

August 22, 2025

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917

RE: MPSC Case No. U-21859 – In the Matter of the Application of Consumers Energy Company for Ex Parte Approval of Certain Amendments to Rate GPD.

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find the corrected **Initial Brief of Consumers Energy Company**. This brief is being filed only to correct missing page numbers. This is a paperless filing and is therefore being filed only in PDF. Also included is a Proof of Service showing service upon the parties.

Sincerely,

Anne M. Uitvlugt
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Email: anne.uitvlugt@cmsenergy.com

cc: Parties Per Attachment 1 to the Proof of Service

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

INITIAL BRIEF OF CONSUMERS ENERGY COMPANY

I. INTRODUCTION

Consumers Energy Company (“Consumers Energy” or the “Company”), like other utilities throughout the country, has experienced a significant increase in requests for service from new data centers. The Company has data center inquiries that total over 15 gigawatts of electric load in the economic development pipeline. This volume of requests and potential load growth is significant. 3 TR 81. In order to position itself to appropriately serve this new load and protect its existing customers, the Company filed its application in this case to propose modifications to Rate GPD.

While load growth is beneficial to the Company and to other customers, Staff witness David W. Isakson explained that:

If that growth is moderate and diverse (i.e., it comes from several customer classes or from a variety of economic sectors), then load coming or going from many smaller customers is less likely to create a sudden, radical change to the Company’s cost drivers. ...On the other hand, if the expected load growth is both far larger than can be accommodated by the existing grid and from a single customer or source, then there exists a single point of potential failure that could result in significant stranded assets. Essentially, concentrating load growth into a single customer or industry increases the sensitivity of that load growth to outside factors. [4 TR 292-293]

Consumers Energy’s proposed tariff provisions are designed to help mitigate risk associated with serving new large customer loads, and should be put in place to protect other customers from

potentially stranded assets and increased costs should the load not materialize after resources are committed to serve them or the load is not in place for as long as expected.

II. PROCEDURAL HISTORY

On February 7, 2025, Consumers Energy filed an Application for *ex parte* approval of amendments to its Rate GPD (“Application”). The Company’s Application proposed modifications to Rate GPD’s terms of service for any new data centers, or large load customers, taking service under the rate. The proposed amendments to Rate GPD are designed to help mitigate the financial risk of serving large load customers, and include a 15-year minimum contract term, Minimum Monthly Demand charge, an Exit Fee, and the authority to require financial security.

On March 13, 2025, the Michigan Public Service Commission (“Commission” or “MPSC”) issued an order converting this case to a contested case proceeding. The order scheduled a prehearing conference for April 16, 2025. On April 8, 2025, Consumers Energy filed a motion looking to define and limit the scope of the contested case proceeding to be consistent with the relief requested in the Application. A prehearing conference was held before Administrative Law Judge (“ALJ”) Katherine E. Talbot on April 16, 2025. The parties to the proceeding are the Attorney General; the Association of Businesses Advocating Tariff Equity (“ABATE”); the Data Center Coalition (“DCC”); Switch Ltd.; the Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively “CEO”); the Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan (collectively “MNSC”); and the Michigan Energy Innovation Business Council, Institute for Innovation, Advanced Energy United (collectively “MEIBC”). 1 TR 17-18. The MPSC Staff (“Staff”) also participated in the hearing. The parties set a case schedule. 1 TR 19. The ALJ also conducted a hearing on the Company’s motion and issued a ruling denying the Company’s motion

to limit testimony and arguments. 2 TR 46-51. Consumers Energy appealed this decision to the Commission on April 30, 2025.

Evidentiary hearings began on July 29, 2025 and concluded on August 8, 2025. Pursuant to the schedule established, Initial Briefs are due August 21, 2025, and Reply Briefs are due September 16, 2025. The Commission has indicated that it will read the record in this case. MPSC Case No. U-21859, March 13, 2025 Order, page 3.

III. RATE GPD

At this time, data center customers, or other large load customers, could take service on Rate GPD. In fact, Rate GPD is the most competitive rate currently available for data center customer load. 3 TR 82. At this time, there are no provisions in the Company's tariffs that would prevent a data center customer from signing a contract with the Company today and taking service on this tariff rate. This means that a customer could contract for service with Consumers Energy, significantly increasing the Company's current peak demand, and require substantial investments in generation capital, purchase power agreements, distribution infrastructure, and/or higher transmission expense to serve that load. 4 TR 293. Without the Company's proposed protections, other customers would pay for the incremental costs to serve a data center or other large load customer if that customer exits service before sufficient revenue is generated to offset costs. *Id.*

A. Rate GPD Large Load Provisions

Consumers Energy proposed to modify its Rate GPD to include provisions related to data centers. 3 TR 86. The Company later changed this to be provisions relevant to large load customers, or customers above 100 MW on the rate. In developing its modifications, Consumers Energy looked at proposals adopted in other regulatory jurisdictions. 3 TR 100. Specifically, the Company evaluated proposals being made in nearby states. Most relevant to the Company's proposal is the Indiana Michigan Power Company's Industrial Power Tariff, which was approved

via a settlement agreement by the Indiana Utility Regulatory Commission. See Exhibit S-3. Staff provided a summary comparison of Indiana Michigan Power Company's Industrial Power Tariff and the Company's proposal at 4 TR 304-306.

The Company's original Rate GPD Large Load Provision proposal features the following:

- A 15-year minimum contract term, commencing after the negotiated ramp up period;
- A Minimum Billing Demand Requirement;
- Financial Security Stipulations;
- An Exit fee requirement;
- A 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 the Contracted Capacity; and
- An upfront administrative fee for project proposal. [3 TR 82.]

In making these proposed modifications, Consumers Energy's objective is to balance the needs of prospective large load customers against the needs of its existing customers. The exact language of these modifications is seen on Exhibit A-1 (LMC-1). Each of the Company's original proposals are discussed below.

1. Contract Term

Rate GPD requires entering a one-year contract. To address concerns regarding proper planning for the system and to help ensure that the large load customer is responsible for the costs of providing it service, Consumers Energy proposes that the prospective large load customer must enter into a rate contract term for an initial period of at least 15 years in order to receive electric service. 3 TR 83. Company witness Laura M. Connolly explained that this proposed contract length is due to investments in capacity, energy, and distribution to serve the requested large load. *Id.* Many of these investments are long term in nature, such as Power Purchase Agreements

(“PPAs”) and/or building generation assets. 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. The rate contract shall also include a specified Contract Capacity amount and allows for a ramp up period, not to exceed five years, after which the minimum 15-year contract term would commence. A minimum contract term of 15 years reasonably reflects the term of the power supply resources the Company anticipates needing to procure in order to serve new data center loads.

2. Minimum Billing Demand

Minimum Billing Demand requirement ensures that the customer the investment was made to serve covers the costs of that investment, whether they are using the requested capacity or not. Under the Company’s proposal, a large load customer would be required to declare a contracted capacity amount (“Contract Capacity”). Company witness Connolly explained that the Minimum Billing Demand would be 80% of the Contract Capacity. After an agreed upon ramp up schedule, the Minimum Billing Demand requirement would start at the end of the ramp up period and commence for the length of the 15-year contract. 3 TR 83. Under this proposal, the large load customer would be required to pay On Peak Demand, Transmission, and Maximum Demand charges based on no less than 80% of the Contracted Capacity amount, regardless of actual usage.

3. Financial Security

The Company is also requesting authority to require financial security from large load customers. This would occur in cases where the Company’s standard risk review deems it appropriate. 3 TR 84. The purpose of this financial security is to ensure that a customer is economically viable to pay for the investments needed to serve it.

4. Exit Fee

Due to the size of the large load customers, the Company is proposing an Exit Fee if these customers leave prior to the end of their contract. This fee would protect other customers from having to pay for stranded assets if the large load customer ceases to take full service from Consumers Energy. 3 TR 84. The Exit Fee would be calculated by multiplying the large load customer's Minimum Billing Demand requirement by the number of months remaining in the term of the contract. *Id.*

5. Contract Capacity Reductions and Increases

At the time of entering into a contract, large load customers may not know their exact load requirements for the term of the contract. Also, there could be other outside considerations that would impact the customer's load plans. 3 TR 84. For this reason, the Company proposes to include flexibility to allow the customer a one-time reduction to their contracted capacity amount, at the Company's discretion. This request would be honored if doing so does not create a stranded asset related to investment made to serve the customer's original load request or otherwise cause costs to be shifted to other customers. *Id.*

While the Company is willing to permit a one-time load reduction, the Company is also proposing to suspend service and/or amend the customer's contract if a customer is using 1,000 kW or above its Contracted Capacity. The Company proposes this in order to protect the integrity of the system. If a large load customer uses above the Contract Capacity amount, the other customers could be impacted by system disruption. 3 TR 84. Company witness Connolly explained that "[i]f the additional capacity is available, the Company may seek to adjust the Contract Capacity amount going forward. If additional capacity is not available, the Company will inform the data center customer that it must reduce its usage to its Contract Capacity, and if the

customer does not comply, the Company would have the right to suspend service to the customer.”
3 TR 85.

6. Administrative Fee

The Company has received a number of requests from prospective large load customers on information and load scenarios for multiple sites. These requests often take considerable time and resources to prepare the extensive engineering studies needed to determine the most economical solution to serving the potential load. 3 TR 85. To ensure that potential large load customers cover the costs associated with their project development, the Company requests authority to charge these prospective customers an upfront administrative fee, not to exceed \$100,000 per project proposal, on the project proposals made for them. *Id.* This administrative fee would collect the costs incurred by the Company for the engineering study, supply planning, project management, economic development, and rates support needed to develop a project proposal. The fee will be calculated based on estimated labor hours and hourly labor rates expected to generate the study and supporting materials. *Id.* Establishing an upfront administrative fee allows the Company to focus on those prospective customers that are most serious about investing in Michigan.

B. Compromise Position

The Company reviewed the different testimonies filed by the parties in this proceeding. Instead of taking a position on each of the different items, the Company focused on finding areas of agreement with the different parties. Overall, Staff and the Company are closely aligned, and the Company would support approval of many of Staff’s modifications. Specifically, the Company agrees with Staff on:

- Removing the definition of “Data Center” and rename the tariff provision as a Large Load provision. (This position is also shared by DCC witness Justin Bieber and MEIU witness John D. Albers.);

- Including a more detailed, transparent definition of the collateral requirement and acceptable forms of payment. See Exhibit A-2 (LMC-2);
- Defining the collateral amount as equal to the Exit Fee;
- Reducing the Exit Fee with offsetting revenue when available;
- Preventing customers on this provision from reassigning their capacity obligation to another entity without Company approval; and
- Requiring the Exit Fee to apply during the ramp up period. [3 TR 91.]

The Company agrees that all of these are reasonable modifications to its proposal. Exhibit A-2 (LMC-2) is an updated tariff showing the modifications.

1. Eligibility

The parties to the proceeding took different positions on load size that should be eligible for the Large Load provision. Staff, the Company, and DCC agree that the Large Load provision should apply to all new large load customers with a load greater than 100 MW. The Attorney General proposes that the provision apply to loads of 50 MW or greater for a single site and 100 MW or greater for aggregated sites. MEIU proposes that the tariff provision applicability be set at 25 MW and MNSC proposes 50 MW. 3 TR 92. Company witness Connolly evaluated these different proposals and maintained that 100 MW is an appropriate threshold for this provision to apply at a single site but also supports the Attorney General's proposal to apply this to two or more sites of 50 MW or greater per site which are owned by the same entity and located in Consumers Energy's service territory. 3 TR 92. The Company believes that this is reasonable as the modification that the Company is proposing to address very large load requests that are not eligible to take service under the Large Economic Development (Rate LED). Additionally, the Company does not support the Attorney General's proposal to include a minimum load factor requirement as an eligibility requirement. Company witness Connolly explained that:

Mr. Deupree does not explain the relevance of load factor as it pertains to investments made to serve these large load customers. The tariff requirements the Company is proposing are just as necessary for a 100 MW customer with a 90% load factor customer as they are for a 100 MW customer with a 50% load factor. The Company has to build the system to support 100% of the customer's expected load, 100% of the time. In other words, load factor is not a relevant consideration for the risks the Company is seeking to mitigate by the Rate GPD tariff revisions proposed in this case. [3 TR 93.]

Accordingly, Consumers Energy recommends a 100 MW eligibility requirement or two or more sites of 50 MW or greater per site which are owned by the same entity and located in Consumers Energy's service territory.

2. Contract Term/Renewal

Parties expressed differing opinions on the contract term and renewals. DCC proposed a 10-year minimum contract while MNSC proposed a 20-year minimum contract term. 3 TR 96. Staff proposed three-year contract extensions, while ABATE and the Attorney General proposed five-year contract renewal extensions. *Id.* Additionally, ABATE proposed that customers be required to provide five years notice of intention to terminate; whereas, DCC proposed three years' notice and MNSC proposed 42 months' notice. *Id.*

The Company maintains its position that a 15-year contract term is appropriate and reasonably balances the interests of the large load customers with other customers and the Company. The Company's position is the midpoint position of the parties. It also aligns more closely with the terms of the PPAs or other assets the Company will need to acquire to serve new load. 3 TR 96. The Company supports five-year contract renewal extensions with a minimum of four years' notice of plans to terminate or extend the contract. The four years' notice aligns with the Company's proposed notice for contract capacity changes. 3 TR 96. It also aligns with Michigan's four-year forward capacity planning process.

3. Minimum Billing Demand

The range of minimum billing demand proposals spans from a 70% Minimum Billing Demand to a 90% Minimum Billing Demand requirement. The Company maintains that its proposal for an 80% Minimum Billing Demand is appropriate. Not only is it the midpoint position in this case, but it also aligns with Indiana Michigan Power Company's Industrial Power Tariff. 3 TR 93.

4. Exit Fee

Parties have also made various proposals about the Exit Fee. Staff and the Attorney General proposed to apply the Exit Fee during the ramp up period. Also, Staff and DCC suggested that the Company seek to reduce the Exit Fee with offsetting revenue. 3 TR 93. The Company agrees with these proposals.

DCC also proposed to base the Exit Fee on the lesser of 60 months or the remaining months of the contract. 3 TR 93. The Company does not agree with setting a maximum term for the Exit Fee to apply. For example, a customer could cease taking service under this rate with little to no notice. In this case, the Company will need time to adjust plans which could include connecting another customer or making a related filing. This could very well take more than 60 months. 3 TR 94. Limiting the term for the application of the Exit Fee may not allow the Company to fully recover the cost of any stranded investments that could be created from the customers' exit.

MNSC suggested that the Exit Fee be expanded to include the infrastructure portion of the system access charge. 3 TR 93. This should not be handled through the Exit Fee. A customer's distribution infrastructure should be handled through their Contribution in Aid of Construction agreement which has its own minimum demand requirements and contract termination requirements. 3 TR 94.

5. Contract Capacity Reductions and Increases

The parties also made several proposals related to changes in the large load customer's contracted capacity. Staff proposed that the large load customer provide at least three years' notice prior to an expected capacity reduction. 3 TR 94. DCC proposed allowing a one-time 15% reduction in contract capacity with 36 months' notice and allowing the Company to accept, at its discretion, any reduction greater than 15% or without 36 months' notice. *Id.* The Attorney General maintained that any capacity reductions should not exceed 10% total initial contract capacity, may only be sought after five years, and may only be made with at least four years' written notice. Additionally, the Attorney General proposed that the reduction in contracted capacity should require approval through a contested case proceeding. 3 TR 94-95. ABATE made a similar proposal that any increase or reduction in capacity should require the Company to make an *ex parte* filing for approval. 3 TR 95.

After reviewing the positions of the parties, the Company agrees that it is appropriate to set both a maximum capacity reduction amount and an advance notice requirement for reductions in contract capacity. To that extent, Consumers Energy agrees with DCC to allow a one-time reduction in contract capacity of 15%. 3 TR 95. The Company also agrees with the Attorney General that four years' notice should be provided for such a request to reduce capacity – as this aligns with the Company's obligation for the State Reliability Mechanism capacity planning period.

If the Commission establishes guardrails capping the allowed reduction in contract capacity and notice requirements, the Company should not be required to seek MPSC approval if the capacity change aligns with the prescribed tariff guardrails. 3 TR 96. By requiring four years' advanced notice before any changes, the Company will be able to incorporate the new capacity

requirements into future Integrated Resource Planning (“IRP”) and general rate case filings, thereby allowing an opportunity for the Commission to review its future planning proposals.

6. Administrative Fee

The Company withdrew its request for an administrative fee. This is due to a change in the intake process that has limited the number of formal study requests. 3 TR 101.

IV. ANNUAL REPORTING

The Company will provide an annual report documenting its service to large load customers. The annual report will provide information on the number of executed rate contracts which are subject to the Rate GPD Large Load provision. The report will also provide the aggregated large customer load provision MW and MWh in service and the number of reductions and/or increases to capacity requests and associated MW. Additionally, the report will provide the number of termination of contract notices and the Exit Fees applied. 3 TR 86.

ABATE requests that additional annual reporting requirements should be added related to power supply, transmission, and delivery investments made to serve large load customers. ABATE also requests that large load customer contracts should be approved by the Commission. The Company disagrees with this proposal. To start, the Company disagrees that a customer who takes service under a standard tariff rate should be required to have their contract approved by the Commission. This is why a tariff option is in place. Additionally, the Company files annual electric general rate cases which will include forecasts of expected data center and other large customer loads in the test year, as well as the power supply, transmission, and delivery costs to serve those loads. Any concerns about plans to serve these customers are better addressed through the general rate case and other planning processes. This type of information is burdensome to provide in an annual report construct.

V. **EXPEDITED REQUEST**

The Company is proposing to charge large load customers the currently approved Rate GPD tariff rates, and the language proposed in this case would provide protections to all customers against potential stranded assets from data center and other large loads that do not materialize as expected after the Company has made investments to serve expected loads. As the Company indicated when filing this case, it has a number of data center requests in the pipeline. Some of these have been working with the Company for months and would like to review final contract terms. While the rate contract is still being negotiated, an initial agreement was recently entered into with a new large load data center customer. 3 TR 183. The Company requests expedited approval in this case in order to have provisions in place that will help protect all customers, while also informing potential customers of the terms of electric service that will apply to any rate contracts they execute with the Company. Therefore, the Company requests the Commission approve its proposed amendments to Rate GPD, as modified during the proceeding, to ensure these protections are in place.

Respectfully submitted,

CONSUMERS ENERGY COMPANY



Dated: August 22, 2025

By:

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
CONSUMERS ENERGY COMPANY)
for Ex Parte Approval Certain Amendments)
to Rate GPD.)
_____)

Case No. U-21859

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Melissa K. Harris, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on August 22, 2025, she served an electronic copy of the **Initial Brief of Consumers Energy Company** upon the persons listed in Attachment 1 to this Proof of Service.



Melissa K. Harris

Subscribed and sworn to before me this 22nd day of August 2025.



Crystal L. Chacon, Notary Public
State of Michigan, County of Eaton
My Commission Expires: 05/25/30
Acting in the County of Jackson

ATTACHMENT 1 TO CASE NO. U-21859

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* Receives Confidential Materials

ATTACHMENT 1 TO CASE NO. U-21859

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