and successfully found ways to protect all customers of utilities while serving a single customer that represents an exceptionally large percentage of demand. This case should be approached the same way, ensuring (as the law requires) that rates represent the cost of service<sup>94</sup> and allow economic growth while protecting other customers from the risks associated with single-customer load. Utility costs are agnostic to the underlying use of the electricity, for good reason, since the costs to serve a particular load amount and profile are the same regardless of end use. The Commission should retain the same broad applicability in the docket – this is not only prudent, reasonable, and proactive, but it also comports with long-standing prohibitions against discriminatory utility service in Michigan.<sup>95</sup> Moreover, it comports with the approach taken by the majority of utilities

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<sup>93</sup> Tr. Vol. V at 661-662 (Bieber Direct Testimony).

<sup>94</sup> MCL 460.11(1) (“In establishing cost of service rates, the commission shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid.”).

<sup>95</sup> See, e.g., *Ten Broek v Miller*, 240 Mich 667, 669–70; 216 NW 385 (1927); *Antisdell v Macatawa Resort Co*, 243 Mich 444, 445; 220 NW 768 (1928) (utility terms of service upheld since they were “uniform to all,” “reasonable,” and “impartially enforced.”)

proposing tariff revisions to address rapid load growth from data centers and other large loads. For the legal and policy reasons discussed below, the Commission should not adopt any set of tariff provisions applicable only to data centers. Instead, the Commission should adopt a set of amendments to Rate GPD that apply to large load customers notwithstanding business activity, consistent with the recommendation of Michigan Public Service Commission Staff and the Company’s revised proposal in rebuttal testimony.

*I. Michigan Law Prohibits Utilities From Charging Different Rates to Customers Receiving Like Contemporaneous Service*

Michigan law explicitly protects public utility customers from discriminatory tariffs. MCL 460.557(4) provides that a utility service “consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under *similar* circumstances and conditions.”<sup>96</sup> MCL 460.557(4) further states that electric utilities operating in Michigan may not, directly or indirectly, by any device, demand, collect, or receive greater compensation from one customer over another for like contemporaneous service rendered.<sup>97</sup> MCL 460.557(2) provides a list of factors that the Commission may consider when evaluating whether two or more customers are receiving like contemporaneous service. This list is non-exhaustive, however, as the Michigan Court of Appeals has held that the Commission may consider “any other lawful factors it deems relevant.”<sup>98</sup> Stated succinctly, Michigan law makes it very clear that a utility may not charge one

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<sup>96</sup> MCL 460.557(4) (emphasis added).

<sup>97</sup> See MCL 460.557(4): “An electric utility doing business within this state shall not, directly or indirectly by a special rate, rebate, draw-back, or other device, charge, demand, collect, or receive from a person, partnership, or corporation, a greater or lesser compensation for a service rendered than the electric utility charges, demands, collects, or receives from any other person, partnership, or corporation for rendering, a like contemporaneous service.

<sup>98</sup> *Attorney Gen. v. Public Service Com.*, 472 N.W.2d 53, 57-58 (Mich. Ct. App. 1991).

customer more than another customer receiving the same *or similar* service. To do so would constitute be unjust, unreasonable, and unlawful rate discrimination.

2. *The Record Evidence In This Case Does Not Support Application of Revised Rate GPD Provisions to Data Centers Alone*

Whereas DCC supports Consumers' revised proposal to apply certain Rate GPD provisions to large load customers, Consumers Energy's original proposal to apply amended Rate GPD provisions exclusively to data centers is both unreasonable and discriminatory.<sup>99</sup> The Company does not support its assumptions about alleged risk specific to the data center industry, and Consumers has not refuted and cannot refute the fact that any similarly sized customer could pose the same risk as it seeks to mitigate in this case.

Consumers' fundamental purpose in proposing amended Rate GPD provisions is to protect its other customers from stranded assets and increased costs that would result if infrastructure investments are made to serve expected load that either does not materialize as planned, or ceases to exist sooner than anticipated.<sup>100</sup> But *any type of customer* with a similarly sized load, coming onto the utility's system *en masse*, would require comparable infrastructure investment and would pose the same potential risk of load not fully materializing or disappearing early.<sup>101</sup> In other words, it is the size of the new load, not the nature of the customer's end use or the service rendered to the customer, that causes the risk that warrants mitigation efforts such as revised tariff terms.

Additionally, Consumers has provided no evidence to support its initial claims about data centers being more inclined or able to reduce or eliminate load.<sup>102</sup> In fact, the unprecedented nature of data center load growth cited by Consumers as the basis for its amendments to Rate GPD is a

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<sup>99</sup> Tr. Vol. V at 622 (Bieber Direct Testimony).

<sup>100</sup> Tr. Vol. III at 81 (Connolly Direct Testimony).

<sup>101</sup> See Tr. Vol. III at 622 (Bieber Direct Testimony).

<sup>102</sup> *Id.* at 625.

possible limitation on data centers' ability to exit or reduce service unexpectedly. Data center load is clearly growing quickly across the country—including the 15 GW of data center service requests the Company reports in its economic development pipeline.<sup>103</sup> This means that while any given data center can technically move its operation elsewhere, there is no guarantee that another state's utilities will have the capacity to meet that data center's needs—and the Company appears to have a pipeline of requests that could fill the gap left by any departing data center.<sup>104</sup> The Company has not provided any evidence—such as a load study—that would demonstrate any difference between customers with similar loads in different, *i.e.*, non-data center industries.<sup>105</sup> The Company has not conducted any quantitative assessment or analysis of risk related to data centers,<sup>106</sup> and further, offers no evidence concerning the likelihood of non-data center customers to reduce their load. In fact, the Company admits that it does not track aggregate peak demand or contract capacity by industry.<sup>107</sup>

At least one major non-data center industry has, however, already experienced substantial unforeseen reduction in electric load that supports application of revised Rate GPD provisions to all large load customers, not just data centers. Distress in Michigan's iconic automotive industry negatively affected Consumers' credit ratings and cost of debt, thus impacting the Company's other customers.<sup>108</sup> In 2009, for example, credit rating agency Fitch cited concerns about Consumers' credit rating due to the weak and declining economy in Michigan, driven in large part by the distressed automotive industry.<sup>109</sup> Fitch specifically referenced bankruptcy filings of

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<sup>103</sup> Tr. Vol. III at 81 (Connolly Direct Testimony).

<sup>104</sup> Tr. Vol. V at 627 (Bieber Direct Testimony).

<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 625.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 625-626.

<sup>109</sup> *Id.* at 626.

General Motors Corporation and Chrysler LLC while highlighting the potential for plant closures and production ramp-downs to reduce electric load and industrial electric sales.<sup>110</sup>

The potential for other industries to pose the same risk as Consumers allocates to data centers is why utility commissions in other jurisdictions have approved non-discriminatory tariffs applicable to all large load customers over a certain size threshold. For example, non-discriminatory large load tariffs have been implemented in Indiana (in a case Consumers references as a benchmark for its own Application), Oregon, Utah, and West Virginia.<sup>111</sup> Additionally, utilities in Oregon, Kansas, Missouri, and Virginia have all filed applications to implement new tariff provisions applicable to all similarly sized large loads, not just any one specific industry.<sup>112</sup> Non-discriminatory tariffs applicable to all loads at or above a given threshold offer utility commissions the most practical, proactive approach to address surging electric demand across numerous industries.

DCC does not argue that revised Rate GPD provisions are unnecessary. In fact, DCC witness Bieber agreed with Consumers' proposal to apply revised Rate GPD provisions to customers with loads over 100 MW.<sup>113</sup> But because *any* customer with a load over 100 MW would require similar infrastructure investment, and would pose the same risk if its load failed to materialize or disappeared, it is unreasonable to apply revised Rate GPD provisions exclusively to data centers. Consumers has provided no evidence regarding how the service it will provide to data centers would not constitute like contemporaneous service to similar large load customers under the same *or similar* circumstances and conditions,<sup>114</sup> to impose the more stringent contract terms

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 628.

<sup>112</sup> *Id.* at 628-629.

<sup>113</sup> *Id.* at 622.

<sup>114</sup> MCL 460.557(4).

contemplated in Consumers’ application—including exit fees and minimum demand charges—only to data centers would be unlawfully discriminatory.

3. *Staff Correctly Recognizes That Revised Rate GPD Amendments Should Apply to All Customers Over 100 MW, and Consumers Agrees*

In direct testimony, MPSC Staff witness Isakson proposes that Consumers remove the term “data center” from its tariff revisions and make the revised provisions applicable to all new large load customers with a load of or exceeding 100 MW.<sup>115</sup> Witness Isakson further states explicitly that it is not appropriate to identify data center customers specifically.<sup>116</sup> Witness Isakson explains that rates or tariff provisions are not typically targeted to specific customer end-uses unless the end use itself results in a unique nature of service from the utility, such as with metal melting or electric vehicle charging.<sup>117</sup> And in this case, according to witness Isakson, though data centers can be unique in their sheer scale compared to other load, it is the size of data center customers that is unique—not the utility’s service to a data center or the end use of electricity as a data center.<sup>118</sup> Witness Isakson also recognizes that “any unexpected exit from service of a customer with 100 MW or more of demand could be detrimental enough” to warrant revised tariff provisions contemplated by Consumers.<sup>119</sup> Accordingly, Staff recommends application of revised Rate GPD provisions to all large load customers over 100 MW.<sup>120</sup>

Mr. Isakson’s observations are astute, and in rebuttal testimony, Consumers agreed that modifying its proposed revisions to Rate GPD provisions—such that they are applicable to all

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<sup>115</sup> Tr. Vol. IV at 307 (Isakson Direct Testimony).

<sup>116</sup> *Id.* at 308.

<sup>117</sup> *Id.*

<sup>118</sup> *See id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

large load customers over 100 MW and not just data centers—is a reasonable modification.<sup>121</sup> DCC supports this change. For the reasons discussed above, the Commission should approve Consumers’ proposed revisions to Rate GPD as applicable to all large loads over 100 MW, consistent with the Company’s rebuttal position. To single out data centers would be illogical, unreasonable, and unlawfully discriminatory.

## V. CONCLUSION

For the reasons described in this brief, DCC respectfully requests the Commission adopt DCC’s recommended modifications to Consumers Energy’s proposals, described in DCC’s Summary of Recommendations.

August 21, 2025

Respectfully submitted,



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<sup>121</sup> See Tr. Vol. III at 91 (Connolly Rebuttal Testimony).

# 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

### PROOF OF SERVICE

On August 21, 2025, an electronic copy of the foregoing was served on the following via email:

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The statements above are true to the best of my knowledge, information and belief.

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