

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to open a docket to implement the provisions of)
Section 6w of 2016 PA 341 for) Case No. U-18239
CONSUMERS ENERGY COMPANY'S)
service territory.)
_____)

In the matter, on the Commission's own motion,)
to open a docket to implement the provisions of) Case No. U-18248
Section 6w of 2016 PA 341 for)
DTE ELECTRIC COMPANY'S service territory.)
_____)

In the matter, on the Commission's own motion,)
to open a docket to implement the provisions of) Case No. U-18253
Section 6w of 2016 PA 341 for)
UPPER MICHIGAN ENERGY RESOURCES)
CORPORATION'S service territory.)
_____)

In the matter, on the Commission's own motion,)
to open a docket to implement the provisions of) Case No. U-18254
Section 6w of 2016 PA 341 for)
UPPER PENINSULA POWER COMPANY'S)
service territory.)
_____)

In the matter, on the Commission's own motion,)
to open a docket to implement the provisions of) Case No. U-18258
Section 6w of 2016 PA 341 for)
CLOVERLAND ELECTRIC COOPERATIVE'S)
service territory.)
_____)

At the March 10, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

SCHEDULING ORDER

On February 28, 2017, the Commission issued an order (the February 28 order) in these dockets that suspended previously established schedules¹ for implementing Section 6w of 2016 PA 341 (Act 341)² for Consumers Energy Company (Consumers) and DTE Electric Company (DTE Electric), and opened dockets for Upper Michigan Energy Resources Corporation (UMERC), Upper Peninsula Power Company (UPPCo), and Cloverland Electric Cooperative (Cloverland). The February 28 order also provided that interested persons could submit comments by March 7, 2017, addressing the scope and further scheduling of these proceedings in light of the February 2, 2017 decision (the February 2 order) by the Federal Energy Regulatory Commission (FERC) rejecting the November 1, 2016 application filed by the Midcontinent Independent System Operator, Inc. (MISO), for approval of a three-year Forward Resource Auction (FRA) embodied within its Competitive Retail Solution (CRS) proposal in FERC Docket No. ER17-284-000, and the potential shift in the focus of these proceedings away from Section 6w(1) towards Section 6w(2) of Act 341.

Comments were received from Consumers, DTE Electric, UMERC, UPPCo, Cloverland, the Commission Staff (Staff), the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, the Sierra Club, Calpine Energy Solutions LLC (Calpine), Constellation NewEnergy, Inc. (CNE), and Verso Corporation (Verso).

¹ The Commission's January 20, 2017 order in Case Nos. U-18239 and U-18248 established the schedules that were suspended by the February 28, 2017 order.

² The effective date of Act 341 is April 20, 2017.

The comments filed by each of the named utilities were only submitted in the docket associated with that utility. The comments filed by the Staff, ABATE, the Sierra Club, and CNE were filed in all five dockets. Verso filed comments in Case Nos. U-18253 and U-18254. Calpine filed comments in Case Nos. U-18239 and U-18248. Energy Michigan also filed comments in Case Nos. U-18239 and U-18248.

Consumers

Consumers maintains in its comments that the scope of these proceedings must now be limited to implementation of a State Reliability Mechanism (SRM) pursuant to the requirements of Section 6w(2) of Act 341. According to Consumers, the February 2 order rejecting MISO's proposed CRS Tariff moots any consideration of "whether an SRM would be more cost-effective, reasonable, and prudent than the use of a capacity forward auction for meeting Michigan's electric resource adequacy requirements." Consumers' comments, p. 3. Consumers also stresses that Section 6w(2) of Act 341 expressly mandates the Commission to implement an SRM due to the FERC's failure to approve either the FRA or the Prevailing State Compensation Mechanism (PSCM). According to Consumers, "[t]he FERC's actions have clearly precluded a MISO resource adequacy tariff which includes a capacity forward auction before September 30, 2017." Consumers' comments, p. 4. Indeed, Consumers insists that the February 2 order, combined with MISO's announcement that "it would not be possible to implement the CRS tariff for the 2018-2019 Planning Year," means that the September 30, 2017 deadline set in Act 341 for approval of the tariff cannot be met. Consumers' comments, p. 4.

Under these circumstances, Consumers avers that the Commission is now required to implement an SRM pursuant to Sections 6w(3) through 6w(8) of Act 341. Consumers maintains that the scope of Case No. U-18239 must address the term of the capacity charge. Consumers

insists that, although Section 6w(2) specifies that the capacity charge must be implemented for a minimum term of four consecutive planning years beginning in the 2018 planning year, the Commission is obligated to make the term of the capacity charge long enough “to prevent alternative electric suppliers and retail open access customers from having the opportunity to unfairly leverage the utility’s capacity resources by relying on the utility to provide capacity for periods of up to four years, then returning to alternative electric supplier capacity service, all the while having the insurance of being able to return to the utility’s capacity services in the event the alternative electric supplier is unable or unwilling to provide capacity to its retail customers.” Consumers’ comments, pp. 5-6. Therefore, Consumers contends that the term of the capacity charge must be “sufficient to allow the utility to procure and recover the costs of capacity necessary to fulfill its capacity resource obligation for the load subject to the capacity charge.” Consumers’ comments, p. 6.

Next, Consumers maintains that this proceeding must consider both (a) the true-up mechanism required in Section 6w(4) of Act 341, which will true-up the difference in the projected net revenues used to calculate the capacity charge and the actual net revenues reflected in the capacity charge, and (b) the process for annually reviewing and amending the SRM capacity charge embodied in Section 6w(5).

Additionally, citing Sections 6w(6) to 6w(8) of Act 341, Consumers argues that this proceeding should address the requirements of the capacity demonstrations mandated for electric utilities, alternative electric suppliers (AESs), cooperative and municipal utilities, with regard to the application of the SRM capacity charge to retail load as a result of the resource adequacy demonstrations.

Finally, Consumers urges the Commission to act expeditiously in order to conclude this proceeding prior to December 1, 2017. To that end, Consumers requests that the Commission remain committed to reading the record. Also, Consumers asks the Commission to allow it at least 21 days following the issuance of the scheduling order to prepare its application and supporting testimony.

DTE Electric

In its comments, DTE Electric offers a different approach than that proffered by Consumers. Instead of opening this freestanding docket to implement Section 6w of Act 341, DTE Electric maintains that the Commission should replace this proceeding by reviewing all the necessary statutory alternatives set forth in MCL 460.6w in the company's next general rate case. DTE Electric asserts that the Commission can fully address the provisions of Section 6w within the statutory deadlines, thereby eliminating having to conduct parallel contested cases on identical issues.

In reaching this recommendation, DTE Electric agreed that because of the February 2 order, MISO's decision not to seek rehearing of that order, and the current inability of the FERC to decide any substantive matters due to a lack of a quorum, the Commission would be wise to conserve its own resources and those of the utility and the other interested persons by resolving all of the Section 6w issues in the context of the utility's next general rate case. DTE Electric states that it will file its next electric rate case before April 20, 2017, which will provide the Commission with an appropriate vehicle and up to date data for determining an SRM for its service territory. In the words of DTE Electric:

If the Company were required to file its capacity charge case as set forth in the January 20 Order, the only Commission approved costs and rates available to establish a capacity charge, are the costs approved in the Company's prior general rate case, Case No. U-18014. The result would be two contested case proceedings

(a capacity charge case and a general rate case), occupying essentially the same timeframe, covering many of the same expenses and analysis. Such inefficient duplicative processes are unnecessary. All of the statutory deadlines for establishment of the SRM and the associated capacity charge, can be met with far greater efficiency by simply establishing the SRM and the capacity charge in the course of DTE Electric's next general rate contested case proceeding.

DTE Electric comments, p. 5.

DTE Electric realizes that its next rate case determinations will not be finally determined until April 2018 while the Section 6w issues must be concluded on or before December 1, 2017. Nevertheless, DTE Electric insists that the Commission could accommodate both deadlines by establishing a separate calendar for the Section 6w determinations, and by agreeing to read the record on the SRM and capacity charge calculation issues. DTE Electric believes that a reasonable schedule would close the record on the SRM/capacity charge issues by October 1, 2017, and allow the parties until late October 2017 to brief the issues. The Commission would then have four to five weeks to issue its SRM/capacity charge determinations by December 1, 2017.

UMERC

UMERC agreed that the FERC's February 2 order and MISO's decision not to ask for rehearing have effectively eliminated two of the three statutorily created options by which the Commission could have addressed resource adequacy concerns for Michigan via Section 6w of Act 341. Instead, all that is left for the Commission to address is the SRM. UMERC states that it supports development of the SRM to address both near-term and long-term resource adequacy for all load serving entities, including those in Michigan's Upper Peninsula. According to UMERC, a properly operating SRM will "ensure that all entities serving load demonstrate ownership or contractual rights to capacity sufficient to meet capacity obligations." UMERC comments, p. 2. Therefore, UMERC recommended that the Commission should set a prehearing conference to

permit the utility, the Staff, and the properly admitted intervening parties to set a schedule for the remainder of the proceedings.

UPPCo

In its comments, UPPCo maintains that Section 6w(2) does not identify a fixed date for implementation of the SRM. Also, UPPCo stresses that the statute provides that the Commission may initiate contested case proceedings any time before October 1. According to UPPCo, this proceeding could have been commenced as late as September 30, 2017 and still conform to the requirements of the new law. UPPCo states that it would be helpful if it better understood the Commission's reason for the "immediate timing and implied urgency for this docket." UPPCo comments, p. 2. Further, UPPCo complained that the Commission did not provide adequate time for it to provide substantive comments if the purpose of those comments was to aid in the development of the scope of this proceeding. Finally, UPPCo asserted that "should any other person file comments in this case, the Company reserves the right to file replies thereto, and seek other relief if necessary." UPPCo comments, p. 2.

Cloverland

Cloverland maintains that the SRM must be specific to each utility. Further, Cloverland believes that the SRM should be arrived at through adherence to each utility's traditional ratemaking procedures, which means in the case of Cloverland, the Commission should follow traditional cooperative ratemaking principles. Cloverland believes that its SRM should be designed to compensate Cloverland for the capacity obligation it undertakes to meet the retail choice customer capacity needs that are not proven to be satisfied by the serving AES. According to Cloverland, that cost could reasonably be determined based on the costs reflected in Cloverland's wholesale power supply agreement or on the cost of service reflected in existing

rates. As for the schedule to be followed, Cloverland suggested that the Commission follow the same schedule used in establishing a state compensation mechanism for Indiana Michigan Power Company in Case No. U-17032.

ABATE

Initially, ABATE expressed an objection to the short amount of time allowed for the utilities and other interested persons to respond to the Commission's February 28 order, which it maintains could constitute a procedural due process violation. Turning to potential substantive violations of federal and state law, ABATE identifies three problems presented by the legislation requiring the Commission to implement an SRM that involve federal preemption and contract impairment issues. According to ABATE, implementation of Section 6w of Act 341 may run afoul of the Federal Power Act, 16 USC 824 *et seq.*, due to interference with the FERC's regulation of the wholesale marketplace, interstate commerce, and the preempted field of wholesale electricity regulation. ABATE's comments, paragraph 2a. Additionally, in paragraphs 2b and 2c of its comments, ABATE suggests that implementation of Section 6w could be interpreted as violating both the federal and state constitutional prohibitions on impairment of existing contracts between AESs and their retail open access customers.

Next, citing many differences among the utilities subject to the SRM, ABATE requests that "the Commission take steps to ensure that each of these proceedings is decided on the merits of the detailed factual circumstances of each electric provider in question, and avoid application of a 'one size fits all' policy or approach to implementation of Act 341's 6w requirements to geographically and structurally different electric providers, particularly as to capacity charges." ABATE's comments, paragraph 3.

In paragraph 4 of its comments, ABATE questions Act 341's failure to address how the Commission should react if, subsequent to September 30, 2017, but before the December 1st preceding the 2022-2023 Planning Year (i.e., December 1, 2021) the FERC were to approve a capacity forward auction or PSCM that displaces or preempts a Commission-approved SRM.

In paragraphs 5 to 13 of its comments, ABATE suggests several additional concerns, including (a) Act 341's silence with respect to the mechanism for the underlying alternative electric load amount for each AES to be determined when assessing the capacity obligation of each AES; (b) how the Commission intends to identify the entity that will be held responsible for initially or ultimately paying the capacity charge assessed under the statute in every situation; (c) how the Commission will resolve the question of which "electric provider" will be required to deliver the capacity secured by payment of a capacity charge if more than one utility has franchise rights in a given municipality; (d) what it means to "own" the right to capacity or have "contractual rights" thereto; (e) how the Commission will investigate the most cost-efficient way for electric providers to obtain contractual capacity rights that avoids a capacity charge and maintains electric rate competitiveness; (f) how to determine the proper level of "costs previously set for recovery through net stranded cost recovery and securitization;" (g) what should be the appropriate term of the capacity charge (e.g., one charge for four years or a different charge for each year); (h) how to implement the true-up mechanism so that the revenues collected by electric providers under the capacity charge equal their actual cost to provide capacity, and how any excess is returned to customers with interest; and (i) how MCL 460.10f's requirements for excess capacity reconcile, if at all, with the capacity charge under Section 6w.

Energy Michigan

In its comments, after a detailed recitation of the circumstances, Energy Michigan comes to the conclusion that the effect of the February 2 order and the plain language of Section 6w(1) and a portion of 6w(2) mean that Consumers and DTE Electric should be relieved of the requirement to file testimony in this proceeding regarding whether the capacity mechanisms described in Sections 6w(1) and 6w(2) are more cost-effective, reasonable, and prudent than MISO's FRA. Energy Michigan describes these portions of Act 341 as moot due to the FERC's failure to approve MISO's CRS proposal and MISO's statement that it would not ask the FERC to reconsider the February 2 order. According to Energy Michigan, the only option left is for the Commission to implement the SRM in accordance with Sections 6w(2), 6w(3), and 6w(8).

However, Energy Michigan opposes extension of the SRM beyond Consumers and DTE Electric. According to Energy Michigan, MISO Zone 2, which comprises the Upper Peninsula of Michigan, was not the focus of the resource adequacy concerns that led the Legislature to adopt Section 6w. Energy Michigan states that "until there is a resource adequacy concern manifested in the MISO Zone 2 forecasts, Energy Michigan does not support the opening of SRM dockets for the Upper Peninsula utilities." Energy Michigan comments, p. 5.

Sierra Club

The Sierra Club's analysis concurs with the recommendations of most of the other commenters that the focus of these proceeding must be on the establishment of an SRM given that MISO's FRA and PSCM proposals are no longer viable. Calling the SRM "a new type of planning mechanism," the Sierra Club maintains that there will be numerous technical issues that must be addressed. As an example, the Sierra Club points out that these cases will likely require the Commission to address not only the question of whether portions of the state actually face

reliability problems, but also to consider alternative solutions to any resource adequacy shortfalls. To do so, the Sierra Club stresses that all parties should be given an opportunity to thoroughly investigate the utilities' SRM proposals, and to prepare and submit testimony regarding those proposals. The Sierra Club would like to have the timelines for the proceedings be no shorter than those established in the January 20 order for Consumers and DTE Electric. The Sierra Club argues that a more compressed schedule established for these proceedings would seriously hinder the party's ability to conduct discovery and might prevent a thorough review of utilities' proposals. Additionally, the Sierra Club recommends that the Commission include additional time within the schedule for each proceeding for the administrative law judge (ALJ) assigned to the case to prepare a proposal for decision. The Sierra Club also supports staggering schedules to allow the parties a more meaningful opportunity to participate in these cases. In the alternative, the Sierra Club urges the Commission to consider delaying the issuance of any schedule for an SRM proceeding. The Sierra Club recommends this alternative due to the possibility that MISO might amend and resubmit its previously rejected CRS application to the FERC.

Finally, the Sierra Club insists that, if the Commission is to approve an SRM proposal, it should do so only to the extent that the utility demonstrates that this would meet the utility's MISO capacity obligations in a manner that is cost-effective, reasonable, and prudent. According to the Sierra Club, the FERC's rejection of the FRA and the PSCM "does not obviate the need to assess utilities' SRM proposals against these statutory benchmarks." Sierra Club comments, p. 5. Indeed, the Sierra Club urges the Commission to make it clear to all parties that this standard will be applicable to all of its SRM determinations.

CNE

CNE also agreed that the Section 6w provisions pertaining to the FRA are now moot, and that Consumers and DTE Electric be relieved of addressing whether the PSCM and the SRM would be more cost-effective, reasonable, and prudent than the FRA in their applications. In so doing, CNE stressed that MISO had announced on February 24, 2017, that it would not seek rehearing of the FERC's February 2 order.³ Accordingly, CNE urges the Commission, Consumers, and DTE Electric to focus their efforts on establishing a cost-effective, reasonable, and prudent SRM and any associated reliability charge. Moreover, CNE maintained at the Commission without undue delay should move forward with proceedings to establish appropriate capacity mechanisms for both Consumers and DTE Electric.

CNE recommends that it would facilitate the SRM process if the Commission were to establish some basic filing requirements for the utilities that would spare the other parties from having to conduct extensive discovery. It is CNE's belief that, at a minimum, the Commission should order the simultaneous electronic service of testimony, exhibits, and workpapers by Consumers and DTE Electric in an unrestricted, native format on all intervenors to these proceedings. Additionally, CNE argues that Consumers and DTE Electric should be directed to clearly breakout all of the following information:

(1) All capacity-related resource costs included in the utility's base rates, surcharges, and power supply cost recovery (PSCR) factors for the utility's entire portfolio of resources;

(2) All non-capacity-related resource costs, including, but not limited to costs previously set for recovery through net stranded costs recovery and securitization for the utility's entire portfolio of resources;

³ CNE attached a copy of MISO's announcement to its comments.

(3) Projected revenues and projected fuel costs from each of the following:

- a. All energy market sales.
- b. Off-system energy sales.
- c. Ancillary service sales.
- d. Energy sales under unit-specific bilateral contracts.

CNE also urges the Commission to ensure that each utility provides on an unbundled basis (i.e., capital, O&M, depreciation, rate of return, and taxes) the costs, both fixed and variable, by resource for every resource in the utility's portfolio. Additionally, CNE contends that the Commission should also direct the utilities to provide a calculation showing the energy savings, meaning the savings that stem from paying the portfolio fuel costs rather than purchase energy at market prices, for each generation resource in the utility's portfolio.

CNE also opposes the commencement of SRM proceedings for the utilities located in Michigan's Upper Peninsula. According to CNE, although Act 341 does not specify which utilities must be subject to an SRM, the Commission should exercise its authority under Section 6w(2) to exclude the Upper Peninsula utilities from the SRM process at this time because MISO's Zone 2 does not have the same resource adequacy concerns that Zone 7 is facing. Alternatively, if the Commission cannot be dissuaded from commencing SRM proceedings for the Upper Peninsula utilities at this time, CNE believes that the proceedings for Consumers and DTE Electric should take precedence so as to conserve resources of all parties that will be involved in these cases.

Finally, CNE maintains that the Commission should commence a generic proceeding to establish forms and filing requirements for AESs subject to an SRM. According to CNE, Section 6w(8)(b) obligates AESs to make annual filings "in a format determined by the Commission" to demonstrate that the AES "owns or has contractual rights to sufficient capacity to meet its capacity

obligations as set forth by the appropriate independent system operator, or commission, as applicable.” Because the purpose of this statutory provision is to enable an AES to possibly avoid payment of the capacity charge, CNE recommends that the Commission open a generic proceeding to implement this provision for all affected AESs.

Calpine

In its comments, Calpine commenced by indicating that it was reserving the right to address federal/state jurisdictional issues at a later date. Calpine then asserted that the FERC’s rejection of MISO’s CRM application eliminated the Commission’s authority to address both the three-year FRA and the PSCM embodied in Section 6w of Act 341. According to Calpine, the sole issues before the Commission in these proceedings involve the implementation of the SRM and consideration of the circumstances by which the Commission is obligated to hold that AESs are to be exempted from the capacity charge. According to Calpine, Section 6w(3) provides that when establishing the capacity charge, the Commission shall include capacity-related generation costs included in the utility’s base rates, surcharges, and PSCR factors. Calpine asserts that the Commission must then subtract from those listed costs all non-capacity-related generation costs, including stranded costs, securitization and projected revenues from energy market sales, off-system energy sales, ancillary services sales, and bilateral contract energy sales. Calpine maintains that, in the event that an AES is able to demonstrate that it owns or controls sufficient capacity to serve its retail electric load for the four years commencing with the start of the current Planning Year, then the AES is entitled to be exempted from paying the capacity charge established by the Commission. Additionally, Calpine stresses that under Section 6w(4), there should be an annual true-up with any over- or under collections rolled into the capacity charge applicable in the subsequent year. Further, Calpine maintains that is in the public interest to avoid

material fluctuations of the capacity charge, which might make it difficult for customers to effectively control their retail electric costs from year to year.

With regard to the procedural schedule for these proceedings, Calpine recommends that the Commission commence these proceedings before the April 20, 2017 effective date of Act 341 to allow development of full and complete records within these proceedings.

Verso

After expressing agreement that the February 2 order not only expressly rejected MISO's proposed FRA and also impliedly rejected the PSCM, Verso strongly objects to any effort on the part of the Commission to establish an SRM for any portion of MISO Zone 2 (i.e., the Upper Peninsula of Michigan). Verso argues that MISO's CRS had a "materiality threshold" that exempted all retail access load in Zone 2. Moreover, Verso asserts that MISO does not have any resource adequacy concerns concerning Zone 2. Also, citing a pleading filed with the FERC by the Michigan Agency for Energy (MAE), Verso insists that MAE is on record stating that "[R]etail choice in Zone 2 is not material at this time, nor is it likely to become so." Verso comments, p.4. Verso added that even the Commission's analysis in its most recently completed five-year study of resource adequacy in Michigan concluded that "Zone 2 will have an adequate supply of capacity resources to meet its Planning Reserve Margin requirements" for the 2017/2018 planning year. Verso comments, p. 4. Verso contends that testimony before the Legislature drew a distinction between the conditions in MISO Zone 7 and MISO Zone 2. For these reasons, Verso insists that "until there is a resource adequacy concern manifested in the MISO Zone 2 forecasts, Verso does not support the opening of SRM dockets for the Upper Peninsula utilities." Verso comments, p. 5. Verso emphasizes that the SRM cases will be complex matters that will require it to hire skilled legal and regulatory experts to assist in the prosecution of these cases. According to Verso, it

should not be required to bear the expense or to expend valuable time absent legitimate resource adequacy concerns in the Upper Peninsula.

Staff

As did most of the other commenters, in its comments the Staff recounted the procedural history of MISO's CRS filing, the FERC's February 2 order, the Commission's January 20 and February 28, 2017 orders in these dockets as these events impact the Commission's obligation to implement Section 6w of Act 341. After supplying this important background information, the Staff opined that the FERC's rejection of MISO's CRS application effectively relieved Consumers and DTE Electric of the requirement to file testimony and exhibits regarding whether Sections 6w(1) and 6w(2) of Act 341 are more cost-effective, reasonable, and prudent than MISO's capacity auction. Additionally, it is the Staff's position that the Commission no longer needs to determine if the SRM will be more cost-effective, reasonable, and prudent than the capacity forward auction. Nevertheless, the Staff asserts that because it is extremely unlikely that the FERC will be in any position to approve either a forward auction or a PSCM by September 30, 2017, Act 341 requires the Commission to establish an SRM under Section 6w(8). According to the Staff, to establish an SRM, the Commission must hold a contested case proceeding, which must be completed by December 1, 2017.

The Staff added:

It should also be noted that subsection 8 of Act 341 provides for the payment of a capacity charge, but also provides for annual capacity demonstrations from electric utilities, alternative electric suppliers, cooperative electric utilities, and municipally owned electric utilities. MCL 460.6w(8)(a)-(b). The scope of these dockets should be restricted to setting the capacity charge for each named utility. These dockets should not include any issues regarding either setting capacity requirements or making capacity demonstrations. Rather, the Staff recommends that the commission order the Staff to convene a technical workgroup and consult with the Midcontinent Independent System Operator, culminating in the Staff filing

a report in Case No. U-18197 no later than August 16 setting forth the workgroup's recommendations regarding setting capacity requirements and making capacity demonstrations as provided for in Section 8 of Act 341.

Staff comments, p. 6.

Finally, the Staff attached a proposed schedule for each utility that provided for slightly different schedules to spread out the workloads.

Discussion

To begin with, the Commission would like to express its appreciation to all of the commenters for adhering to the schedule for the submission of comments and recommendations in these proceedings. Resource adequacy concerns were a major driver in the adoption of Act 341. The Commission finds that the importance of these concerns to the economic well-being of Michigan is paramount, and justifies expediting these proceedings to fulfill the requirements of Section 6w of the act.

Next, the Commission notes that several commenters have raised, or at least suggested, that potential federal and Michigan constitutional hurdles involving both procedural and substantive issues including federal preemption, interstate commerce, and contract impairment may be encountered during the processing of these proceedings. The Commission recognizes the need of certain parties to preserve such issues for appellate review. However, the Commission needs to stress that it is an administrative agency, not a court of law. The Commission has an obligation to follow its enabling statutes. In *Dation v Ford Motor Co*, 314 Mich 152; 22 NW2d 252 (1946), the Michigan Supreme Court held that a state administrative agency cannot determine that its enabling statute is unconstitutional. With respect to ABATE's and UPPCo's concern over the timeline for comments in response to the February 28 order, the Commission emphasizes that its purpose for seeking input from interested persons and clarifying the scope of these proceedings at this time is

to provide the stakeholders as much time as possible to present a full and complete record within the confines of the statute.

Almost every commenter agreed that, in the wake of the FERC's February 2 order and MISO's decision to forego a petition for rehearing, the focus of these proceedings must shift away from Section 6w(1) towards Section 6w(2) of Act 341. No comment indicated that any time should be spent on the FRA, the PSCM, or any analysis of whether or not the SRM would be more cost-effective, reasonable, and prudent than the use of the capacity forward auction for this state in meeting the local clearing requirement and the planning reserve margin requirement.

An obvious area of disagreement between Consumers and DTE Electric does exist. Whereas Consumers supports the use of a freestanding docket for determining SRM issues, DTE Electric urges the Commission to include the SRM issues in a general electric rate case proceeding. The Commission finds that packaging the SRM issues into a general rate case would be unwise at this time. Rate cases are already very involved, and adding new issues of first impression into a rate case is not practical. Moreover, the rate case schedule for DTE Electric does not align with the statutory deadline for the Commission to comply with Act 341 in the establishment of the SRM.

Another obvious area of disagreement involves the decision of the Commission to read the records in these proceedings. Consumers supports this approach. The Sierra Club maintains that the Commission should rely on a proposal for decision drafted by an ALJ. The Commission finds that time is of the essence in conducting these cases. It also notes that the SRM issues are novel because Section 6w is new to the Commission's enabling statutes. Therefore, the Commission is persuaded that preparation of a proposal for decision will not only delay the outcome of these

proceedings, but also would require the ALJ assigned to these proceedings to consider issues that have never before been adjudicated by an ALJ in this state.⁴

Two suggestions, one from the Staff associated with the use of a technical work group to settle myriad issues that are tangentially related to the establishment of SRM charges, and one from CNE regarding a generic proceeding to consider the creation of forms and filing requirements for AESs subject to the SRM, appear to mesh together nicely. The Commission finds that these suggestions have merit, and should be approved with modifications discussed below. Therefore, the Commission directs the Staff to convene a technical conferences in Case No. U-18197 to resolve issues raised by the Staff and CNE in their comments that are amenable to resolution outside of a fully contested case proceeding. More specifically, the Commission directs the Staff to consult with MISO and parties to do all of the following by August 16, 2017:

1. Continue to examine resource adequacy issues as part of the annual assessment in Case No. U-18197.
2. Develop recommendations regarding requirements for capacity demonstrations for electric utilities, cooperatives, municipalities, and AESs in this state subject to an SRM, including filing requirements.
3. Develop recommendations regarding load forecasts, planning reserve margin requirements and locational requirements for capacity resources.
4. Develop recommendations regarding the capacity obligations for load that pays an SRM charge to a utility, including MISO's annual PRA.

⁴ In resolving Case No. U-17032, which established a state compensation mechanism for Indiana Michigan Power Company's service territory, the Commission opted to read the record rather than to await preparation of a proposal for decision.

Although the Staff proposed the use of technical conferences to address issues related to the term of capacity charges beyond the statutory minimum of four years provided for in Section 6w(2) and all matters associated with the true-up proceedings described in Section 6w(4), the Commission is not persuaded by this recommendation. The Commission finds that the term of the SRM and the true-up methodology should be addressed in Case Nos. U-18239 and U-18248 in the event that the parties are not able to reach a compromise on these potentially contentious issues. These are integral to the functioning of the SRM and the Commission wants to ensure a full and complete evidentiary record is developed. Notwithstanding, the Commission encourages the parties to consider opportunities for collaboration and compromise on these issues outside the hearing process.

The commenters were also divided over whether the Commission should immediately proceed with SRM cases for the three Upper Peninsula utilities. UMEREC seemed to favor commencement of such a proceeding at this time. UPPCo found no reason in the statute to commence the SRM case before September 30, 2017. Cloverland seems to have no objection to starting its case without delay. Verso, CNE, THE Sierra Club, and Energy Michigan opposed going forward with the Upper Peninsula utilities' cases. In doing so, they argued that MISO's Zone 2 does not share the same resource adequacy challenges faced by the MISO Zone 7 utilities. And, Verso was also worried about the expense of needing to hire legal and regulatory experts to represent its interests. After some thought, the Commission finds that there is no immediate need to place the proceedings for UMEREC, UPPCo or Cloverland on the same fast track as Consumers and DTE Electric. The Commission encourages these utilities to participate in the technical conference to

be conducted by the Staff. However, the Commission will not be scheduling their SRM cases to proceed at this time.⁵

THEREFORE, IT IS ORDERED that:

A. The Commission's Executive Secretary shall electronically serve a copy of this order on Consumers Energy Company, DTE Electric Company, on all intervenors and commenters in these proceedings, and on every licensed alternative electric supplier in Michigan.

B. Within 10 days following issuance of this order, Consumers Energy Company and DTE Electric Company shall serve a copy of this order on all participants to their most recently concluded general rate cases and on all of their retail open access customers.

C. By April 11, 2017, Consumers Energy Company shall file an application fully supported by testimony, exhibits, and workpapers to implement a state reliability mechanism in accordance with the provisions of this order. Simultaneous service shall be made on all intervenors at that time, and upon any person that had previously submitted comments in Case No. U-18239.

D. Petitions to intervene in Case No. U-18239 shall be filed in this docket by April 18, 2017.

E. Administrative Law Judge Mark D. Eyster shall preside over the initial prehearing conference and all further proceedings for Case No. U-18239, which has been set for April 25, 2017 at 9:00 am at the Commission's Lansing offices, 7109 W. Saginaw Highway, Lansing, Michigan 48917. A schedule shall be set that recognizes the Commission's intent to read the record, the need for some staggering of the schedules of Case Nos. U-18239 and U-18248, and the statutory requirement that the Commission must issue its final order on or before December 1, 2017.

⁵ The Commission encourages the Staff, the Upper Peninsula utilities, and others to discuss the future of the SRM dockets for these utilities at the technical conference.

F. By April 11, 2017, DTE Electric Company shall file an application fully supported by testimony, exhibits, and workpapers to implement a state reliability mechanism in accordance with the provisions of this order. Simultaneous service shall be made on all intervenors at that time, and upon any person that had previously submitted comments in Case No. U-18248.

G. Petitions to intervene in Case No. U-18248 shall be filed in this docket by April 18, 2017.

H. Administrative Law Judge Mark D. Eyster shall preside over the initial prehearing conference and all further proceedings for Case No. U-18248, which has been set for April 25, 2017 at 9:30 am at the Commission's Lansing offices, 7109 W. Saginaw Highway, Lansing, Michigan 48917. A schedule shall be set that recognizes the Commission's intent to read the record, the need for some staggering of the schedules of Case Nos. U-18239 and U-18248, and the statutory requirement that the Commission must issue its final order on or before December 1, 2017.

I. The Commission Staff shall convene a technical work group for the purposes more fully described in this order.

J. Consumers Energy Company and DTE Electric Company shall publish notices of hearing in accordance with instructions from the Commission's Executive Secretary.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of March 10, 2017.

Kavita Kale, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-18239 et al

County of Ingham)

Danielle Rogers being duly sworn, deposes and says that on March 10, 2017 A.D. she served a copy of the attached **Commission Order via e-mail transmission**, to the persons as shown on the attached service list.

Danielle Rogers

Danielle Rogers

Subscribed and sworn to before me
This 10th day of March 2017

Lisa Felice

Lisa Felice
Notary Public, Eaton County
My Commission Expires April 15, 2020

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GEMOTION DISTTRIBUTION SERVICE LIST UPDATED AS OF: 01-19-2017

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