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 **CLOVERLAND ELECTRIC COOPERATIVE'S** service territory.	)))))	Case No. U-18258

At the November 30, 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

OPINION AND ORDER

History of Proceedings

On February 28, 2017, the Commission commenced this proceeding (February 28 order) for implementation of Section 6w of 2016 PA 341 (Act 341), MCL 460.6w, for Cloverland Electric Cooperative (Cloverland). As a result of rulings by the Federal Energy Regulatory Commission (FERC),[1] in the February 28 order, the Commission sought comments on the proposed scope and schedule for this proceeding.

[1] On February 2, 2017, the FERC issued an order (February 2 order) rejecting the Midcontinent Independent System Operator, Inc.'s (MISO) Competitive Retail Solution (CRS) tariff filing in Docket No. ER17-284-000. The FERC determined that the Forward Resource Auction proposed by MISO, which would apply to a small amount of load within MISO and would occur more than three years prior to MISO's existing Planning Resource Auction, would bifurcate the MISO capacity market and have potential adverse impacts on price. February 2 order, p. 2. The FERC did not expressly comment on the Prevailing State Compensation Mechanism (PSCM) proposal that was set forth in MISO's CRS filing, however, the Commission

Comments were filed in this docket by Cloverland, the Commission Staff (Staff), the Association of Businesses Advocating Tariff Equity (ABATE),[2] Constellation NewEnergy, Inc., and the Sierra Club.[3] The Commission summarized the comments filed in response to the February 28 order in its March 10 order, wherein the Commission concluded that it was required to set an SRM and that there was no immediate need to place the proceedings for Cloverland on the same fast track as Consumers Energy Company and DTE Electric Company. Instead, the Commission encouraged the Upper Peninsula utilities, the Staff, and the other interested entities to participate in a collaborative effort to be conducted by the Staff. Additionally, the Commission concluded that it must shift its focus from Section 6w(1) to 6w(2) and (8).

On May 11, 2017, the Commission issued an order in Case No. U-18197 *et al*. clarifying the procedure for establishing the format of the capacity demonstration process and seeking comments on three threshold issues. On June 15, 2017, the Commission issued an order in Case No. U-18197 *et al*. addressing the threshold questions.

On June 28, 2017, Administrative Law Judge Suzanne D. Sonneborn (ALJ) held a prehearing conference, at which intervenor status was granted to Constellation NewEnergy, Inc., and Constellation Energy Services Inc., (together, CNE) and the Michigan Electric Cooperative Association (MECA) in the instant contested case proceeding. The Staff also participated. The

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understood that the PSCM was also rejected in the February 2 order, and concluded that further efforts to implement Section 6w(1) of Act 341 were no longer appropriate. Thus, the Commission turned its attention to implementation of a State Reliability Mechanism (SRM) as required under Section 6w(2) of Act 341. March 10, 2017 order (March 10 order), p. 18.

[2] ABATE did not participate further in this case.

[3] The Sierra Club did not participate further in this case.

ALJ set a schedule that provided for the Commission to read the record and issue an order no later than December 1, 2017, as required by Section 6w.

On July 25, 2017, Cloverland filed its application, along with supporting testimony and an exhibit, for an SRM capacity charge under Section 6w.

On August 4, 2017, the ALJ issued a Protective Order.

On August 25, 2017, testimony and exhibits were filed by the Staff, CNE, and MECA. On September 6, 2017, rebuttal testimony and exhibits were filed by Cloverland and the Staff.

Evidentiary hearings were held on September 11, 2017. On October 6, 2017, initial briefs were filed by Cloverland, the Staff, CNE, and MECA. On October 20, 2017, reply briefs were filed by the same parties.

The record consists of 88 pages of transcript and 7 exhibits admitted into evidence.

Background

MCL 460.6w(12)(h) defines the SRM[4] as "a plan adopted by the commission in the absence of a [PSCM] to ensure reliability of the electric grid in this state consistent with [MCL 460.6w(8)]."

Pertinent subsections of MCL 460.6w related to the SRM, capacity charge, and the capacity obligations and process are as follows:

> (2) If, by September 30, 2017, the Federal Energy Regulatory Commission does not put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism, then the commission shall establish a state reliability mechanism under subsection (8). The commission may commence a proceeding before October 1 if the commission believes orderly administration would be enabled by doing so. If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year. A state reliability charge must be established in the

[4] The final sentence of Section 6w(2) refers to establishment of a "state reliability charge" in the same manner as a "capacity charge" under Section 6w(3). The remainder of Section 6w refers to the state reliability mechanism or SRM. "SRM charge" or "capacity charge" are used interchangeably throughout this order to refer to the state reliability charge.

same manner as a capacity charge under subsection (3) and be determined consistent with subsection (8).

(3) After the effective date of the amendatory act that added section 6t, the commission shall establish a capacity charge as provided in this section. A determination of a capacity charge must be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, after providing interested persons with notice and a reasonable opportunity for a full and complete hearing and conclude by December 1 of each year. The commission shall allow intervention by interested persons, alternative electric suppliers, and customers of alternative electric suppliers and the utility under consideration. The commission shall provide notice to the public of the single capacity charge as determined for each territory. No new capacity charge is required to be paid before June 1, 2018. The capacity charge must be applied to alternative electric load that is not exempt as set forth under subsections (6) and (7). If the commission elects to implement a capacity forward auction for this state as set forth in subsection (1) or (2), then a capacity charge shall not apply beginning in the first year that the capacity forward auction for this state is effective. In order to ensure that noncapacity electric generation services are not included in the capacity charge, in determining the capacity charge, the commission shall do both of the following and ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load:

(a) For the applicable term of the capacity charge, include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.

(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

(i) All energy market sales.

(ii) Off-system energy sales.

(iii) Ancillary services sales.

(iv) Energy sales under unit-specific bilateral contracts.

(4) The commission shall provide for a true-up mechanism that results in a utility charge or credit for the difference between the projected net revenues described in subsection (3) and the actual net revenues reflected in the capacity charge. The true-up shall be reflected in the capacity charge in the subsequent year. The

methodology used to set the capacity charge shall be the same methodology used in the true-up for the applicable planning year.

(5) Not less than once every year, the commission shall review or amend the capacity charge in all subsequent rate cases, power supply cost recovery cases, or separate proceedings established for that purpose.

(6) A capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier can demonstrate that it can meet its capacity obligations through owned or contractual rights to any resource that the appropriate independent system operator allows to meet the capacity obligation of the electric provider. The preceding sentence shall not be applied in any way that conflicts with a federal resource adequacy tariff, when applicable. Any electric provider that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years before the beginning of the applicable planning year if it does not expect to meet that capacity obligation and instead expects to pay a capacity charge. The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective.

(7) An electric provider shall provide capacity to meet the capacity obligation for the portion of that load taking service from an alternative electric supplier in the electric provider's service territory that is covered by the capacity charge during the period that any such capacity charge is effective. The alternative electric supplier has the obligation to provide capacity for the portion of the load for which the alternative electric supplier has demonstrated an ability to meet its capacity obligations. If an alternative electric supplier ceases to provide service for a portion or all of its load, it shall allow, at a cost no higher than the determined capacity charge, the assignment of any right to that capacity in the applicable planning year to whatever electric provider accepts that load.

(8) If a state reliability mechanism is required to be established under subsection (2), the commission shall do all of the following:

(a) Require, by December 1 of each year, that each electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable.

(b) Require, by the seventh business day of February each year, that each alternative electric supplier, cooperative electric utility, or municipally owned electric utility demonstrate to the commission, in a format determined by the

commission, that for the planning year beginning 4 years after the beginning of the current planning year, the alternative electric supplier, cooperative electric utility, or municipally owned electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. One or more municipally owned electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. One or more cooperative electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. A cooperative or municipally owned electric utility may meet the requirements of this subdivision through any resource, including a resource acquired through a capacity forward auction, that the appropriate independent system operator allows to qualify for meeting the local clearing requirement. A cooperative or municipally owned electric utility's payment of an auction price related to a capacity deficiency as part of a capacity forward auction conducted by the appropriate independent system operator does not by itself satisfy the resource adequacy requirements of this section unless the appropriate independent system operator can directly tie that provider's payment to a capacity resource that meets the requirements of this subsection. By the seventh business day of February in 2018, an alternative electric supplier shall demonstrate to the commission, in a format determined by the commission, that for the planning year beginning June 1, 2018, and the subsequent 3 planning years, the alternative electric supplier owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. If the commission finds an electric provider has failed to demonstrate it can meet a portion or all of its capacity obligation, the commission shall do all of the following:

(i) For alternative electric load, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for that portion of the load not covered as set forth in subsections (6) and (7). If a capacity charge is required to be paid under this subdivision in the planning year beginning June 1, 2018 or any of the 3 subsequent planning years, the capacity charge is applicable for each of those planning years.

(ii) For a cooperative or municipally owned electric utility, recommend to the attorney general that suit be brought consistent with the provisions of subsection (9) to require that procurement.

(iii) For an electric utility, require any audits and reporting as the commission considers necessary to determine if sufficient capacity is procured. If an electric utility fails to meet its capacity obligations, the commission may assess appropriate and reasonable fines, penalties, and customer refunds under this act.

(c) In order to determine the capacity obligations, request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and planning reserve margin requirement. If the appropriate

independent system operator declines, or has not made a determination by October 1 of that year, the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements.

(d) In order to determine if resources put forward will meet such federal reliability requirements, request technical assistance from the appropriate independent system operator to assist with assessing resources to ensure that any resources will meet federal reliability requirements. If the technical assistance is rendered, the commission shall accept the appropriate independent system operator's determinations unless it finds adequate justification to deviate from the determinations related to the qualification of resources. If the appropriate independent system operator declines, or has not made a determination by February 28, the commission shall make those determinations.

* * *

(12) As used in this section:

(a) "Appropriate independent system operator" means the Midcontinent Independent System Operator. . . .

(c) "Electric provider" means any of the following:
(i) Any person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.
(ii) A municipally owned electric utility in this state.
(iii) A cooperative electric utility in this state.
(iv) An alternative electric supplier licensed under section 10a.

(d) "Local clearing requirement" means the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8).

(e) "Planning reserve margin requirement" means the amount of capacity equal to the forecasted coincident peak demand that occurs when the appropriate independent system operator footprint peak demand occurs plus a reserve margin that meets an acceptable loss of load expectation as set by the commission or the appropriate independent system operator under subsection (8).

* * *

(h) "State reliability mechanism" means a plan adopted by the commission in the absence of a prevailing state compensation mechanism to ensure reliability of the electric grid in this state consistent with subsection (8).

Thus, Section 6w requires each electric utility, alternative electric supplier (AES), cooperative electric utility, and municipally-owned electric utility to demonstrate to the Commission, in a format determined by the Commission, that the load serving entity (LSE or electric provider) owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator (ISO), or by the Commission, as applicable. In the event an AES cannot make the required capacity showing (or elects not to), Section 6w requires that an SRM capacity charge be assessed, to be determined by the Commission, with the associated capacity for such AES customers provided by the incumbent utility. Section 6w established a new framework for resource adequacy in Michigan – that is, ensuring electric providers can meet customers' electricity needs over the long-term, even during periods of high electricity consumption or when power plants or transmission lines unexpectedly go out of service. Act 341 went into effect on April 20, 2017.

Pursuant to a series of orders issued in Case No. U-18197 and the March 10 order in this matter, the Staff held a number of technical conferences for the purpose of addressing the procedures and requirements for demonstrating capacity. The Commission engaged stakeholders, with opportunities to provide comments and positions, and also opened dockets in this case and in Case Nos. U-18239, U-18248, U-18253, and U-18254, for the five electric providers with choice load potentially affected by the SRM charge requirement of Section 6w.

Under the Section 6w framework, the Commission must determine the capacity obligations for individual electric providers and create a process to evaluate whether such obligations are met. Section 6w provides remedies in instances when an electric provider is unable to demonstrate it has procured adequate capacity to cover its load, including allowing for uncovered AES load to be assessed a capacity charge determined by the Commission and paid to the incumbent utility in

exchange for meeting that load's capacity obligations. Special provisions exist for electric utilities, municipally-owned utilities, and electric cooperatives that fail to meet the Section 6w capacity obligations. Whether any capacity charge is actually imposed on choice customers will be determined after February 9, 2018, when AESs make their capacity demonstrations. However, under Section 6w(3), the capacity charge must be established by the Commission after a contested case by December 1 of each year, and the charge may not go into effect prior to June 1, 2018.

In the September 15, 2017 order in Case No. U-18197 (September 15 order), the Commission adopted a timeline and procedures for the capacity demonstration process referred to in Section 6w(6) and (8). In the September 15, 2017 order in Case No. U-18441, the Commission opened the docket that will be the repository for all of the electric providers' filings for the initial demonstrations for planning years 2018-2021. Under the approved timeline, the Staff will file a memo in that docket indicating its determination on each electric provider's demonstration by March 6, 2018. Show cause proceedings shall be initiated if an individual LSE does not appear to have sufficient capacity based on the Staff's assessment. Such a proceeding will provide an opportunity for parties to present evidence on whether the electric provider has failed to demonstrate that it can meet a portion or all of its capacity obligations, thereby triggering Commission action as set forth in Section 6w(8)(b)(i). The instant order will determine the capacity charge associated with load in Cloverland's service territory. Whether the charge is levied on any retail open access (ROA) customers will be determined by the outcome of any orders to show cause issued after March 6, 2018, for AESs serving load in Cloverland's service territory.

Positions of the Parties

Direct Testimony

Cloverland Electric Cooperative

Robert J. Malaski, Cloverland's Chief Financial Officer, provided an overview of the company and how Cloverland proposes to implement the SRM charge. He explained that Cloverland is a non-profit corporation engaged in the generation, distribution, and sale of electric energy to member-customers in Michigan's Upper Peninsula. 2 Tr 20. Mr. Malaski stated that, on December 22, 2015, in Case No. U-17971, the Commission found that Cloverland had met all of the requirements to become member-regulated in accordance with 2008 PA 167 (Act 167), MCL 460.31 *et seq.*, the Electric Cooperative Member-Regulation Act. He asserted that the company has approximately 42,000 member-customers, and only one member, UP Paper, LLC, purchases a portion of its electric energy from an AES. According to Mr. Malaski, Cloverland serves the remainder of UP Paper's electric energy needs under the terms of a special contract.

Mr. Malaski described Cloverland's major contracts and power supply arrangements. 2 Tr 22. He stated that Cloverland has 100% of the net output of the U.S. Army Corps of Engineers hydro plant; 100% of the output of Cloverland's hydro plant and all operational costs, including interest, depreciation, taxes, etc.; has diesel generation at three locations; and makes power purchases from Wisconsin Electric Power Company (WEPCo). According to Mr. Malaski, over the next five years, the company is expected to have enough resources, either owned or under contract, to provide the generation capacity for all of its current customers.

However, Mr. Malaski stated, the AES serving UP Paper is solely responsible for providing the capacity necessary to serve the portion of UP Paper's service that the AES provides. Therefore, he noted, the company has not made arrangements to provide capacity to UP Paper

beyond the percentage of service which Cloverland provides under the special contract. In the event UP Paper seeks generation capacity from Cloverland, Mr. Malaski averred that the company will do everything prudently possible to secure the required capacity and that Cloverland will most likely increase its purchases from WEPCo. While there are not any current capacity concerns with respect to MISO Zone 2 where Cloverland is located, Mr. Malaski asserted that, in the future, MISO may not have enough firm physical capacity to serve all demand.

He stated that Cloverland proposed an initial capacity charge of $28.00 per kilowatt (kW) per month. Mr. Malaski maintained that $28.00/kW/month is the approximate average year-end capacity charge Cloverland paid pursuant to a power purchase agreement (PPA) with WEPCo for the last two years. *See,* Exhibit CEC-1. He claimed that the WEPCo capacity charge is an appropriate proxy for Cloverland's overall capacity charges because it "represents the incremental and avoided cost should Cloverland be required to provide capacity to UP Paper in the event the AES failed to provide that capacity." 2 Tr 24. Mr. Malaski asserted that Cloverland does not anticipate any significant changes in that capacity charge for the next few years. However, he stated, if those costs change, under Section 6w(5), the Commission can revisit that charge in annual proceedings following reconciliation. Finally, Mr. Malaski proposed that the SRM and associated capacity charge be in place until 2029, because it coincides with the term of Cloverland's wholesale PPA with WEPCo.

Mr. Malaski argued that if some or all of the choice load takes capacity service from Cloverland beginning in June 2018, the company will not experience a windfall of incremental revenue. He explained that, under the provisions of Section 6w(4), capacity revenue will be reconciled each year, "thus, any incremental capacity revenue realized will be addressed in the

annual capacity charge reconciliation and refunded to all customers paying the capacity charge." 2 Tr 25.

Mr. Malaski noted that Section 6w(2) states that an SRM must be in place for a minimum of four consecutive planning years. In his opinion, if a choice customer pays the capacity charge in any one of the first four years that the SRM is in place, Section 6w(8)(b)(i) requires that the choice customer must, at a minimum, pay the capacity charge for all of the first four years of the SRM. He contended that, "After the initial four-year period, Choice customers will have the ability each year to choose to take capacity service from the Company or an AES four years in the future." 2 Tr 23.

After the initial four years of the SRM, if a choice customer elects to take capacity service from Cloverland, Mr. Malaski stated that, at a minimum, the customer should only be required to pay the capacity charge for that one year, four years in the future. Thus, he opined, after the initial four-year period of the SRM, choice customers will have the ability, with four years' notice, to switch back and forth between receiving capacity service from Cloverland and their AES. 2 Tr 23.

Mr. Malaski asserted that because the AES serving UP Paper is obtaining its capacity outside of MISO Zone 2, UP Paper would commence taking capacity from and paying a capacity charge to Cloverland beginning in 2018. 2 Tr 24-25. He stated that Cloverland is not proposing to alter its tariffs for its bundled-member customers to implement a separate capacity charge because the company is member-regulated and, therefore, is only proposing a capacity charge applicable to AES load that is not exempt under Section 6w(6) and (7). He noted that although Cloverland has a capacity charge for some of its classes of service under its unregulated retail tariffs, which differ by rate class, he did not propose to alter those capacity charges. According to Mr. Malaski, the

process of establishing this capacity charge applicable to non-exempt AES load assures that there is no difference in the costs borne by full-service load and AES load. 2 Tr 25.

Mr. Malaski noted that there is a significant difference between MISO Zone 2, where Cloverland is located, and MISO Zone 7, which covers most of the Lower Peninsula. He explained that, because the Staff concluded that Zone 2 has adequate capacity for the foreseeable future, there is more concern about capacity in Zone 7 than in Zone 2. Accordingly, Mr. Malaski proposed that any Section 6w(8) capacity demonstrations by Cloverland, or an AES proposing to serve customers in Cloverland's service territory, must include Zone 2 resources only. 2 Tr 26.

The Commission Staff

Nicholas M. Revere, Manager of the Rates and Tariff Section of the Commission's Regulated Energy Division, presented the Staff's calculation of the capacity charge. He asserted that the appropriate cost of capacity is the cost of new entry (CONE), or the cost to build a combustion turbine (CT). According to Mr. Revere, "the difference between the cost to build a CT and any other type of plant is the capital cost expended to produce lower energy costs. In Staff's opinion, this cost should properly be considered an energy cost." 2 Tr 37.

Mr. Revere testified that by using the WEPCo capacity charges under the FERC formula rate tariff as a proxy, Cloverland failed to include all capacity-related costs in its rates. 2 Tr 38. He stated that, by contrast, the Staff reviewed the cost of service study (COSS) and identified all capacity-related costs; all other costs were considered non-capacity. Mr. Revere asserted that the Staff's identification of capacity-related costs meets the requirements of Section 6w(3).

He stated that the Staff identified costs currently classified as production-demand related and excluded those which are not directly incurred to provide capacity service. Mr. Revere continued:

> An alternative methodology is to apply a percentage to all production demand classified costs at the percentage necessary to make the resulting amount equal to

> CONE or some other measure of the value of capacity, as determined by the Commission. This would treat all costs in excess of CONE (or the Commission's chosen value of capacity) as non-capacity-related costs. Should the Commission determine such a method is more appropriate, Staff recommends that the levelized per year cost of a CT resulting from one of the rate-regulated Upper Peninsula utilities' PURPA [Public Utility Regulatory Policy Act] cases be utilized. This would provide consistency in the Commission's determination of the value of capacity.

2 Tr 38 (footnote omitted).

Mr. Revere stated that, ideally, these costs would be distributed to the classes according to the results of the COSS, which reflects status quo. He explained that the Staff interprets Section 6w to require a single capacity charge applied to similarly-situated ROA and full-service customers, allowing for collection of class cost responsibility from that class. With respect to the issue of how to align the collection of costs with customers' contributions to the need for capacity, Mr. Revere noted two difficulties. First, he stated that billing according to the measure of contribution is effectively impossible. Second, customers would not be able to determine when the peak hours would occur because they are not known until after the fact. Mr. Revere asserted that if customers were aware of peak hours and that they were going to be charged based on those hours, customers could lower usage in those hours, thus making them non-peak hours. 2 Tr 40.

In addition, Mr. Revere noted that there is an issue of randomness inherent in a particular customer's contribution to any given hour. He averred that a customer could contribute little to the other hours surrounding the 12 coincident peak (CP) hours. For example, he stated, a customer who is away from home did not actually contribute less to the need for capacity because the customer is not usually away from home at that time. 2 Tr 40. Mr. Revere argued that, "When costs are distributed to a large class of customers, these stochastic differences essentially even out, making the cost responsibility of the class as a whole appropriate." 2 Tr 40. However, he stated, in that same class, attempting to charge on the same basis as the allocation makes little sense. As a

result, Mr. Revere asserted that we are left with imperfect proxies for capacity contribution on which the company could bill its customers.

To address these issues, he suggested using a proxy such as on-peak demand, which applies a charge to the highest hour of demand a customer places on the system during on-peak hours of the billing month. However, he noted that for smaller classes, the proxy measure would still be problematic. 2 Tr 39-40.

Mr. Revere opined that for classes with large numbers of diverse customers, on-peak kilowatt-hour (kWh) is the best starting point for billing these costs. He stated that using the entire year incorporates those months included in the calculation of the 12 CP allocator, which is used to determine cost responsibility for these capacity-related costs. According to Mr. Revere, "narrowing the number of hours charged beyond this on-peak period unreasonably increases the risk of reaching an undesirable result." 2 Tr 41-42. He noted that, as classes contain fewer customers with more usage, one approaches the assumed perfect case of a one-customer class, where any measure will result in the same cost responsibility to the customer. Mr. Revere supported the use of an on-peak demand charge for classes currently billed on a demand basis. However, he stated:

> as the Company currently uses demand charges with no peak restriction, and lacks the ability to charge non-demand billed customers on the basis of on-peak energy, Staff proposes a charge based on annual kWh for the smaller classes, and on annual billed kW or kVa [kilovolt-ampere] demand for classes that currently have such charges. Staff would support the use of an on-peak demand charge for classes currently billed on a demand basis, as well as the use of on-peak kWh for those not billed on a demand basis. However, if the Commission decides the costs must be billed the same to all classes, an annual kWh charge should be utilized. The result should be similar for the larger customers, and more accurate for the smaller.

2 Tr 42.

In sum, Mr. Revere recommended that capacity-related costs be collected through annual kWh charges for rate schedules without demand charges and through annual billed kW or kVa charges for rate schedules with demand charges. For Newberry Water & Light, he noted that the Staff lacked appropriate billing demand and used the contribution to 12 CP as a placeholder. Mr. Revere stated that the resulting capacity rates are shown on Exhibit S-1.1. If the Commission decides that all customers must pay the same charge, then he recommends that the charge be collected through a uniform annual total kWh charge calculated by dividing total capacity-related cost by total kWh. 2 Tr 42-43.

Mr. Revere disagreed with Cloverland's proposal to maintain its rates and tariffs for full-service customers, observing that Section 6w(3) requires the capacity charge to be the same for both bundled and choice customers. Accordingly, he contended that the capacity charge must apply to both groups of customers.

Mr. Revere stated that Section 6w(3)(b) requires only a very limited reconciliation of the projected net revenues used in the calculation of the SRM charge to the actual net revenues, and the difference is reflected in the charge for the next year.

Lynn M. Beck, a Departmental Analyst in the Resource Adequacy and Retail Choice Section of the Financial Analysis and Audit Division, stated that the purpose of her testimony was to present the Staff's position on: (1) the appropriate term of the SRM and associated capacity charge; (2) the applicable zonal resources used to demonstrate capacity; and (3) Retail Access Service Tariff modifications. First, she explained that the SRM and capacity charge have two different definitions. Ms. Beck asserted that the SRM term defines how long the mechanism itself will be in place, while the capacity charge term is determined based on the AES's ability to make a satisfactory demonstration that it owns or has contractual rights to resources that are sufficient to

meet its capacity obligation in the future. 2 Tr 48. She disagreed with Cloverland that the SRM should be in place until 2029 and argued that it should remain in effect indefinitely because it "provides additional visibility into the overall resource adequacy outlook for Michigan. It also provides an additional economic incentive to load serving entities to diligently plan for future capacity obligations." 2 Tr 49. However, Ms. Beck agreed with the company that the capacity charge should only be assessed to AES load for the years in which the AES is unable to provide a satisfactory capacity demonstration, with the exception of the initial four-year demonstration period.

Second, regarding Cloverland's proposal that capacity demonstrations shall be made utilizing MISO Zone 2 resources only, Ms. Beck deferred to Case No. U-18197 for the applicable zonal or locational requirement for the capacity demonstrations. 2 Tr 50.

Finally, she recommended that Cloverland add a new provision to its Retail Access Service Tariff and elsewhere, as necessary, that defines the SRM and how choice customers will be affected if the AES cannot provide sufficient capacity. 2 Tr 50. Ms. Beck requested that the tariff language be consistent with the Commission's final order in this case.

Michigan Electric Cooperative Association

Thomas King, Jr., Director of Regulation and Policy for Wolverine Power Supply Cooperative, Inc., a member of MECA, testified that the capacity charge should be imposed on the AES, not the customer. He explained that because customers are the end users of electricity, they are not able or required to provide information for a capacity demonstration, they do not serve their own load, and they do not own or control their own capacity. By contrast, Mr. King argued, LSE's are responsible for submitting their capacity demonstration filings to the Commission, are obligated to serve their customers' loads, and are able to own or control capacity resources.

Therefore, he stated that "It is this delineation of responsibility, obligation, and ability that determines that an AES, as the LSE, is the proper entity that should be assessed any applicable capacity charge." 2 Tr 63. And, Mr. King opined, it seems fundamentally unfair from a ratemaking standpoint to assess the capacity charge on the customer absent some specific legislative authorization.

According to Mr. King, an AES should be responsible for paying a capacity charge only after the Commission finds the AES to be deficient in its capacity demonstration and should only be assessed for the time period that an AES is found to be deficient. He argued that pursuant to Section 6w(6) and (7), the initial demonstration requires each LSE to show sufficient capacity for each of the first four years and each filing thereafter requires that a demonstration only be made for a single year that is four years forward. Mr. King further indicated that a capacity charge can only be assessed for years covered by a particular capacity demonstration. 2 Tr 64.

Constellation NewEnergy, Inc.

Laura T.W. Olive, Ph.D., Senior Consultant at National Economic Research Associates, Inc., testified that Cloverland's use of the average year-end capacity charge in the WEPCo wholesale power supply agreement does not create an SRM charge that appears to be consistent with Act 341 for two reasons. First, she argued that this method of calculating an SRM capacity charge does not address the issue that Section 6w seeks to cure. Dr. Olive asserted that the SRM capacity charge should be established so that it creates a mechanism to ensure reliability with sufficient capacity resources at the "forecasted coincident peak demand" plus a reserve margin. 2 Tr 73. She also contended that Cloverland is not obligated to purchase capacity from WEPCo and can use other options to obtain capacity. Second, Dr. Olive stated that the WEPCo power supply agreement does not reflect the market-based value for capacity. 2 Tr 73.

She asserted that it is important to consider contribution to peak load when calculating the SRM capacity charge because the purpose of the charge is to ensure system reliability. Therefore, Dr. Olive recommended the National Association of Regulatory Utility Commission's (NARUC) Electric Utility Cost Allocation Manual "Average and Excess" energy weighting method to calculate a single SRM capacity charge of $220 per megawatt (MW) per day. 2 Tr 75-76. She stated that:

> The average and excess method allocates production plant costs to average loads—using only the "excess" to allocate costs based on the difference between average loads (that does not include AES customers) and the maximum demand (that would include AES customers). The result of this calculation is such that AES customers pay only a pro rata share of the maximum demand.

2 Tr 75. For the purpose of comparison, she noted that MISO Zone 2 has a CONE of $260.90/MW-day, which she recommended as the absolute cap on the capacity charge.

Rebuttal Testimony

Cloverland Electric Cooperative

In rebuttal, Mr. Malaski states that Cloverland is willing to accept the Staff's general approach to establish capacity charges for ROA and full-service customers, but requests several necessary and appropriate adjustments. But first, he notes that the difference between Cloverland's and the Staff's approach is simply a choice between which cost proxy should be used in the event that the AES serving UP Paper is unable to make the required capacity demonstration. Mr. Malaski asserts that "Cloverland is willing to use the Staff's approach for purposes of this case, but does not concede that its approach would be contrary to the requirements of Section 6w." 2 Tr 28.

Returning to his specific concerns, Mr. Malaski notes that the Staff's proposed capacity charges are based upon a COSS that was prepared by Cloverland in 2015, and since that time, a number of the classes of service have been eliminated or consolidated. In addition, he states that

the COSS includes two non-jurisdictional classes of service: government special contracts and a sale for resale special contract with Newberry Water & Light. Mr. Malaski contends that these services should not be subject to the capacity charge under Section 6w. Finally, he argues that the 2015 COSS does not reflect the current cost of service for UP Paper. 2 Tr 28-29.

Mr. Malaski states that Cloverland supports the Staff's position that capacity charges be established on a class-by-class basis, rather than a single, uniform capacity charge for all classes of service. In addition, he asserts that a capacity charge should only be imposed when an AES is unable to make the required capacity demonstration. Therefore, he opines that Cloverland will not implement a capacity charge until the AES serving UP Paper fails to make its capacity demonstration. 2 Tr 30.

The Commission Staff

Eric W. Stocking, an Economic Specialist in the Commission's Financial Analysis and Audit Division, testifies in rebuttal that because the capacity charge is a retail charge, it should be billed directly to the customer and not applied to the AES. Mr. Stocking opined that MECA's proposal to charge the AES, and not the customer, conflicts with MCL 460.6w(3), which requires that the capacity charge for both retail and choice customers be equal. According to Mr. Stocking:

> [T]he Commission can only ensure that the "resulting capacity charge does not differ" if it sets the rate. The Commission may not set the rates an alternative electric supplier charges to its "load," i.e. customers. See MCL 460.6w(3). However, the Commission does set the rates public utilities may charge their ROA customers, and in so doing, may ensure that the capacity charge for both bundled and ROA customers do not differ.

2 Tr 55.

Initial Briefs

Cloverland Electric Cooperative

Cloverland reiterates that, according to Section 6w(3), a capacity charge will only be imposed on an ROA customer in the event that the AES serving that customer fails to make a capacity demonstration with respect to some or all of the load necessary to serve that customer. The company also notes that Section 6w(3) states that the capacity charge for ROA customers and full-service customers shall not differ. Therefore, Cloverland argues, "it is axiomatic that, if open access customers may not be assessed a capacity charge because the AES serving them has made the required capacity demonstration, the capacity charge established by the Commission pursuant to subsection 6w(3) also cannot be assessed against full service customers where open access customers are exempted by the statute from being assessed a capacity charge." Cloverland's initial brief, p. 6.

In addition, the company asserts that the Commission lacks jurisdiction to require Cloverland, a member-regulated cooperative, to impose a separate capacity charge on its full-service retail customers. The company argues that Act 341 does not amend Act 167, and nothing in Act 341 authorizes the Commission to establish capacity charges for full-service customers of member-regulated electric cooperatives. According to Cloverland, Act 341 only authorizes the Commission to establish capacity charges applicable to ROA customers in the event an AES fails to make the required capacity demonstration, and to assure that the capacity charge is the same for ROA and full-service customers. *Id.*

The Commission Staff

In response to Cloverland's proposal that the SRM and the capacity charge be in place until 2029, the Staff states that the SRM should remain in place indefinitely, observing that statutes that

do not have an expiration date continue in perpetuity. The Staff notes that Section 6w(2) states that, if the Commission sets an SRM, it must be for a minimum of four years. The Staff maintains that it is clear that the Legislature delegated authority to the Commission to set the term of the SRM and, significantly, did not provide an expiration date or a sunset clause on the SRM.

The Staff explains that the SRM provides the Commission with a tool to ensure the long-term reliability of the electric grid in Michigan:

> The application of the SRM over an extended time horizon provides an ongoing source of visibility into the overall resource adequacy outlook for Michigan and provides an additional economic incentive to electric providers to diligently plan for future capacity resource obligations. Setting a term of indefinite length, or in other words, electing not to set an expiration date, promotes long-term reliability of the electric grid in Michigan, and furthers the purpose of the statute.

Staff's initial brief, p. 8.

Turning to the calculation of the SRM charge, the Staff recommends that the Commission include only costs utilities directly incur to supply capacity. The Staff's first proposal is to identify appropriate production costs, and consider only costs corresponding to the cost of a CT as capacity related, because CTs are the least costly method for producing capacity, and any other method inevitably involves considerations that go beyond capacity. *Id.*, p. 9. The Staff recommends use of the levelized per-year cost of a CT as determined in one of the rate-regulated Upper Peninsula PURPA cases:[5]

> [A] percentage should be applied to production demand classified costs to determine which portion of those costs (and other related costs and offsets) are capacity-related results in said cost on a MW/year basis. (2 TR 38.) Or in other words, a percentage would be developed that, when applied to the Company's approved applicable costs, limits the capacity revenue requirement to the cost of a CT unit on a MW/Year basis.

[5] Upper Peninsula Power Company, Case No. U-18094; Wisconsin Public Service Commission, Case No. U-18095; or WEPCo, Case No. U-18096.

Id., p. 10.

The Staff also proposes an alternative method to identify capacity-related costs, which is to review Cloverland's approved COSS to identify costs incurred to supply capacity service. This, like the previous method, also begins with identification of appropriate production costs. 2 Tr 38. The Staff contends that Cloverland's proposal to use the capacity charges in the FERC formula rates in its PPA with WEPCo conflicts with Section 6w(3), which requires that the charge include capacity-related generation costs included in the utility's base rates, surcharges, and PSCR factors. Contrary to the Staff's proposed methodologies, Cloverland's methodology does not align the charge with all capacity costs currently in rates.

The Staff recommends that the results of the allocation of capacity-related costs in the COSS conducted by the Staff be used to set a charge separately for each class of customers. 2 Tr 39. The Staff maintains that Section 6w requires the capacity charge to be equal between similarly-situated ROA and full-service customers.

The Staff notes that Cloverland claims that the most recent COSS is out-of-date and does not reflect recent changes. The Staff agrees with the company that residential, general service, and large power rates have been consolidated and that the company should use the consolidated rates to identify one rate for each of the consolidated classes. In addition, the Staff agrees with Cloverland that its sale for resale customer, Newberry Water & Light, is non-retail and is exempt from the capacity charge. And, "For the purposes of this case, Staff will accept the governmental contracts as non-jurisdictional as well." Staff's initial brief, p. 12. Finally, the Staff states that, according to Cloverland, the COSS is not reflective of the current nature of service provided by the company to UP Paper. 2 Tr 29. The Staff agrees, but contends that the materials provided by Cloverland in discovery do not reflect the costs currently included in rates, as the law requires.

And, the Staff avers, the company's calculation for the capacity charge for UP Paper does not reflect the Staff's recommended methodology. Therefore, the Staff requests that Cloverland implement new rates based on an updated COSS, and then apply for a change in capacity charges.

The Staff disagrees with Cloverland's claim that a capacity charge shall not be imposed unless an AES fails to make the required capacity demonstration. The Staff asserts that, pursuant to Section 6w, the capacity charge must be established and charged to both full-service customers and similarly-situated ROA customers taking state reliability service.

In response to the company's claim that the Commission lacks jurisdiction to require a member-regulated cooperative to impose capacity charges for full-service customers, the Staff argues that Cloverland misinterpreted the law. The Staff asserts that Act 167 is a general law, to which various exceptions apply, and Act 341 creates such an exception. The Staff explains that Section 6w applies to all electric providers, which specifically includes a "cooperate electric utility in this state." Staff's initial brief, p. 14, quoting MCL 460.6w(12)(c)(iii). According to the Staff, just as the Commission retained jurisdiction over ROA rates in MCL 460.36(2), the Commission was provided authority over one specific element of cooperative utility rates: capacity charges for full-service customers. The Staff argues that "Without this authority, the sections of Act 341 requiring the commission to set a state reliability charge for each electric utility service territory and 'ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load' would be rendered nugatory for member-regulated cooperatives." *Id.*, quoting MCL 460.6w(3).

The Staff notes that the Michigan Supreme Court explained that, in interpreting statutes, courts "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id.*, quoting *Johnson v Recca*,

492 Mich 169, 177; 821 NW2d 520 (2012), citing *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). In addition, the Staff states, Michigan courts have explained that "Statutes that relate to the same subject matter or share a common purpose are *in pari materia* and must be read together as one law . . . to effectuate the legislative purpose as found in harmonious statutes." *Id.*, pp. 14-15, quoting *Parise v Detroit Entmt*, LLC, 295 Mich App 25, 27; 811 NW2d 98 (2011), citing *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich App 142, 148; 762 NW2d 192 (2009). And, the Staff contends, "In order to effectuate the Legislature's purpose, '[w]hen two statutes are *in pari materia* but conflict with one another on a particular issue, the more specific statute must control over the more general statute.'" *Id.*, p. 15, quoting *Parise*, 295 Mich App at 27-28, citing *Donkers v Kovach*, 277 Mich App 366, 371; 745 NW2d 154 (2007).

The Staff also asserts that the rule of statutory construction is relevant in this instance: "a more recently enacted law has precedence over the older statute." *Id.*, p. 15, quoting *Parise*, 295 Mich App at 28, citing *Travelers Ins v U–Haul of Mich, Inc*, 235 Mich App 273, 280; 597 NW2d 235 (1999). The Staff states that the *Parise* Court noted that "This rule is particularly persuasive when one statute is both the more specific and the more recent." *Id.* The Staff avers that Act 341 is more recent than Act 167, and that it is evident that Act 341 is more specific: Act 167 provides a general authority to set rates, and Act 341 provides a specific statutory mandate to regulate one specific segment of those rates. Thus, the Staff states, "to harmonize these two conflicting statutes that govern electric utility rates, the rules of statutory construction dictate that Act 341's provisions have precedence and are applicable" in this case. *Id.* The Staff contends that while general provisions of Michigan law allow member-regulated cooperatives to set their own rates, they are overridden by more specific statutory grants of authority in some areas.

The Staff disputes Cloverland's contention that it should not have to impose a capacity charge on all customers because capacity costs are already embedded in its rates. The Staff maintains that once capacity charges are established in this case, the company will need to decide whether and how to amend its other charges to reflect that these costs are now included in the capacity charge. According to the Staff, the Commission does not have jurisdiction over non-capacity power supply rates, and, therefore, Cloverland is free to set new rates that remove embedded capacity costs from other charges. *Id.*, p. 16.

The Staff recommends that the calculation of the SRM charge be based on on-peak kWh for rate schedules without demand charges, and on-peak kW charges for rate schedules with demand charges. The Staff noted that charging directly on 12 CP contribution in any given year is not necessarily representative of contribution to the allocation measure of 12 CP. 2 Tr 40. Also, customers might not know what they would be charged for until after the fact, or the CP might move as customers attempt to avoid contributing. *Id.* To address this, the Staff recommended on-peak billing demand for demand-billed customers, noting, however, this method may not work as well for classes with large numbers of smaller customers. For these customer classes:

> Staff recommends dealing with this issue by selecting some series of hours likely to become the CP and billing on those hours, as this spreads the cost responsibility over all hours that could potentially become the CP. Staff recommends on-peak kWh, as it balances the competing priorities of sending an effective price signal and not shifting the peak such that the rate no longer reflects the hours likely to become a CP. (2 TR 40-41.)

Id., p. 17. However, the Staff states, as the company currently lacks the ability to charge most non-demand billed customers on this basis, the Staff proposes the capacity charge be based on annual kWh for non-demand billed customers for whom the company lacks the ability to charge based on on-peak kWh. For those non-demand billed customers who can be billed on-peak, the Staff recommends on-peak kWh capacity charges be approved. *Id.* If the Commission chooses

one charge for all customers, the Staff recommends on-peak kWh. 2 Tr 42-43. The Staff asserts that its proposal best reflects cost allocation and causation.

In response to MECA's arguments that the capacity charge should be paid, not by the customer, but by the AES because customers "are not required (or able) to: (1) provide information for any capacity demonstration, (2) serve their own load, or (3) own or control their own capacity," the Staff acknowledges that MECA's statements are true, but argues that they do not impact who pays the capacity charge. Staff's initial brief, p. 18, quoting 2 Tr 63. The Staff states that for any planning year when the ROA customer's AES cannot make a sufficient capacity demonstration, the obligation to provide state reliability service transfers from the AES to the incumbent utility. The Staff asserts that the utility is not providing capacity service to the AES, or selling capacity to the AES, but rather, is providing state reliability service to its ROA customer. Therefore, the Staff maintains that the capacity charge is, essentially, the charge associated with rendering that service. The Staff states that "The benefit of increased reliability does not flow to the AES, it flows to the customer who, as Mr. King admits, is the end-user of that capacity. (2 TR 63.) It only makes sense to charge the recipient of the forward-planning state reliability service with the costs of that service." *Id.*, p. 19.

The Staff also asserts that, in accordance with Section 6w, the capacity charge paid by bundled customers and ROA customers should be equal. If the charge is not levied directly onto ROA customers, the Staff contends that there is no way for the Commission to ensure parity in the capacity charge. 2 Tr 54. Mr. Stocking explains that:

> This is because the Commission does not set rates for alternative electric suppliers, or the rates they charge their customers. The Commission only determines retail rates charged by public utilities (or in this case, for a member regulated co-operative with ROA customers within its service territory). Thus, the Commission can only ensure that the "resulting capacity charge does not differ" if it sets the rate. The Commission may not set the rates an alternative electric supplier charges to its

> "load," i.e. customers. See MCL 460.6w(3). However, the Commission does set the rates public utilities may charge their ROA customers, and in so doing, may ensure that the capacity charge for both bundled and ROA customers does not differ.

Id. Thus, the Staff states, MECA's interpretation would render Section 6w(3)'s requirement that the Commission ensure capacity charges do not differ between full-service and ROA load nugatory.

In addition, the Staff notes that the Commission has no authority or jurisdiction to set wholesale rates; wholesale rates are the exclusive province of the FERC under the Federal Power Act (FPA). The Staff argues that the Legislature would not have ordered the Commission to set a rate it knows the Commission may not set under the FPA. Thus, the Staff concludes that the Legislature must have intended the Commission to set a retail rate, which is consistent with the other terms of Section 6w and is the only interpretation that harmonizes all parts of Act 341.

Finally, the Staff recommends that the reconciliation required by Section 6w(4), which is limited to revenues and costs required under Section 6w(3)(b), be approved.

Michigan Electric Cooperative Association

MECA asserts that the Commission should determine that the capacity charge must be assessed upon the AES, not the customer. As set forth in its testimony above, MECA reiterates that customers, as the end users of electricity, are not required, or able, to provide information for a capacity demonstration, serve their own load, or own or control their own capacity. In addition, MECA argues, it is clear that the Legislature intended that the AES, not its customers, pay the capacity charge, given that the statute states: "Any **electric provider** that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years before the beginning of the applicable planning

year if it does not expect to meet that capacity obligation and instead **expects to pay a capacity charge**." MECA's initial brief, p. 7, quoting MCL 460.6w(6) (emphasis added).

MECA also argues that imposing the capacity charge on the customer disincentivizes choice service. MECA explains that if a choice customer's AES fails to fully meet its capacity obligations and the customer bears the responsibility to pay, the choice customer would be obligated to directly pay a capacity charge to Cloverland for the term of the capacity or return to tariff service. By contrast, MECA asserts, the tariff service customer is paying rates designed to cover costs, including capacity costs, but can switch to choice service and not pay a capacity charge. MECA states that choice customers would be paying for the service, and not the capacity itself, and therefore, they have no legal or equitable entitlement to a greater aspect of the capacity benefits. According to MECA, "If choice customers are required to pay the capacity charge, those customers would otherwise have aspects of ownership of the capacity dedicated to serving them." *Id.*, p. 9. Therefore, to avoid this flaw, MECA states that the AES should pay the capacity charge.

MECA asserts that when the AES pays the capacity charge, it compensates the utility for the cost incurred in obtaining capacity on behalf of the AES. In MECA's opinion, such a compensatory charge does not involve the Commission setting wholesale capacity prices.

MECA also disputes Cloverland's proposed 12-year term for the charge, stating that the period far exceeds the statutory capacity demonstration horizon. MECA recommends that the capacity charge be assessed for the time period that an AES is found to be deficient, which would be for the initial four-year period, and then for one year at a time. *Id.*, p. 11. MECA maintains that this method is consistent with Section 6w.

Finally, MECA requests that the Commission not impose a locational requirement. MECA argues that the Commission's order in Case No. U-18197 states that no such locational

requirement should be applied until at least 2022, Act 341 does not authorize a locational requirement, and a locational requirement would violate the Michigan and Federal Constitutions. *Id.*, p. 12.

Constellation NewEnergy, Inc.

CNE reiterates that Cloverland's methodology for calculating its SRM charge does not comply with Act 341, but states that it is possible to use Cloverland's embedded costs to establish a reasonable SRM capacity charge for the company. To reasonably approximate the incremental cost of Cloverland providing capacity-only SRM service using the company's embedded costs, CNE recommends utilizing NARUC's long established "average and excess" energy weighting method to derive an appropriate SRM charge for Cloverland. CNE's initial brief, p. 6. Using the average and excess method, CNE calculates an SRM capacity charge of $220/MW-day. In any event, CNE contends that the capacity charge should be no higher than MISO CONE.

CNE asserts that the charge should be placed on the AES and not on the customer, arguing that Section 6w(6) requires this; the AES is responsible for procuring capacity and making the demonstration; and charging the customer may violate existing customer contracts and prohibit AESs from making competitive product offerings. *Id.*, pp. 7-8.

Reply Briefs

Cloverland Electric Cooperative

Cloverland believes that its proposed 12-year term is reasonable given the reality of how it would meet power supply requirements in the event that the AES serving UP Paper fails to make a capacity demonstration. However, Cloverland is willing to accept the Staff's proposed indefinite term. Cloverland's reply brief, p. 1.

Cloverland notes that the Staff proposed two alternate methods for establishing the formula for capacity-related costs and sales revenues: (1) using a CT as a cost proxy; or (2) utilizing the company's COSS to identify costs incurred to supply capacity service. According to Cloverland, the Staff's first option is simply a different proxy than the company proposed and less realistic in the real world. Cloverland states that it is most likely to obtain additional capacity to serve UP Paper by increasing purchases from WEPCo under the wholesale PPA, and, therefore, it is a better proxy for the capacity cost.

Regarding the Staff's second option, Cloverland is willing to accept the Staff's approach of utilizing a COSS for purposes of establishing the initial capacity charge in this case. However, Cloverland asserts that the particular COSS that the Staff utilized is not reflective of current circumstances and the resulting rates are neither reasonable nor lawful. According to the company:

> Pursuant to discovery and stipulation of the parties, Cloverland provided additional discovery to Staff, making pro-forma adjustments to its 2015 cost of service study to reflect the current service to UP Paper. (Exhibit S-2) Based upon those pro-forma adjustments, Cloverland calculated a proposed capacity charge of $25.78/Kva – a rate consistent with its initial proposal in its Application. That calculation should be adopted and approved by the Commission in this case.

Id., p. 3.

Cloverland reiterates that the Staff's proposal to apply capacity charges to the company's full-service customers is unlawful because the Commission lacks statutory power and jurisdiction to do so. Cloverland argues that Section 6w does not authorize the Commission to establish a capacity charge for any load other than for AES load. According to Cloverland, the Commission may ensure parity in capacity costs by determining how those costs are recovered in current rates without altering those rates. *Id.*, p. 5.

In addition, Cloverland argues that the specific capacity charges proposed by the Staff for other customer classes are unreasonable. *Id.* The company maintains that the Staff failed to consider Cloverland's rate structure, and the Staff's proposed rates would effectively destroy the existing rate structure and design.

Cloverland recommends that the Commission reject CNE's proposal to cap the capacity charge at CONE because the company believes that its proposed method is more reasonable. And, the company requests that the Commission reject CNE's and MECA's recommendation to impose the capacity charge on the AES, not the customer, for the reasons set forth by the Staff.

The Commission Staff

The Staff disagrees with MECA that if ROA customers pay a rate based on embedded capacity, the ROA customers would then have some ownership claim over the capacity. The Staff explains that, under its proposal, similarly-situated ROA and full-service customers receiving capacity service from Cloverland will pay the same: the cost of the service provided. Staff's reply brief, pp. 1-2.

CNE proposed the use of the average and excess method to identify the going-forward capacity-only costs. The Staff objects to CNE's proposal, arguing that the Staff's method is simpler, easier to implement, and is an extension of the Commission's current allocation and classification methods. *Id.*, p. 2. The Staff also disagrees with CNE's premise that CONE should provide an upper limit on the charge, calling it arbitrary and inconsistent with Section 6w(3).

The Staff also takes issue with the intervenors who call for the charge to be placed on the AES, contending that Section 6w, when read as a whole, requires that the charge be placed on the ROA customer, to make it practical and enforceable. The Staff reiterates that the service itself is provided directly to the customer and not to the AES. The Staff restates that the statute requires

that the charge paid by bundled load and AES load must not differ and that it would be impossible for the Commission to carry this out if the charge is placed on the AES. The Staff notes that if the Legislature ordered the Commission to set a wholesale rate, then Section 6w is preempted by federal law.

Michigan Electric Cooperative Association

In its reply brief, MECA reiterates that Cloverland's proposed 12-year capacity charge term is unnecessary, is inconsistent with Act 341, and will stifle competition. MECA restates that the capacity charge can only be assessed for the time period that an AES is found to be deficient. MECA also renews its request that the Commission make clear that the capacity charge may only be assessed upon the LSE, not the customer, because the plain language of Section 6w supports this position.

Constellation NewEnergy, Inc.

CNE reiterates that the Commission should adopt an SRM charge for Cloverland that is no higher than CONE, direct Cloverland to assess the SRM capacity charge on the AES, and defer ruling on any SRM true-up mechanism because such issues are not yet ripe for Commission review.

Discussion

Based on the record and briefing in this proceeding, the following issues require resolution: (1) the term of the capacity charge; (2) the appropriate method for determining the SRM capacity charge for Cloverland in the instant proceeding and in the future; (3) the proper rate design for the SRM charge; (4) the appropriate entity on which to levy the SRM charge; and (5) application of the charge to Cloverland's full-service customers. These issues are addressed *ad seriatim*.

The Terms of the SRM and the Capacity Charge

The parties dispute whether or not the SRM continues in perpetuity. The Legislature, in its wisdom, crafted Section 6w to give the Commission a tool for better ensuring the reliability of electric supply for Michigan's electric service ratepayers over the long term. Section 6w(1) and (2) indicate the flow of options for providing this tool, beginning with the potential approval by the FERC of an ISO's resource adequacy tariff that provides for a capacity forward auction, moving to approval of a PSCM, and then, in default of either of those options occurring, examination of an SRM. The latter describes the situation in Michigan. *See*, n. 1, *supra.*

Section 6w(2) provides that "If, by September 30, 2017, [the FERC] does not put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism, then the commission shall establish a state reliability mechanism under subsection (8). . . . If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year;" and Section 6w (3) provides that "After [April 20, 2017], the commission shall establish a capacity charge as provided in this section." The first quoted sentence indicates that the Commission "shall" establish an SRM, and the last quoted sentence indicates that the Commission "shall" establish a capacity charge. The fact that the intervening quoted sentence begins with "if" does not persuade the Commission that the SRM is meant to be optional – it is, after all, a mechanism. The mechanism may not result in the shifting of a capacity obligation from an AES to an incumbent utility every year, but that does not mean the mechanism itself should cease to exist, or that there is no need for the mechanism to continue in perpetuity in order to ensure adequate electric supplies over the long term. The mechanism will continue to be a tool at the Commission's disposal until amendment or repeal of Section 6w. The Staff correctly observes that any statute that does not

have an automatic expiration date or sunset provision continues in perpetuity until it is amended or repealed by the Legislature alone. No administrative agency may amend or repeal a statute.

The Commission finds that Section 6w does not limit the term that a charge may remain in place, with the exception of the language just quoted providing that "If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year." MCL 460.6w(2). When this language is read in conjunction with the requirement under Section 6w(8)(b)(i) that "If a capacity charge is required to be paid under this subdivision in the planning year beginning June 1, 2018 or any of the 3 subsequent planning years, the capacity charge is applicable for each of those planning years," the Commission concludes that the Legislature intended for the first four consecutive planning years to be treated as a group, and that any charge applicable to any of those first four planning years is also applicable to every other year in the first four planning years.

Other than this limitation applicable to the first four planning years, Section 6w provides no indication as to the required term of the charge. The Staff and others argue that a term longer than a year would violate the language of Section 6w(6) which states that a "capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an [AES] can demonstrate that it can meet its capacity obligations." The Commission disagrees. This sentence makes clear that a charge shall not be assessed <u>for</u> a planning year for which an AES can make its demonstration, but it does not say that a charge may not be assessed <u>in</u> a planning year for which an AES can make its demonstration. The Commission therefore concludes that Section 6w allows for a charge to be assessed in a planning year different from the planning year for which the AES failed to show sufficient capacity and for which the utility may recover capacity costs from ROA customers.

That said, the statute thereafter focuses on one year at a time, where it requires that "each year" electric utilities, AESs, cooperatives, and municipally-owned utilities shall make their demonstrations "for the planning year beginning 4 years after the beginning of the current planning year." MCL 460.6w(8)(a) and (b). As some intervenors note, the MISO process is also an annual one. In this context, and bearing in mind that this is the first group of cases setting a capacity charge, the Commission finds that the charge (with the exception of the first four consecutive planning years) should be imposed on an annual basis for a single year. This ensures that the charge comports with the requirements of the statute while avoiding imposition of the charge on the initial group of ROA customers for a term that is unduly burdensome. Therefore, the Commission finds that the initial charge that is levied on choice customers at the conclusion of a show cause proceeding for planning years 2018-2021 shall be in the first four consecutive planning years, and any charge levied thereafter at the conclusion of a show cause proceeding shall be levied and applicable for a single year.

The Commission is sympathetic to the utility's concern with AES customers potentially going on and off utility capacity service due to market conditions in any given year and how this may cause the utility's full-service customers to bear costs associated with arranging for new capacity for AES customers that then return to the AES for capacity service when market conditions improve. But given the four-year notice and the ability for the utility to secure shorter-term capacity supplies, this potential concern with capacity pricing arbitrage does not warrant the Commission setting a 12-year term at this time. The Commission will, however, monitor this situation and consider a term longer than one year if needed to ensure all customers are treated equitably and cost shifting is avoided.

The Method for Determining the Capacity Charge

The record in this matter includes a limited number of competing proposals for determining the capacity charge, with marked differences among the proposals. CNE continues to advocate for the average and excess method as the most appropriate. Cloverland initially proposed that the capacity charge should be equivalent to the FERC formula rates applicable to the wholesale PPA with WEPCo. However, for the purposes of this case, Cloverland concedes to the Staff's proposal of utilizing a COSS to establish the initial capacity charge.

The Staff's proposed method begins with identification of capacity-related costs in Cloverland's most recently approved COSS. To identify capacity-related costs, the Staff identified costs currently classified as production demand related, and excluded those which are not directly incurred to provide capacity service. *See*, 2 Tr 38.

The Commission looks to Section 6w(3), which provides guidance on the method for determining the SRM charge. Section 6w(3)(a) instructs the Commission to begin the calculation of the charge by including "the capacity-related generation costs included in the utility's base rates, surcharges, and [PSCR] factors," regardless of whether those costs result from owned, purchased, or leased resources.

Cloverland's proposal to use the WEPCo capacity charges under the FERC formula rate tariff as a proxy fails to comply with Act 341 because it does not include all capacity-related costs included in the company's rates. In any event, Cloverland agreed to use the Staff's proposal for purposes of establishing the initial charge in this case.

Regarding CNE's proposed average and excess method, the Commission finds that the Staff's proposed method is simpler to implement and relates more directly to the company's costs as required by Act 341.

Therefore, based on the record in this case, and limited to this first SRM charge calculation, the Commission finds the Staff's proposed method of identifying capacity-related costs, as set forth on Exhibit S-1.1, to be a reasonable method under Section 6w(3). The Commission notes that Section 6w(3)(a) and (b) differ in that, while (a) relies on "base rates, surcharges, and [PSCR] factors," (b) relies on "projected revenues" net of "projected fuel costs." Thus, (3)(a) refers to embedded costs and (3)(b) refers to forecasted costs. In this proceeding, neither the Staff nor Cloverland used projected revenues; thus, in Cloverland's next review case, the company shall present applicable forecasted offset amounts as required under Section 6w(3)(b). To calculate the applicable forecasted offset amounts, the Commission finds that the method approved in Consumers' and DTE Electric's SRM cases is reasonable, appropriate, and consistent with Section 6w. *See*, *e.g.*, November 21, 2017 orders in Case No. U-18239, pp. 65-68 and Case No. U-18248, pp. 66-69.

The Commission rejects CNE's proposal to cap the capacity charge at CONE for MISO Zone 2. The Commission agrees with Cloverland and the Staff that Section 6w(3) sets forth a very specific method for calculating capacity-related costs and does not provide for a cap.

Pursuant to Section 6w(5), the Commission shall review or amend the company's capacity charge not less than once every year. In Cloverland's next Section 6w(5) review case, the company shall present applicable forecasted offset amounts as required under Section 6w(3)(b). *See*, November 21, 2017 order in Case No. U-18239, pp. 65-68 and the November 21, 2017 order in Case No. U-18248, pp. 66-69.

Rate Design and Reconciliation

The Commission agrees with the Staff that the results of the allocation of capacity-related costs in the COSS should be used to set a separate charge for each customer class. However,

Cloverland claims that the most recent COSS relied upon by the Staff is out-of-date and should not be used for cost allocation purposes. The Staff responds that it agreed to the company's proposed rate consolidation and, as a result, provided Cloverland with updated calculations. The Staff also agrees that Cloverland's resale customer, Newberry Water & Light, and the company's governmental contracts should be considered non-jurisdictional and should be considered exempt from the initial capacity charge. However, according to the Staff, Cloverland's calculation for the capacity charge for UP Paper does not reflect the Staff's methodology. The Staff recommends that the company implement new rates based on an updated COSS and then apply for a change in the capacity charge in order to properly reflect the changes consistent with Act 341. In the meantime, the Staff maintains that its proposed charge for UP Paper should be approved. The Commission agrees.

The Commission adopts the Staff's recommendation that capacity charges be collected through annual kWh charges for rate schedules without demand charges and through annual billed kW or kVa charges for rate schedules with demand charges. The Commission agrees that this is the best available proxy for contribution to capacity-related cost incurrence.

Section 6w(3) provides that no new capacity charge may be required to be paid before June 1, 2018. As discussed further herein, the Commission finds that the capacity charge approved by this order shall apply to bundled customers as of that date. Attachment A to this order reflects the application of the decisions made herein to Cloverland's proposed rate design. Tariff sheets substantially similar to Attachment A should be filed prior to June 1, 2018.

Section 6w(4) provides for a true-up of "the difference between the projected net revenues described in subsection (3) and the actual net revenues reflected in the capacity charge." Projected net revenues are addressed in Section 6w(3)(b). Thus, the Commission finds that the

reconciliation required under Section 6w(4) is limited to the amounts forecasted under Section 6w(3)(b) and should occur in a standalone proceeding, or in the capacity charge determination proceeding as previously discussed. Any difference will be included in the following year's capacity charge.

Application of the Capacity Charge to Choice Customers

MECA and CNE argue that the capacity charge should be levied on the AES and not on choice customers. The Commission finds that a capacity charge shall be levied on the ROA customer receiving the capacity service from the incumbent utility for several reasons. As these intervenors are well aware, Section 201(b)(1) of the FPA, 16 USC 824(b)(1), vests the FERC with jurisdiction over wholesale sales of electric energy in interstate commerce; and Section 205(a) of the FPA, 16 USC 824d(a), confers on the FERC the responsibility to ensure that wholesale power sales rates and charges are just and reasonable. *See, Mississippi Power & Light Co v Mississippi ex rel Moore*, 487 US 354, 371; 108 S Ct 2428; 101 L Ed 2d 322 (1988). AESs resell their product to ROA customers. Thus, were the Commission to, pursuant to Section 6w, set a capacity charge to be paid by AESs to incumbent utilities, Section 6w would be a legal nullity subject to immediate federal preemption. The Commission finds it disingenuous to posit that the Legislature mistakenly engaged in the pointless enactment of a statute requiring the Commission to set a wholesale rate for AESs, when other aspects of Section 6w reveal that the Legislature well understood the role that the FERC plays in the MISO process.

Rules of statutory construction provide that the "words used in the statute are the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the context within which they are used." *Dep't of Environmental Quality v Worth Twp*, 491 Mich 227, 237-238; 814 NW2d 646 (2012). Effect should be given to every phrase,

clause, and word in the statute, "read and understood in its grammatical context," and the statute "must be read as a whole unless something different was clearly intended." *Id.* The Commission "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012). Clearly, this concept extends to an entire statute. The Commission has no jurisdiction over wholesale power sales – a fact that the Commission feels justified in believing the Legislature to be aware of.

As the rules of statutory construction make clear, the words used in the statute are the most reliable indicator of the intended meaning. The specific language of Section 6w is instructive. Everywhere that the charge is referred to, the Commission is instructed to apply it to full-service or AES "load." Section 6w(3) provides "the charge must be applied to alternative electric load," and the Commission "shall ensure that the resulting capacity charge does not differ for full service load and alternative electric load." Section 6w(6) provides that the charge "must be paid for the portion of [the utility's] load taking service from the AES not covered by capacity." Section 6w(7) provides that the incumbent utility "shall provide capacity to meet the capacity obligation for the portion of that load taking service from an AES." And, Section 6w(8)(b)(i) provides that the Commission shall, "[f]or alternative electric load, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for that portion of the load not covered as set forth" in subsections (6) and (7).

"Load" can be ambiguous, but is generally understood to mean power consumed, as by a device or circuit.[6] "To different people in different departments of a utility, load may mean

[6] Merriam-Webster Third New International Dictionary (1st ed.).

different things; such as active power (in kW), apparent power (in kVA [kilo-volt-ampere]), energy (in kWh), current (in ampere), voltage (in volt), and even resistance (in ohm). In load forecasting, load usually refers to demand (in kW) or energy (in kWh)."[7] What each of these definitions has in common is that they relate to the use of power by the end-user. In addition to Section 6w, "load" is frequently referred to in the choice law, 2001 PA 141 (Act 141), MCL 460.10 *et seq.*, as well. For example, Section 10a(1)(b) of Act 141 requires the Commission to "allocate the amount of load that will be allowed to be served by alternative electric suppliers;" and Section 10bb(3) provides that "'aggregation' means the combining of electric loads of multiple retail customers or a single customer with multiple sites." It is important to remember that the capacity charge is paid by both full-service and choice customers. Each use of "load" in both the choice law and in Section 6w refers to power that is consumed by end-users and could often be replaced with the word "customers;" but none of these references to "load" make sense when replaced with "alternative electric supplier." Nothing may be read into a statute that is not "within the manifest intent of the Legislature as derived from the words of the statute itself." *Covenant Medical Ctr v State Farm Mut Automobile Ins Co*, 500 Mich 191, ___; 895 NW2d 490, 495 (2017) (citation omitted). The Commission finds that to levy the capacity charge on an AES would require reading into Section 6w something that is not there.

In making its argument, MECA emphasizes the wording of Section 6w(6), which requires an "electric provider" that has previously made a satisfactory demonstration to give notice to the Commission if it expects to be unable to make its demonstration in the next (four-year-out) planning year "and instead expects to pay a capacity charge." The Commission finds that this

[7] Hong, T., *et al*, Load Forecasting Case Study, January 15, 2015, NARUC and Eastern Interconnection States' Planning Council, p. 9-2.

sentence must be read in the context of Section 6w as a whole. *Johnson*, 492 Mich at 177. There is no entity that could give such notice other than the AES, since only the AES knows whether it intends to provide its customers with sufficient capacity or intends to provide something less. ROA customers are incapable of providing such notice, even though they are the parties that will be paying the charge.

The Legislature has chosen to make incumbent utilities (which are subject to rate regulation) the capacity suppliers of last resort under Section 6w(7).[8] The capacity charge is a retail rate, designed to recover the incumbent utility's cost of providing capacity service, to whatever type of customer load – bundled or choice. The Commission has full discretionary authority to set just and reasonable rates, which are based on a determination of the reasonable costs of doing business and what charges and expenses to allow as costs of operation. MCL 460.6; *Detroit Edison Co v Public Service Comm*, 127 Mich App 499, 524; 342 NW2d 273 (1983). The service is provided by the utility and thus must be billed by the utility. And this service to provide long-term resource adequacy as a default provider is essential to ensuring reliable electric service for all customers. *See*, MCL 460.10(a), (c); 460.10q(2)(a); 460.10b. The Staff correctly points out that if the service were billed to the AES, there would be no way for the Commission to carry out the mandate that the capacity charge paid by bundled load and choice load must not differ, nor any way for the Commission to ensure that the cost to the customer reflects the cost to serve that customer under MCL 460.11.

[8] The capacity charge does not violate MISO's tariff by allowing for the transfer of the PRMR obligation. MISO's Module E-1, 32.0.0, 69A.1.1.1, allows for the transfer of the capacity obligation where it specifies that the "LSE that is the provider of last resort ("POLR") for the [electric distribution company] EDC area in question will have the obligation to procure capacity for the required PRMR for the remaining Demand" for its area.

Finally, the Commission wishes to elaborate on how Section 6w and the choice law are intended to work together. In the two decades since varying forms of retail competition were implemented in states across the country, different models for continued state oversight over the supply and delivery of electricity have emerged. Provision of electricity to end-use customers is comprised of multiple components, including power supply service (e.g., energy and capacity), wires service (e.g., distribution), and other functions associated with the use of electricity, such as energy efficiency programs, providing bill payment assistance to low-income customers, and collection of funds to use for decommissioning of nuclear generating facilities. Even with the advent of retail competition, many states continued to set prices for "default" service in a bundled or unbundled fashion for wires and non-wires services, and other functions, to ensure the availability of reliable power to end-users and meet other objectives including, in some cases, state policy objectives. Under Act 141, Michigan left this default service responsibility with the incumbent utility, and the Commission retained jurisdiction to regulate the utility's rates for electric generation services. The regulated utility was expected to compete with the licensed AESs for energy supply while also providing wires (distribution) service to all end-use customers. In other states with restructured electricity markets, default generation services were provided by either the incumbent utility or another entity selected through a competitive bidding process or other mechanism. Some states that required the incumbent utility to fully divest its generation as a competitive function still facilitated and approved procurement activities for energy or capacity to reliably serve some or all end-use customers under their retail choice model (or the transition thereto).

The purchase of energy and/or capacity from a third party by the LSE, whether they are a vertically integrated utility under state rate regulation or a competitive retailer or default service

provider under a retail choice construct, is a wholesale purchase. But charging customers for the provision of electricity supply and other services associated with customers' electricity use is decidedly a retail activity. States have defined what types of entities provide these services with varying degrees of specificity. In some states, it is only the regulated incumbent utility providing power supply, wires service, and other functions, costs for all of which are recovered through retail rates. In states with retail competition, some of these services, such as power supply, are provided by a third party under market-based prices, or as part of regulated default service, with the wires and other functions associated with electricity use collected through nonbypassable charges flowing through to the customer (either directly or in combination with the energy supply portion).

The provision of power supply service includes both capacity and energy components, among others. Providing long-term "capacity service" to customers to ensure future resource adequacy and provide reasonable assurance that energy will be actually available at any given moment (particularly peak periods) is related to, but notably distinct from, supplying only "energy." These two products or services – energy and capacity – are distinguished from one another in many wholesale contractual arrangements, such as PPAs and in long-term resource planning. They are measured differently as well – kW versus kWh. The costs to provide capacity and energy are allocated to, and collected from, end-use customers differently through conventional cost allocation and rate design methodologies. And, like other services, such as energy efficiency, the costs for which are recovered through nonbypassable retail charges assessed to end-use customers, the capacity charge under Section 6w is set by the state as a retail charge assessed to retail customers. This is an acknowledgment that Section 6w creates a new category of default service, namely, the provision of capacity service to choice customers whose energy providers do not

secure long-term capacity. The capacity charge established under Section 6w is intended to compensate the default supplier (i.e., the incumbent utility) for providing long-term capacity to customers, including customers of energy providers who supply energy but not long-term capacity. This is just one of many services associated with retail electric service that flows through to end-use customers as a retail charge.

The Commission notes that under Section 6w, the same charge applies to "load" whether it is bundled (receiving all services from the incumbent utility) or unbundled (receiving energy service from an AES). And like many states that designated either the incumbent utility or another entity to provide certain default services (from energy efficiency to wires to energy and/or capacity supply), Michigan is certainly within its rights to declare that the rate-regulated incumbent utility, certificated by the Commission to serve a specific service area, shall provide this critical long-term reliability service to designated customers. Of course, with this state-mandated assignment of responsibility for the planning and arrangement of long-term capacity supplies comes the ability for the utility to charge applicable end-use customers taking this particular service from the utility. Supplying long-term capacity is as fundamental to ensuring electric reliability as maintaining the distribution system or other critical functions of the utility for which it is compensated by customers using the service.

Application of the Capacity Charge to Full-Service Customers

Cloverland argues that the Commission lacks statutory power and jurisdiction to require the company to impose capacity charges on its full-service customers. The Commission disagrees. As the Staff correctly points out, Act 167 is a general law, to which various exceptions apply, and Act 341 creates one such exception.

In Act 167, the Commission retained jurisdiction over ROA rates:

> Notwithstanding the provisions of this act, the commission shall **retain** jurisdiction and control over all member-regulated cooperatives for matters involving . . . customer choice including, but not limited to, the ability of customers to elect service from an alternative electric supplier under 1939 PA 3, MCL 460.1 to 460.10cc, **and the member-regulated cooperative's rates, terms, and conditions of service for customers electing service from an alternative electric supplier** . . . .

MCL 460.36(2) (emphasis added). Because the Legislature indicated in Section 6 of Act 167 that the Commission "shall retain" the jurisdiction formerly provided to the Commission under "1939 PA 3, MCL 460.1 to 460.10cc," which includes the sections added to Act 3 by Act 141, as amended by Act 341, the unmistakable conclusion is that Act 141 (and Act 341) did authorize the Commission to establish the rates, terms, and conditions of AES service in Michigan.

Similarly, Act 341 has given the Commission authority over one specific element of cooperative utility rates – the capacity charges for full-service customers. Section 6w of Act 341 applies to "electric providers," which specifically includes a "cooperative electric utility in this state." MCL 460.6w(12)(c)(iii). Section 6w(3) also states that the Commission shall "ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load."

According to the Michigan Supreme Court, in interpreting Act 341, the Commission "must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *Johnson,* 492 Mich at 177. In addition, to achieve the statutory harmony desired by the Legislature, statutes that relate to the same subject matter or share a common purpose must be read together as one law. *Parise*, 295 Mich App at 27. In the event that two statutes are *in pari materia*, but conflict with one another on a particular issue, the more specific statute must control over the more general statute. *Id.*, at 27-28.

The Commission also agrees with the Staff that the rule of statutory construction is relevant in this case, which states that "a more recently enacted law has precedence over the older statute." *Id.*, at 28. The *Parise* Court noted that "This rule is particularly persuasive when one statute is both the more specific and the more recent." *Id*.

There is no dispute that Act 341 is more recent than Act 167. Although Act 167 provides a general authority to member-regulated cooperatives to set their own rates, Act 341 provides a specific statutory mandate to the Commission to regulate one specific part of those rates. To remedy the conflict between the statutes, the rules of statutory construction dictate that Act 341's specific provisions take precedence over the general provisions of Act 167.

Without this specific grant of authority, the sections of Act 341 requiring the Commission to set a capacity charge for each electric utility service territory and "ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load" would be rendered nugatory for member-regulated cooperatives. MCL 460.6w(3). Therefore, the Commission finds that the capacity charge shall apply to both full-service and ROA customers.

The Commission also agrees with the Staff that a capacity charge shall be imposed whether or not the AES makes the required capacity demonstration. As the Staff points out, pursuant to Section 6w, the capacity charge must be charged to both full-service customers and similarly-situated ROA customers taking state reliability service. MCL 460.6w(3).

Finally, the Commission finds unpersuasive Cloverland's argument that it should not have to impose a capacity charge on all customers because capacity costs are already embedded in its rates. The Commission agrees with the Staff that once capacity charges are established in this case, the company may need to amend its other charges to reflect that rates are now unbundled.

THEREFORE, IT IS ORDERED that:

A. If a state reliability mechanism capacity charge is levied on retail open access customers at the conclusion of a show cause proceeding for planning year 2018-2021, it shall be for the first four consecutive planning years and any charge levied at the conclusion of a show cause proceeding shall be levied and applicable for a single year.

B. Beginning June 1, 2018, Cloverland Electric Cooperative shall implement a state reliability mechanism capacity charge of $228,891 per megawatt-year, or $627 per megawatt-day, for full-service customers, using the Commission Staff's rate design, as illustrated in Attachments A and B attached to this order. Thirty days prior to June 1, 2018, Cloverland Electric Cooperative shall file tariff sheets substantially similar to those contained in Attachment A, employing the capacity charge calculation in Attachment B.

C. If an alternative electric supplier operating in Cloverland Electric Cooperative's service territory fails to make a satisfactory demonstration regarding its forward capacity obligations pursuant to MCL 460.6w(8), the resulting state reliability mechanism capacity charge shall be levied by Cloverland Electric Cooperative on the retail open access customers of that alternative electric supplier on a pro rata basis.

D. Cloverland Electric Cooperative is directed to file a standalone contested case for the annual review of its state reliability mechanism capacity charge by April 1, 2018, and annually thereafter, that will conclude by December 1 of each year. If the utility does not file a standalone contested case by April 1, 2018, it shall notify the Commission in this docket of the expected approval path and timing for the annual review of the state reliability mechanism capacity charge.

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

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under 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 the Attorney General - Public Service Division at pungp1@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

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of November 30, 2017.

Kavita Kale, Executive Secretary

Cloverland Electric Cooperative
Capacity Charge Rates

MPSC Case No.: U-18258
ATTACHMENT A

Customer Class	Net Plant	Return	O&M	Purchased Power	Labor	Depreciation	Property Taxes	TOTAL CAPACITY REVENUE REQUIREMENT	Determinant Type	Determinants	**Capacity Charge**
CEC Farm and Home Service	$ 1,848,168	$ 1,816	$ 497,867	$ 2,970,329	$ 127,348	$ 64,401	$ 36,412	$ 3,698,172	Annual kWh	93,850,736	$0.03914
Edison Sault Residential Service	$ 3,185,458	$ 3,266	$ 858,111	$ 5,119,587	$ 219,494	$ 111,000	$ 62,759	$ 6,374,217	Annual kWh	161,901,655	$0.03914
CEC Seasonal Residential Service	$ 264,142	$ 3,496	$ 71,155	$ 424,521	$ 18,201	$ 9,204	$ 5,204	$ 531,782	Annual kWh	15,161,113	$0.03914
Edison Sault General Service	$ 2,118,983	$ 107,478	$ 570,820	$ 3,405,575	$ 146,008	$ 73,837	$ 41,748	$ 4,345,467	Annual kWh	115,598,669	$0.03756
CEC General Service	$ 551,320	$ 29,627	$ 148,517	$ 886,067	$ 37,989	$ 19,211	$ 10,862	$ 1,132,272	Annual kWh	31,264,325	$0.03756
CEC Seasonal General Service	$ 22,242	$ 1,593	$ 5,992	$ 35,747	$ 1,533	$ 775	$ 438	$ 46,078	Annual kWh	1,281,459	$0.03756
Edison Sault Heating and Air Service	$ 161,482	$ 15,673	$ 43,501	$ 258,467	$ 11,127	$ 5,627	$ 3,181	$ 337,576	Annual kWh	7,928,202	$0.03756
Commercial Heating and Air Conditioning	$ 4,503	$ 725	$ 1,213	$ 7,237	$ 310	$ 157	$ 89	$ 9,731	Annual kWh	252,745	$0.03756
Edison Sault Large Power Service	$ 1,805,803	$ 209,503	$ 486,454	$ 2,902,240	$ 124,429	$ 62,924	$ 35,577	$ 3,821,128	Annual Billed Demand	234,438	$16.02636
Lake Superior State University	$ 248,342	$ (2,461)	$ 66,899	$ 380,778	$ 17,112	$ 8,654	$ 4,893	$ 475,874	Annual Billed Demand	29,396	$16.02636
Large Power Service	$ 343,399	$ 33,206	$ 92,506	$ 551,901	$ 23,662	$ 11,966	$ 6,766	$ 720,007	Annual Billed Demand	49,213	$16.02636
Louisiana Pacific Corporation	$ 288,345	$ 21,110	$ 77,676	$ 463,421	$ 19,868	$ 10,048	$ 5,681	$ 597,804	Annual Billed Demand	34,724	$17.21586
Large Power - Mining Operation	$ 207,819	$ 5,501	$ 55,983	$ 334,001	$ 14,320	$ 7,242	$ 4,094	$ 421,141	Annual Billed Demand	37,274	$11.29851
Primary Substation Distribution Service	$ 55,684	$ 29,591	$ 15,000	$ 85,379	$ 3,837	$ 1,940	$ 1,097	$ 136,845	Annual Billed Demand	5,972	$22.91445
Edison Sault - Western Lime Corporation	$ 126,009	$ 75,318	$ 33,945	$ 190,380	$ 8,683	$ 4,391	$ 2,483	$ 315,198	Annual Billed kVa	18,357	$17.17046
Edison Sault - Carmeuse Cedarville & Port Inland	$ 519,552	$ 320,845	$ 139,959	$ 784,959	$ 35,800	$ 18,104	$ 10,236	$ 1,309,903	Annual Billed kVa	84,615	$15.48074
Edison Sault - Enbridge Energy	$ 763,751	$ 149,911	$ 205,742	$ 1,171,043	$ 52,626	$ 26,613	$ 15,047	$ 1,620,984	Annual Billed kVa	96,918	$16.72531
Edison Sault - UP Paper	$ 182,939	$ 84,948	$ 49,281	$ 24,027	$ 12,605	$ 6,375	$ 3,604	$ 180,840	Annual Billed kVa	30,482	$5.93269
Edison Sault - Street Lighting Service	$ 37,543	$ 4,478	$ 10,113	$ 60,337	$ 2,587	$ 1,308	$ 740	$ 79,563	Annual kWh	2,487,571	$0.03198
Outdoor Protective Lighting	$ 15,732	$ (1,012)	$ 4,238	$ 25,283	$ 1,084	$ 548	$ 310	$ 30,451	Annual kWh	1,044,090	$0.02917
Edison Sault - Outdoor Lighting Service	$ 18,114	$ (608)	$ 4,880	$ 29,112	$ 1,248	$ 631	$ 357	$ 35,620	Annual kWh	1,196,292	$0.02978

Total Capacity Revenue Requirement:	$	26,699,714	
1 CP (Loss Adjusted):		117	MW
Capacity Charge:	$	228,891	MW/Yr
	$	627	MW/Day

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

STATE OF MICHIGAN)

Case No. U-18258

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on November 30, 2017 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).

Lisa Felice

_____

Lisa Felice

Subscribed and sworn to before me
this 30th day of November 2017

Steven J. Cook

_____

Steven J. Cook
Notary Public, Ingham County, Michigan
As acting in Eaton County
My Commission Expires: April 30, 2018

Service List for U-18258

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