

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of )  
**CONSUMERS ENERGY COMPANY** )  
for approval of power purchase )  
agreement amendments. )  
\_\_\_\_\_ )

Case No. U-21459

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

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

**ORDER**

Background

On February 23, 1987, Consumers Energy Company (Consumers) and Cogeneration Michigan Associates Limited Partnership (CMA) entered into a power purchase agreement (PPA) for Consumers to purchase all electric capacity and energy for the output from CMA’s Cadillac Plant. The PPA has been amended on six previous occasions, with the most recent amendment (Amendment No. 7) being executed on May 11, 2023, and the PPA has been assigned twice, with the current counterparty being Cadillac Renewable Energy L.L.C. (Cadillac).

On June 28, 2023, Consumers filed an application, with supporting testimony and exhibits, pursuant to Section 6j of Public Act 304 of 1982, MCL 460.6j, and other applicable law, requesting approval of Amendment No. 7 to the PPA for the output of the Cadillac Plant. In the application, Consumers explained that Amendment No. 7 modifies the term of the PPA and

schedules the retirement of the Cadillac Plant, which has been in operation since 1993. Specifically, Consumers stated that “the parties [to the PPA] reduced the term of the deliveries of energy and capacity from July 15, 2028 to May 31, 2024. To accomplish that reduction in the PPA term, Amendment No. 7 provides for an increase in capacity payments to Cadillac and those capacity payments are enabled through the administration of the Shared Savings Security Fund.” Application, p. 2. The company noted that the Shared Savings Security Fund will be created through a monthly expense related to the fixed cost of the plants and will be booked as an additional capacity expense under the PPA. According to Consumers, “[i]n the event the Shared Savings Security Fund has been distributed in its entirety to Cadillac, and the Cadillac Plant resumes operation between May 2024 and July 2028, Cadillac is required to provide refund payments to [Consumers] on an annual basis as set forth in Exhibit D of Amendment No. 7.” *Id.*

Consumers requested *ex parte* approval of the application. Consumers and the Commission Staff (Staff) met on June 29, 2023, to discuss the contract and application. The Staff requested that the case proceed as a contested case. On August 29, 2023, a prehearing conference was held before Administrative Law Judge Jonathan F. Thoits. Consumers and the Staff participated in the proceeding.

On October 24, 2023, Consumers and the Staff submitted a settlement agreement that proposes to resolve all issues in the case. According to the terms of the settlement agreement, Amendment No. 7 requires that: (1) Cadillac satisfy the asset retirement obligations and conditions, as set forth in the amendment, to receive the Shared Savings Security Fund; (2) if the Cadillac Plant resumes operation after the expiration of the PPA, Cadillac will reasonably cooperate with Consumers to transition Midcontinent Independent System Operator, Inc. (MISO) market participant responsibilities and MISO-related obligations; (3) if the Cadillac Plant resumes

operation after the expiration of the PPA, Cadillac will reasonably cooperate with Consumers to transition responsibilities related to providing meter data associated with the Cadillac Plant to MISO; (4) cost recovery will be pursuant to MCL 460.6a(9)-(11); (5) Cadillac shall update and maintain the Service Agreement for Wholesale Distribution Service with Consumers as authorized by the Federal Energy Regulatory Commission; (6) there is a regulatory disallowance clause; and (7) the Shared Savings Security Fund reverts to Consumers if the Cadillac Plant resumes operation. Settlement agreement, p. 3. The settlement agreement also states that Amendment No. 7 requires energy and capacity payments to counterparties on a monthly basis. Furthermore, the settlement agreement states that Amendment No. 7 provides several benefits, such as “an expected reduction in cost, which will be passed on to PSCR [power supply cost recovery] customers,” and “[t]here is also sufficient cost recovery provided to Cadillac to ensure the decommissioning or mothballing of the Cadillac Plant by May 31, 2024.” *Id.*, p. 4.

As set forth in the application, Paragraph 17 of Amendment No. 7 provides that if it “is not approved within 12 months of the date of [Consumers’] request for approval, it will be *void ab initio* and the existing PPA, as amended, will continue.” Application, p. 5.

### Discussion

In the application and the settlement agreement, Consumers contends that accelerated termination of the PPA will result in “several benefits,” including Consumers’ projection that Amendment No. 7 would result in customer savings of “approximately \$31.8 million with the accelerated termination through the Shared Savings Security Fund when compared to the costs included in the original term of the PPA, as shown in Exhibit A-3 (KGT-3).” Application, pp. 3-4. The other purported benefit is “sufficient cost recovery provided to Cadillac to ensure the decommissioning or mothballing of the Cadillac Plant by May 31, 2024.” *Id.*, p. 3.

Notably, there are no purported benefits relating to reliability or meeting resource adequacy requirements. Indeed, Consumers' witness, Keith G. Troyer, acknowledges that the company must replace the energy and capacity that are provided under the PPA with alternative sources. He notes that the company proposes to replace the spring, summer, and fall season energy and capacity associated with the Cadillac Plant with a new solar asset of 67 megawatts (MW).

However, Mr. Troyer concedes that:

[a] solar facility this size will not be able to replace all energy from the Cadillac Plant during those 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 67 MW would not provide the required capacity to replace the Cadillac PPA which necessitates additional capacity purchases from the market in the analysis.

Direct testimony of Keith G. Troyer, p. 13.

The Commission last approved Consumers' long-term energy plans through the company's 2021 integrated resource plan (IRP) that was 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 June 23 order, is through a new 67 MW solar asset that the company concedes will be insufficient to produce the same level of energy as the Cadillac Plant during the spring, summer, and fall, and insufficient to produce the same level of capacity during the winter. *See*, direct testimony of Keith G. Troyer, p. 13. As a result, the company proposes to fill the gap through market purchases of energy and capacity. This strategy, initially proposed through an application for *ex parte* approval of a contract and not through an IRP amendment, is deeply problematic to the Commission, and provides an insufficient basis to approve the application, even when it has been agreed to through a settlement agreement.

Furthermore, the Commission is also unconvinced by the purported savings to customers used as the primary justification for Amendment No. 7. In calculating the level of potential savings, Mr. Troyer states that the solar PPA was modeled at a cost of \$52 per MW-hour based on IRP-related solicitation results. Regarding the market purchases, Mr. Troyer explains that in Exhibit A-3:

Line 17 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 2023, escalated at 2% to reflect inflation. Line 18 shows the additional energy cost year-round to supplement the energy provided by the replacement solar asset at projected MISO Locational Marginal Prices [LMP]. Line 20 shows the additional cost to procure RECs [renewable energy credits] through a bilateral agreement to supplement the RECs provided by the replacement solar asset.

*Id.*, p. 14.

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 Cadillac Plant could be procured through bilateral contracts at a cost of 55% CONE in the 2023 MISO Planning Year. It is simply asserted. This is

particularly troubling given the recent trends within the MISO capacity market, as well as the specific concerns around resource adequacy in MISO Zone 7 expressed by the Commission in its June 23 order. Further, there is no reason to assume that any of these conditions can be expected to abate during the May 2024-July 2028 timeframe, making market prices more volatile and harder to predict.

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. 7 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 for *ex parte* approval of Amendment No. 7 was filed pursuant to MCL 460.6j, which requires the Commission to review power supply decisions for reasonableness and prudence. *See*, MCL 460.6j(1)(b), (3), (5), (6), (9), (12), (14), and (15). In addition, the Commission's decisions must be supported by competent, material, and substantial evidence on the whole record. *See*, Const 1963, art 6, § 28. Furthermore, to approve the settlement agreement, the Commission must find that the settlement agreement is in the public interest and represents a fair and reasonable resolution of the proceeding. Mich Admin Code, R 792.10431(5)(c) (Rule 431(5)(c)). In considering Consumers' application and evidentiary presentation, the Commission is unable to find that approval of the settlement agreement represents a fair and reasonable resolution of the proceeding. For the reasons discussed above and because the underlying application to renegotiate the PPA is neither reasonable nor prudent, the Commission finds that the application should be denied and that the settlement agreement

does not meet the criteria of Rule 431(5)(c).<sup>1</sup> 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. 6 to the PPA.

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:

A. The June 28, 2023 application filed by Consumers Energy Company pursuant to MCL 460.6j for *ex parte* approval of the amended power purchase agreement between Consumers Energy Company and Cadillac Renewable Energy L.L.C. to add Amendment No. 7 and to recover all payments under the power purchase agreement amendment is denied.

B. The settlement agreement between Consumers Energy Company and the Commission Staff that amends the power purchase agreement between Consumers Energy Company and Cadillac Renewable Energy L.L.C. to add Amendment No. 7 is not approved.

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

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<sup>1</sup> The Commission notes that, in an order issued today in Case No. U-20496, it has declined to approve an *ex parte* application that involves a similarly renegotiated Consumers’ PPA, on the same grounds.

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](mailto:mpscedockets@michigan.gov) and to the Michigan Department of Attorney General - Public Service Division at [pungpl@michigan.gov](mailto: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

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Daniel C. Scripps, Chair

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Katherine L. Peretick, Commissioner

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Alessandra R. Carreon, Commissioner

By its action of March 15, 2024.

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Lisa Felice, Executive Secretary



# PROOF OF SERVICE

STATE OF MICHIGAN )

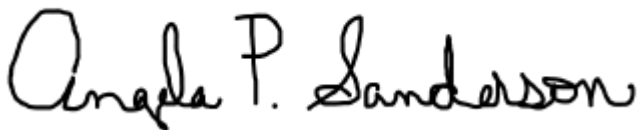
Case No. U-21459

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 15<sup>th</sup> 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-21459**

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