

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of  
CONSUMERS ENERGY COMPANY  
for authority to increase its rates for the  
generation and distribution of electricity and for  
other relief.

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MPSC No. U-21585  
(Paperless e-file)

**Attorney General's Notice of Intervention**

The Michigan Department of Attorney General's Special Litigation Division on behalf of Attorney General Dana Nessel, gives notice of her intervention as a party in this proceeding. In response to the Application filed by Consumers Energy Company ("Consumers Energy" or "the Company"), the Attorney General states:

**I. Statement of Interest**

1. Dana Nessel is the duly elected and qualified Attorney General of the State of Michigan and holds such office by virtue of and pursuant to Const 1963, art 5, § 21, and by mandate of the qualified electorate of the State of Michigan. She is head of the Department of Attorney General created by the Executive Organization Act, 1965 PA 380, ch 3; MCL 16.150. The State of Michigan is a body politic established under the Constitution of the United States and admitted into the Union by Act of Congress in 1837.

2. The Attorney General, intervenes and appears in this proceeding for and on behalf of the People of the State of Michigan and for and on behalf of the State of Michigan, its departments, commissions, and agencies, as customers and

ratepayers of the Company. Consumers Energy serves approximately 1.9 million retail electric customers. The interest of these customers is public in nature, being common among virtually all electric customers in Consumer Energy's service area. The State of Michigan is also a substantial user of and customer for the Company's electric services.

3. Both statutory and common law of Michigan authorizes the Attorney General's intervention and appearance in this proceeding. MCL 14.28 provides, in part:

[T]he attorney general . . . may, when in [her] own judgment the interests of the state require it, intervene in and appear for the people of this state in any other court or tribunal, in any cause or matter, civil or criminal, in which the people of this state may be a party or interested.

The Attorney General has the right to intervene whenever the Attorney General, in her own discretion, deems it in the public interest to do so. *People v O'Hara*, 278 Mich 281; 270 NW 298 (1936); and *Gremore v People's Community Hosp Auth*, 8 Mich App 56; 153 NW2d 377 (1967). In her capacity as Michigan's chief law officer, the Attorney General has common law authority to represent public interests as she may deem necessary for the protection of public rights. *In re Certified Question (Wayne Co v Philip Morris, Inc)*, 465 Mich 537, 543-545; 638 NW2d 409 (2002); and *Withee v Lane & Libby Fisheries Co*, 120 Me 121, 123; 113 A 22, 23 (1921).

4. Furthermore, when the Attorney General deems it in the public interest to do so, she may intervene in any administrative proceeding at any stage

of such a proceeding. *Attorney General v Liquor Control Comm*, 65 Mich App 88; 237 NW2d 196 (1975).

5. The Attorney General has determined that the interests of both the State and the People of the State of Michigan require her intervention in this proceeding on their behalf. This proceeding will directly affect the State and the People of this State who are customers of Consumers Energy. The State and correspondingly the taxpayers of this State pay significant amounts for utility service for the State in the conduct of the People's affairs. In addition, the People of this State who are customers of Consumers Energy pay large sums for utility service for their homes and businesses. Any action taken in this proceeding will directly affect both the economy of the State and the general well-being of the citizens and residents of this State.

## **II. Statement of Positions**

6. On May 31, 2024, Consumers Energy filed its application in this case together with supporting testimony and exhibits.

7. Consumers Energy requests that the Commission authorize an annual net increase of approximately \$303 million in the Company's retail electric rates for the 12-month period ending February 28, 2026, as described in its application, testimony, and exhibits.

8. Consumers Energy is also seeking approval of an additional \$22 million for distribution deferral to be recovered through a separate 12-month surcharge.

9. Consumers Energy requests that the Commission approve a rate of return on common equity of 10.25%, an overall rate of return on total rate base of 6.21%, and a common equity ratio of 50.75%.

10. Consumers Energy requests include, but are not limited to, continuation of the previously approved investment recovery mechanism (IRM) with the inclusion of additional spending in the three programs approved in the IRM to reflect additional amounts from this case and the Company's Reliability Roadmap; approval of a Service Restoration Cost Sharing Mechanism; continuation of the PowerMIDrive (PMD) and PowerMIFleet (PMF) programs with proposed enhancements; approval of an all-encompassing Demand Response (DR) surcharge that would be adjusted during the Company's annual DR Reconciliation proceedings; approval to recover the performance incentive of approximately \$6.2 million included in the 2022 DR reconciliation case, Case No. U-21410, currently before the Commission and the refund of a regulatory liability of \$113,136 (plus interest) which is subtracted from the revenue requirement; updates to the Company's cost-of-service-study (COSS) for historical and test year data and to incorporate items approved in the Company's last electric rate case, Case No. U-21389; approval of deferred cost and amortization expense for the PMD and PMF programs; amortization of expenses for the Pension/OPEB Volatility Mechanism;

approval of various revisions to Consumers' electric rules, regulations, and tariffs; recovery of associated amortization expense for the D.E. Karn Units 1 and 2 and J.H. Campbell Units 1, 2, and 3 retention, decommissioning, and ash disposal costs; and the amortization of the remaining net book value of the Campbell Units 1, 2, and 3.

11. The Attorney General takes the position that the Commission should not approve Consumers Energy's requests without first developing an evidentiary record and conducting proceedings pursuant to Chapter IV of the Administrative Procedures Act [MCL 24.271 *et seq*], to determine if the requests are just, and reasonable and prudent.

12. The Attorney General takes the position that Consumers Energy has the burden of proving that all capital expenditures included in Consumers Energy's proposed rate base are reasonable and prudent. In addition, the Attorney General takes the position that before the Commission can include capital expenditures in Consumers Energy's rate base and test year expenses, Consumers Energy has the burden of proving the reasonableness and prudence of previously unreviewed capital expenditures.

13. The Attorney General takes the position that Consumers Energy has the burden of proving that the Company's projected Operations & Maintenance expenditures are reasonable and prudent before the Commission can approve any proposed rate changes resulting from those projections.

14. The Attorney General takes the position that Consumers Energy has the burden of proving that all proposals, programs, plans, mechanisms, surcharges, allocations, and rates referenced in its application, testimony and exhibits are lawful and just, and reasonable and prudent.

15. The Attorney General takes the position that Consumers Energy has the burden of proving all elements of its case by a preponderance of the evidence.

16. The Attorney General reserves the right to take additional and different positions based upon future discovery and evidence in this case.

### **III. Relief Requested**

The Attorney General requests the Michigan Public Service Commission to:

A. Enter this Notice of Intervention into the official record of the captioned case and treat the Attorney General as a party to these proceedings for all purposes;

B. Develop an evidentiary record and conduct proceedings pursuant to Chapter IV of the Administrative Procedures Act [MCL 24.271 *et seq.*];

C. Establish just and reasonable rates according to the whole record developed in this case; and

D. Grant any further and additional relief the Commission may decide is reasonable and lawful.

Respectfully submitted,

Dana Nessel  
Attorney General

Celeste R. Gill (P52484)  
Assistant Attorneys General  
Special Litigation Division  
6<sup>th</sup> Floor, G. Mennen Williams Bldg.  
P. O. Box 30755  
Lansing, MI 48909  
Ph: (517) 302-6620  
Email: [gillc1@michigan.gov](mailto:gillc1@michigan.gov)

Date: June 3, 2024

**PROOF OF SERVICE - U-21585**

The undersigned certifies that a copy of the *Attorney General's Notice of Intervention* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 3<sup>rd</sup> day of June 2024.

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Celeste R. Gill

**Consumers Energy Company:**

Gary Gensch, Jr.  
Spencer Sattler  
Evan Keimach  
Bret Totoraitis  
Anne Uitvlugt  
[Gary.genschjr@cmsenergy.com](mailto:Gary.genschjr@cmsenergy.com)  
[Spencer.sattler@cmsenergy.com](mailto:Spencer.sattler@cmsenergy.com)  
[Evan.keimach@cmsenergy.com](mailto:Evan.keimach@cmsenergy.com)  
[Bret.totoraitis@cmsenergy.com](mailto:Bret.totoraitis@cmsenergy.com)  
[Anne.uitvlugt@cmsenergy.com](mailto:Anne.uitvlugt@cmsenergy.com)  
[Kelly.hall@cmsenergy.com](mailto:Kelly.hall@cmsenergy.com)  
[Mpsc.filings@cmsenergy.com](mailto:Mpsc.filings@cmsenergy.com)

**ALJ:**

Hon. Sally Wallace  
[Wallaces2@michigan.gov](mailto:Wallaces2@michigan.gov)

**Attorney General of Michigan:**

Celeste Gill  
[gillc1@michigan.gov](mailto:gillc1@michigan.gov)  
[ag-enra-spec-lit@michigan.gov](mailto:ag-enra-spec-lit@michigan.gov)

**MPSC Staff:**

Michael Orris  
Daniel Sonneveldt  
[orrism@michigan.gov](mailto:orrism@michigan.gov)  
[sonneveldtd@michigan.gov](mailto:sonneveldtd@michigan.gov)