

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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.

MPSC No. U-20963
(Paperless e-file)

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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") and the Notice of Hearing issued by the Michigan Public Service Commission ("the Commission"), 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 under date of January 26, 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 customers as part of its electric services. 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 the 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 March 1, 2021, 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 \$225 million in the Company's retail electric rates for the 12-month period ending December 31, 2022 as described in its application, testimony and exhibits.

8. Consumers Energy requests that the Commission approve a rate of return on common equity of 10.5% and an overall rate of return on total rate base of 5.95%.

9. Consumers Energy also requests that the Commission approve among other things: recovery of costs related to its Commercial and Industrial and Residential Demand Response (“DR”) programs; recovery of costs related to its Conservation Voltage Reduction (“CVR”) programs including those related a CVR incentive mechanism; a three-year extension of the PowerMIDrive Pilot programs and expansion of the PowerMIFleet Pilot Program; a Home Battery Pilot program; changes to its Cost of Service Study; changes to its calculation of the capacity-related component for its power supply charges included in base rates, for its State Reliability Mechanism; various revisions to its electric rules, regulations and tariffs; and separating DR-related costs from the overall revenue requirement and recovery of those costs through a DR surcharge.

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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

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Date: March 5, 2021

PROOF OF SERVICE - U-20963

The undersigned certifies that a copy of the *Attorney General's Notice of Intervention* was served upon the parties listed below by emailing the same to them at their respective e-mail addresses on the 5th day of March 2021.

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