

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for approval of power purchase agreement)	Case No. U-20496
amendments.)	
_____)	

At the March 15, 2024 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chairman
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

On January 19, 2024, Consumers Energy Company (Consumers) filed an application (along with supporting testimony, exhibits, and an affidavit) pursuant to Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j, requesting *ex parte* approval of an amendment to the power purchase agreement (PPA) with National Energy of Lincoln, LLC (National Lincoln) for the output of the Lincoln Plant (application). No responsive pleadings were filed in the docket.

Consumers and National Lincoln (under a prior name) entered into a long-term PPA on February 1, 1984, which provided that National Lincoln would supply and sell electric energy and capacity to Consumers and Consumers would purchase all electric energy and capacity from the Lincoln Plant until the end of calendar year 2018. Application, p. 2; *see*, November 14, 1984 order in Case No. U-8062. The Lincoln Plant began commercial operations on February 21, 1989. Under the terms of the PPA, the contract could continue on a year-to-year basis until terminated by

mutual consent or by either party with at least one year's written notice. The Commission approved an extension of the PPA in the September 28, 2018 order in Case No. U-17981. On January 31, 2019, Consumers and National Lincoln entered into Amendment No. 2 to the PPA, which extended the term of the PPA until May 31, 2027. Application, p. 2. Amendment No. 2 was approved by the Commission in the April 18, 2019 order in Case No. U-20496. In addition to the extension, Amendment No. 2 provided for:

the purchase of capacity from the plant based on the Zonal Resource Credits ("ZRCs"), the Midcontinent Independent System Operator, Inc.'s ("MISO") capacity commodity, awarded to the plant at a fixed rate (\$/ZRC-month). Amendment No. 2 provided for the purchase of energy from the plant based on a scheduled rate (\$/MWh [megawatt-hour]). Amendment No. 2 allowed for continued cost recovery by the Lincoln Plant pursuant to MCL 460.6a(9)-(11), as a Biomass Merchant Plant ("BMP"). Amendment No. 2 provided for the decommissioning of the Lincoln Plant through a Monthly Security Payment and provided for all of the Renewable Energy Credits ("RECs") to be transferred to the Company at no additional cost.

Direct testimony of Beth A. Skowronski, p. 4. Consumers explains that the Monthly Security Payments ensure that funds are available for the decommissioning of the Lincoln Plant, and this expense is included in the PPA expense in Consumers' power supply cost recovery (PSCR) filings. Application, p. 3. These funds are held in an escrow account which is reconciled.

On January 3, 2024, Consumers and National Lincoln entered into Amendment No. 3 to the PPA, which reduces the term of the PPA by three years from May 31, 2027, to May 31, 2024. *See*, Exhibit A-1. Amendment No. 3 also provides for:

(i) the requirement of National Lincoln to satisfy the asset retirement obligations and conditions to receive the Security Fund; (ii) National Lincoln to reasonablel[y] cooperate with Consumers Energy to transition the MISO market participant responsibilities and MISO-related obligations starting June 1, 2024; (iii) the continued cost recovery for National Lincoln pursuant to MCL 460.6a(9)-(11), as a BMP through May 31, 2024; and (iv) a regulatory disallowance clause.

Application, p. 3. Consumers states that:

the accelerated termination of the National Lincoln PPA is achieved by increasing the Monthly Security Payment by approximately \$300,000 each month. The additional capacity payment expense provided by Amendment No. 3 will be held as security to ensure that the value provided by the accelerated termination of the PPA between Consumers Energy and National Lincoln is realized.

Application, p. 4. Consumers states that, in comparison to retaining the original term of the PPA, Amendment No. 3 will save customers approximately \$6.9 million, which will ultimately be passed to customers via the PSCR process. Application, pp. 4-5.¹ Section 10 of Amendment No. 3 provides that the amendment shall be void if approval is denied or if the Commission does not act within 12 months of the filing of the application. Exhibit A-1, p. 5. Section 3 of Amendment No. 3 provides that the Lincoln Plant shall be decommissioned by May 31, 2025. *Id.*, p. 3.

Consumers seeks approval of Amendment No. 3 to the PPA, and states that approval of the application will not increase rates or charges “beyond the levels which were previously approved by the Commission for this PPA under Amendment No. 2.” Application, p. 5. Thus, the company states that approval of the amended PPA with National Lincoln will not result in an increase to rates and *ex parte* approval under MCL 460.6a(3) is appropriate. *Id.*

Discussion

In its application, Consumers states that “Amendment No. 2 with the Lincoln Plant is expected to provide several benefits to the parties, the Company’s customers, and the communities surrounding the plants [sic]” including “(i) an expected reduction in cost, which will ultimately be passed on to PSCR customers, achieved through the accelerated termination of the PPA; and (ii) sufficient cost recovery provided to National Lincoln to ensure the decommissioning of the Lincoln Plant.” *Id.*, pp. 4-5.

¹ Ms. Skowronski’s testimony, p. 7, and Exhibit A-2 both reflect a savings of \$7.8 million.

The Commission notes, however, that there are no purported benefits relating to reliability or meeting resource adequacy requirements. Indeed, Consumers recognizes that the early termination of the PPA will result in a need to replace the lost energy and capacity. Consumers' witness, Beth A. Skowronski, explains that the company intends to address this shortfall through a replacement solar PPA and a set of energy and capacity purchases from the MISO market. Ms. Skowronski explains that the replacement solar facility (a 33.6 megawatt (MW) facility) was selected based on new resources associated with Consumers' approved integrated resource plan (IRP) in Case No. U-21090. However, Ms. Skowronski concedes that:

[a] solar facility this size will not be able to replace all energy from the Lincoln Plant during [the Spring, Summer, and Fall] months due to a difference in technology capacity factors which necessitates additional energy purchases from the market in the replacement analysis. Additionally, during the Winter season, a solar PPA sized at 33.6 MW would not provide the required capacity to replace the National Lincoln PPA which necessitates additional capacity purchases from the market in the analysis.

Direct testimony of Beth A. Skowronski, pp. 8-9.

The Commission last approved Consumers' long-term energy plans through the company's 2021 IRP filed in Case No. U-21090. On June 23, 2022, the Commission issued an order in Case No. U-21090 (June 23 order) approving a contested settlement agreement resolving all issues in that case. In the June 23 order, the Commission noted that "the larger resource adequacy concerns of the objecting parties [are] valid and timely." June 23 order, p. 91. However, the Commission ultimately found that "the approval of the settlement agreement enhances zonal resource adequacy in the short, medium, and long term(s)." *Id.*, p. 92. As part of that approval, the Commission concluded that:

while acknowledging the challenges to resource adequacy that were highlighted in MISO's recent [Planning Resource Auction] results, the Commission notes Consumers' testimony that it "will file at least one, if not multiple, IRPs" between

now and when any projected shortfalls are likely to occur, and that it will have “ample time to respond and adjust the [proposed course of action]” if necessary.

Id., p. 93 (quoting 10 Tr 4143-4144).

In the present case, however, the only plan to maintain resource adequacy, even against the backdrop of the concerns expressed in the Commission’s June 23 order, is through a new 33.6 MW solar asset that the company concedes will be insufficient to produce the same level of energy as the Lincoln Plant during the spring, summer, and fall, and insufficient to produce the same level of capacity during the winter. Direct testimony of Beth A. Skowronski, pp. 8-9. As a result, the company proposes to fill the gap through market purchases of energy and capacity. This strategy, proposed through an *ex parte* contract approval application and not through an IRP amendment, is deeply problematic to the Commission, and provides an insufficient basis to approve the application.

This conclusion is underscored by MISO’s recently published “Response to the Reliability Imperative, Updated February 2024” (2024 MISO Report) which describes an increasingly tightening supply of capacity resources in the MISO footprint:

Over the last 10-plus years, surplus reserve margins in MISO have been exhausted through load growth and unit retirements. Since 2022, MISO has been operating near the level of minimum reserve margin requirements. While MISO has implemented several reforms to help avert near-term risk, more work is urgently needed to mitigate reliability concerns in the coming years. In fact, the region only averted a capacity shortfall in 2023 because some planned generation retirements were postponed and some additional capacity was made available to MISO.

2024 MISO Report, p. 6.²

The 2024 MISO Report notes that the North American Electric Reliability Corporation

² This is a living document available at <https://cdn.misoenergy.org/2024%20Reliability%20Imperative%20report%20Feb.%2021%20Final504018.pdf?v=20240221104216> (accessed March 13, 2024).

projects a 4.7 gigawatt shortfall in the MISO region by 2028 (even with the new resources that are expected to come online) due to lower accreditation values. *Id.*, p. 7. Against this backdrop, the Commission finds Consumers' proposal to amend the PPA with National Lincoln in a manner that will accelerate the retirement of the Lincoln Plant to be unreasonable.

Furthermore, the Commission is also unconvinced by the purported savings to customers used as the primary justification for Amendment No. 3. The solar PPA was modeled at a cost of \$52/MWh based on IRP-related solicitation results. Regarding the market purchases, Ms. Skowronski explains that in Exhibit A-2:

Line 13 shows the additional capacity cost for the winter season, which was assumed to be procured as a bilateral purchase of capacity at 55% of MISO's Cost of New Entry [CONE] for Planning Year 2024, escalated at 2% to reflect inflation. Line 14 shows the additional energy cost year-round to supplement the energy provided by the replacement solar asset at projected off-peak MISO Locational Marginal Prices [LMP].

Direct testimony of Beth A. Skowronski, p. 9.

The Commission, notes, however, that nowhere in Consumers' application is any evidence presented to support its assumption that the additional capacity needed to make up the shortfall resulting from the accelerated retirement of the Lincoln Plant could be procured through bilateral contracts at a cost of 55% of CONE for the 2024 MISO Planning Year (escalated by 2%). It is simply asserted. This is particularly troubling given the recent trends within the MISO capacity market noted above, as well as the specific concerns around resource adequacy in MISO Zone 7 expressed by the Commission in its June 23 order.

Under these circumstances, the Commission finds that Consumers' proffered calculations are insufficiently supported, and the company's proposed strategy of depending on the market entails an unacceptable level of risk from both a reliability and cost perspective. Under current market and supply conditions, Amendment No. 3 presents the potential for increased risk to reliability

and increased costs to customers such that the Commission is unable to find the amendment to be reasonable and prudent when analyzed in this manner outside of a comprehensive IRP process. Consumers' application was filed pursuant to MCL 460.6j, which requires the Commission to review power supply decisions for reasonableness and prudence. MCL 460.6j(1)(b), (3), (5), (6), (9), (13), (14), and (15). The Commission's decisions must be supported by competent, material, and substantial evidence on the whole record. Const 1963, art 6, § 28. In considering Consumers' application and evidentiary presentation, the Commission finds that, for the reasons discussed above, it cannot approve Amendment No. 3 as a reasonable and prudent renegotiation of the PPA.³ See, MCL 460.6j(13)(g). The Commission is not persuaded by the evidence that Consumers should abandon the energy and capacity commitments that were locked in via the execution and approval of Amendment No. 2.

Though the Commission is unable, on this record, to find that approval of the application would not result in an increase to rates or rate schedules as required under MCL 460.6a(3), the Commission finds that *ex parte* treatment is nevertheless appropriate because Consumers has indicated that it intends to terminate the PPA by May 31, 2024. Because this is a little over two months from now, it is not possible to conduct a contested case soon enough to provide direction to the company. Additionally, the Commission notes that the order results in a denial. MCL 460.6a(1) and (3) require notice and the opportunity for a hearing whenever a utility proposes to increase rates or alter rates so as to increase the cost of service to customers. The Commission holds plenary power to regulate public utilities, including the power to regulate all rates, fares,

³ The Commission notes that, in an order issued today in Case No. U-21459, it has rejected a settlement agreement and underlying application in a matter that also involves a similarly renegotiated Consumers PPA, on the same grounds.

fees, and charges. MCL 460.6; *see, Attorney General v Pub Serv Comm*, 231 Mich App 76, 80-82; 585 NW2d 310 (1998) (finding that the Commission was not required to hold a contested case hearing before suspending a PSCR clause where the suspension would not result in a rate increase). The Commission's decision ensures that rates will be unaffected because the status quo will be maintained.

Finally, the Commission notes that a viable process exists for utilities seeking to make material changes in the portfolio of resources used to serve their customers. MCL 460.6t(19) specifically provides that “[an] electric utility may seek to amend an approved integrated resource plan” and that any such amendment would be considered under the same expedited process and standards that govern the review of a revised IRP under MCL 460.6t(9). Such a process would ensure a fuller consideration of the legislatively-prescribed factors used for evaluating long-term utility plans, including “[r]esource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement.” MCL 460.6t(8)(a)(i).

THEREFORE, IT IS ORDERED that Consumers Energy Company's application filed pursuant to MCL 460.6j for approval of Amendment No. 3 to the power purchase agreement between Consumers Energy Company and National Energy of Lincoln, LLC, for the output of the Lincoln Plant and to recover all payments under the power purchase agreement amendment is denied.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chairman

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of March 15, 2024.

Lisa Felice
Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

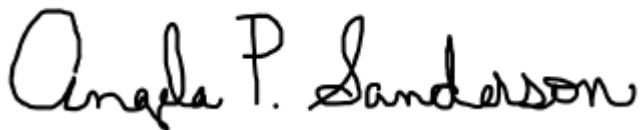
Case No. U-20496

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on March 15, 2024 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this March day of 15th 2024.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case:**U-20496**

Name	On Behalf Of	Email Address
Anne M. Uitvlugt	Consumers Energy Company	anne.uitvlugt@cmsenergy.com
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