

124 West Allegan Street, Suite 1000
Lansing, Michigan 48933
T (517) 482-5800 F (517) 482-0887
www.fraserlawfirm.com

Douglas J. Austin
Michael E. Cavanaugh
Gary C. Rogers
Michael H. Perry
Michael S. Ashton
H. Kirby Albright
Graham K. Crabtree
Michael P. Donnelly
Edward J. Castellani
Peter D. Houk
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Randy L. Tahvonen
Melisa M. W. Mysliwiec
Emily M. Vanderlaan

Amanda S. Wolanin
Matthew J. Meyerhuber
Lauren D. Harrington

Of Counsel

David S. Fry
Darrell A. Lindman
Brandon W. Zuk

Retired

Stephen L. Burlingame
Mark A. Bush
Donald A. Hines
Max R. Hoffman
John J. Loose
David E. S. Marvin
Mary M. Moyne
Thomas L. Sparks

Archie C. Fraser
(1902-1998)
Everett R. Trebilcock
(1918-2002)
James R. Davis
(1918-2005)
Ronald R. Pentecost
(1932-2008)
Mark R. Fox
(1953-2011)
Jonathan E. Raven
(1951-2021)

Peter L. Dunlap, P.C.

jheston@fraserlawfirm.com
(517) 377-0802

December 8, 2021

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

RE: MPSC Docket No. U-21148

Dear Ms. Felice:

Enclosed herewith for filing in the above-referenced matter, please find the *Petition of Retail Energy Supply Association for Leave to Intervene* and its *Certificate of Service*.

If you have any questions, please do not hesitate to contact my office. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.



Jennifer Utter Heston

JUH/alj
Enclosures
Cc: All counsel of record

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)
distribution of natural gas and for)
other relief)
_____)

Case No. U-21148

PETITION OF
RETAIL ENERGY SUPPLY ASSOCIATION
FOR LEAVE TO INTERVENE

NOW COMES the Retail Energy Supply Association (“RESA”) ¹, by and through its attorneys, Fraser, Trebilcock, Davis & Dunlap, P.C., and hereby submits its petition seeking leave to intervene in the above-entitled action pursuant to Rule 410(1) of the Commission’s Rules of Practice and Procedure, R 792.10410(1). In support of this petition, RESA states as follows:

1. RESA is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient customer-oriented outcome than a regulated utility structure.

2. RESA members are licensed to sell natural gas to retail customers in Michigan: Interstate Gas Supply, Inc. (“IGS”), Just Energy Michigan Corp. (“Just Energy”), and Constellation NewEnergy-Gas Division, LLC (“Constellation”), are licensed Alternative Gas

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.



Suppliers (“AGS”). IGS, Just Energy, and Constellation, currently serve Gas Customer Choice (“GCC”) and end use transportation (“EUT”) customers on the Consumers Energy Company (“Consumers”) system.

3. This docket involves an application by Consumers for authority to increase its rates for the distribution of natural gas and for other relief. In its application, Consumers seeks to increase rates by \$278 million based on a test year ending September 30, 2023, plus approval of a revenue decoupling mechanism.

4. Additionally, Consumers proposes an expansion and continuation of its gas demand response pilots as part of its Natural Gas Delivery Plan, and proposes changes to its EUT tariff. As part of its EUT tariff amendments, Consumers seeks to change its agent designation terms, increase the percentage of unaccounted for gas from 2.12% to 2.21%, implement new gas demand charges, and increase the transportation charge adjustments for all Authorized Tolerance Levels. Consumers is also proposing changes to its Group Transportation Service Pilot Program.

5. RESA members have direct and vital interests in the issues raised in this docket. RESA members are both Consumers customers and GCC and EUT suppliers participating in the Consumers transportation market. RESA members have direct interest in the rates, terms and conditions proposed by Consumers. RESA members clearly have a direct financial interest in the GCC and EUT program rates, terms and conditions of service.

6. There are several legal bases for standing to intervene in a proceeding before the MPSC. The first is standing as of right. This Commission has repeatedly applied the two-prong test for standing as of right set forth in *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150; 90 S. Ct. 827; 250 L.Ed. 184 (1970), which has been

applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123 (WD Mich, 1978). As set forth in *Association of Data Processing*, the two-prong test consists of a showing that: (1) the petitioner would likely suffer injury in fact (i.e., its interests are endangered or at issue); and (2) the petitioner's interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. See, e.g., *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150 (December 8, 1992).

7. RESA satisfies the "injury in fact" test, because the proposed changes to Consumers' EUT program will impose costs on RESA members. RESA members will incur a direct financial impact as a result of changes in Consumers' unaccounted for gas percentage.

8. The second prong of the two-pronged test for standing as a matter of right is a showing that the prospective intervenor's interest falls within the "zone of interests" to be protected or regulated in the context of the case. The rates, terms, and conditions of Consumers' EUT and Group Transportation Service programs are of interest to RESA and have been placed in issue by Consumers in this case. The rates, terms, and conditions of Consumers' EUT and Group Transportation Service programs fall within the zone of interests to be regulated by the MPSC in this case, and RESA's interest in fair and reasonable rates, terms, and conditions falls within the zone of interests to be protected in this case.

9. Having demonstrated that its interests satisfy the two-pronged test for standing as a matter of right, RESA respectfully submits that it is entitled to intervene in this case as a matter of right.

10. Even if it were determined that RESA does not have standing as a matter of right, it would be entitled to intervene under the MPSC's discretionary intervention standards. "[T]he Commission's discretion to grant leave to intervene is broader than the two-prong test.

As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation." *In re Michigan Consolidated Gas Co*, MPSC Case No. U-10150, p 5 (December 8, 1992) (finding that discretionary intervention was appropriate, and "a detailed discussion of the two-prong test is unnecessary").

11. Indeed, the two-pronged test does not apply when granting permissive intervention. "The granting of permissive intervention without satisfying the two-pronged test is a long-established Commission practice." *In re DTE Gas Co*, MPSC Case No. U-17332, p 4 (May 13, 2014).

12. Discretionary intervention is appropriate where public policy warrants a party's involvement because a prospective intervenor can provide useful information to the Commission or a unique perspective on the issues to be resolved. See, e.g., *In re Mascotech Forming Technologies, Inc.*, MPSC Case No. U-11057 (June 5, 1996); *In re MCI Metro Access Transmission, Inc.*, MPSC Case No. U-10610 (November 30, 1994); and *In the matter, on the Commission's own motion, to investigate the appropriateness of instituting a surcharge to assist in the funding of the Gas Technology Institute*, MPSC Case No. U-14561 (October 18, 2005). The Commission has held that a proper case for permissive intervention exists when a proposed intervenor "could be expected to bring helpful information to the Commission's attention that might not otherwise be available." *In re International Transmission Co*, MPSC Case No. U-16200, p 4 (October 14, 2010).

13. "Permissive intervention has also been granted where a proceeding 'raises novel questions and important policy issues' and the intervenor will 'bring a unique perspective' to

the case.” *In re DTE Electric Co*, MPSC Case No. U-17319, p 10 (March 6, 2014), quoting, MPSC Case No. U-11057, pp 2-3 (June 5, 1996).

14. RESA is a large and diverse group of retail energy suppliers operating in competitive retail energy markets across many states. RESA has a proven track record of successful retail competition development activities and promoting vibrant and sustainable retail energy markets for residential, commercial and industrial customers. RESA’s breadth of diverse retail energy market experiences makes it particularly well-suited to bring new and helpful information to the MPSC that might not otherwise be available.

15. RESA members are active participants in Consumers’ GCC, EUT, and Group Transportation Service programs, specifically. RESA members have valuable insight into the operation of the GCC, EUT, and Group Transportation Service programs and can offer important insights into the implications of various recommendations concerning Consumers’ programs going forward. RESA members have direct knowledge of the impact of the proposed tariff changes on AGS entities operating on Consumers’ system and on the customers they serve.

16. Thus, RESA has significant interests in this case, offers a unique perspective, and is capable of providing information useful to the Commission. RESA has demonstrated that it warrants intervention in this case both as of right and on a permissive basis.

17. Notice should be taken of the fact that this same RESA has previously participated as an intervenor in cases involving Consumers’ natural gas rates and tariffs, including Consumers’ general rate cases in MPSC Case Nos. U-20650, U-20134, U-18424, U-17882, U-17643 and U-16418, Consumers’ GCR proceedings in MPSC Case Nos. U-20542, U-20234, U-20209, U-17693 and U-17133-R, and Consumers’ GCC and EUT programs

proceeding in MPSC Case No. U-17900. RESA also participated in Consumers' natural gas curtailment tariff proceeding, MPSC Case No. U-21086.

18. Further, RESA was granted intervention as a party in numerous other proceedings involving GCC and EUT issues, such as Michigan Gas Utilities Corporation's general rate case, Case No. U-17880 (daily balancing requirement on gas transportation customers and GCC tariff changes), DTE Gas' general rate cases, MPSC Case Nos. U-20940, U-20642 and U-18999, DTE Gas' GCR proceedings, MPSC Case Nos. U-20544, U-20236, U-20210, U-20076, U-18412, U-18152, U-17941-R, U-17941, U-17691-R, U-17691, U-17332 and U-17131 (all involving GCC capacity reservation charges), SEMCO's transportation balancing tariff case, MPSC Case No. U-15953, SEMCO's general rate cases MPSC Case Nos. U-20479 and U-16169, and in Michigan Consolidated Gas Company's general rate case, MPSC Case No. U-16400.

19. It is the position of RESA that the EUT and Group Transportation Service program proposals should be carefully examined and revised as necessary to assure that the rates, terms, and conditions are just and reasonable, as required by law.

20. RESA reserves the right to take different positions if, and when, this case proceeds to full hearings and following a full review of the testimony filed in this case and responses to discovery, as may be relevant and appropriate. RESA further reserves the right to take other positions and/or seek other relief based on any further proposals that may be submitted by other parties in this case.

21. The relief that RESA seeks in this proceeding is an order approving only those rates, terms and conditions of service that are just, reasonable and lawful. RESA reserves the

right to seek other relief based on a review of the filings and/or discovery responses in this proceeding.

22. RESA's interests, as set forth above, are not adequately represented by the present parties and, therefore, it would be detrimental to the public interest to deny this Petition to Intervene.

23. Because the issues set forth above are of great significance to RESA and to the public, a denial of this Petition would result in a miscarriage of justice.

WHEREFORE, RESA hereby respectfully requests that this Honorable Commission grant it Leave to Intervene in the above-entitled proceedings as a full party of record.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
ATTORNEYS FOR RETAIL ENERGY SUPPLY ASSOCIATION



Jennifer Utter Heston (P65202)
Business Address:
124 W. Allegan, Ste 1000
Lansing, MI 48933
Telephone: (517) 482-5800
E-mail: jheston@fraserlawfirm.com

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)
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Case No. U-21148

CERTIFICATE OF SERVICE

A. Louise Johnson hereby certifies that, on the 8th day of December 2021, she served the *Petition of Retail Energy Supply Association for Leave to Intervene* and its *Proof of Service* in the above docket on the persons identified on the attached service list by electronic mail and filed it electronically with the Michigan Public Service Commission.

/s/ A. Louise Johnson

A. Louise Johnson

SERVICE LIST FOR U-21148

Administrative Law Judge

Honorable Jonathan Thoits	thoits@michigan.gov	<i>Michigan Public Service Commission</i>	7109 W. Saginaw Hwy. Lansing, MI 48917
Meaghan Dobie	dobieM@michigan.gov		

Counsel for Consumers Energy Company

Robert W. Beach	robert.beach@cmsenergy.com	<i>Consumers Energy Company</i>	One Energy Plaza Jackson, MI 49201
Ian F. Burgess	ian.burgess@cmsenergy.com		
Michael C. Rampe	michael.rampe@cmsenergy.com		
Theresa A.G. Staley	theresa.staley@cmsenergy.com		
Bret A. Totoraitis	bret.totoraitis@cmsenergy.com		
Anne M. Uitvlugt	anne.uitvlugt@cmsenergy.com		