STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, establishing the method and avoided cost calculation for **CONSUMERS ENERGY COMPANY** to fully comply with the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq*.	))))))	Case No. U-18090

At the October 5, 2018 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

ORDER ON REHEARING AND REMAND

History of Proceedings

The Commission opened this contested case proceeding in an order issued on May 3, 2016 (May 3 order), in which it directed Consumers Energy Company (Consumers) to file proposed avoided cost calculation methods and costs in accordance with the requirements of the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq.*, 16 USC 824a-3 (PURPA).

Pursuant to the May 3 order, Consumers filed various avoided cost methods and costs on June 17, 2016. At the July 21, 2016 prehearing conference, the Administrative Law Judge granted petitions to intervene filed by the Michigan Environmental Council (MEC); Independent Power Producers Coalition of Michigan (IPPC); Cadillac Renewable Energy, LLC, Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, and T.E.S. Filer

City Station Limited Partnership (collectively, the biomass merchant plants or BMPs); Michigan Power Limited Partnership; Ada Cogeneration Limited Partnership; Environmental Law & Policy Center, Ecology Center, Solar Energy Industries Association, and Vote Solar (collectively, ELPC); and Great Lakes Renewable Energy Association. The Commission Staff (Staff) also participated in the proceedings.

On May 31, 2017, the Commission issued an order (May 31 order) making several findings regarding the appropriate method for determining Consumers' avoided capacity and energy costs, and reopening the record for the taking of additional evidence on the appropriate inputs for the hybrid proxy model. After a second hearing and briefing, the Commission issued an order on July 31, 2017 (July 31 order) in which it made additional findings and remanded the case a second time for the submission of additional evidence addressing the appropriate schedule of avoided energy costs. After a third hearing and briefing, the Commission issued a final order in this proceeding on November 21, 2017 (November 21 order) approving final avoided cost methods and costs and a final standard offer tariff, subject to clarification of the early termination provision in the tariff. On December 20, 2017, the Commission issued an order suspending the implementation of new avoided costs pending decisions on any petitions for rehearing of the November 21 order.

On December 20, 2017, Consumers filed a motion to stay the company's obligation to purchase capacity from qualifying facilities (QFs) and a petition for rehearing and clarification. The petition was accompanied by an affidavit alleging information regarding Consumers' future capacity needs. Additionally, on December 20, 2017, IPPC filed a motion to stay the implementation of new avoided costs and a petition for rehearing.

On February 22, 2018, the Commission issued an order (February 22 order) finding that this proceeding should be reopened to address the terms of early termination in the standard offer tariff

and any disputes over the terms and conditions in Consumers' draft power purchase agreement (PPA), to ensure conformance to the requirements of PURPA and the Commission's determinations in this case. The Commission stated that issues surrounding the creation of a legally enforceable obligation (LEO) are being addressed in Case No. U-20095. The Commission indicated it would read the record, and directed Consumers to file and serve its final standard offer tariff and draft PPA in this docket by March 1, 2018. The Commission also set a date for the prehearing conference in the reopened proceeding, with briefing to be completed by July 16, 2018, and found that implementation of the new avoided costs should continue to be stayed. The Commission went on to state:

> Although Consumers' capacity requirements over the 10-year planning horizon were not extensively litigated (the majority of the dispute was over whether the planning horizon should be five years or 10), a review of the confidential record in this case demonstrates that the company forecasted a need for capacity beginning in 2022, which increased until the end of the planning horizon. Moreover, the issue of the type of capacity the company may require necessitates not only looking at the company's overall capacity position, but also the additional renewable energy required under 2008 PA 295, as amended by 2016 PA 342. While Consumers' claim that it does not require additional capacity in the next decade is disputed, there is no question that the company's renewable energy portfolio must increase by 50% by 2021. MCL 460.1028.
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> While the Commission's solution is less-than-ideal, it nevertheless finds that the only record available indeed supports a need for capacity over the 10-year horizon and, as noted, Consumers must increase its renewable energy credit portfolio significantly by 2021. Nevertheless, to allay any concerns that the company may find itself paying the full avoided capacity payment and becoming awash in unneeded QF capacity, the Commission finds it appropriate to limit payment of the full avoided capacity cost to the first 150 MWs [megawatts] of new QF capacity in the queue. This amount is approximately 25% of the renewables that Consumers will need to add to meet the 15% renewable capacity requirement under Act 295, as amended by 2016 PA 342. New QF applicants and those already in the queue, but having a queue position outside of the first 150 MWs, may continue processing their applications and, in the event that the amount of QF capacity in the queue falls below 150 MW, Consumers shall add additional projects in the order that they were proposed. The 150 MW limit only applies to new QFs and not to existing facilities that are out-of-contract. The company shall notify each QF in the queue of its queue position relative to the first 150 MWs and file its queue list with the Staff under seal.

February 22 order, pp. 12-13.[1] Finally, the Commission denied Consumers' and IPPC's motions to stay.

History of Subsequent Rehearing Proceedings

On March 12, 2018, the Staff filed a petition for rehearing and clarification of the February 22 order.

On March 14, 2018, IPPC filed a response to the Staff's petition.

On March 22, 2018, Ranger Power LLC (Ranger) and Geronimo Energy (Geronimo) filed petitions for reconsideration.

On March 26, 2018, Cypress Creek Renewables, LLC (Cypress Creek) filed a petition for rehearing and clarification (Cypress Creek was granted intervention on March 13, 2018).

On April 2, 2018, ELPC filed a consolidated response to all four petitions, Consumers filed a response to the Staff's petition, and Cypress Creek filed a response to the Staff, Ranger, and Geronimo petitions.

On April 11, 2018, the Staff filed a response to the Ranger, Geronimo, and Cypress Creek petitions.

On April 16, 2018, Consumers filed a response to the Cypress Creek petition.

History of Subsequent Remand Proceedings

[1] The Commission had previously found that "if no capacity is needed during the 10-year planning horizon, then Consumers shall make a filing so indicating, and the avoided cost for capacity shall be reset to the [Midcontinent Independent Systems Operator, Inc.] MISO [planning reserve auction] PRA [rate]." May 31 order, p. 19; November 21, order, p. 3. Consumers made such a filing in Case No. U-18491. In an order issued today in that docket, the Commission dismisses the application for the reasons stated therein.

On March 13, 2018, a prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ) for the reopened proceeding, at which Cypress Creek was granted intervention.

On April 11, 2018, testimony and exhibits were filed by IPPC, Cypress Creek, and the Staff. On May 2, 2018, rebuttal testimony and exhibits were filed by ELPC and Consumers. An evidentiary hearing was held on June 13, 2018, at which the pre-filed testimony and exhibits were admitted into evidence and cross-examination took place. On July 13, 2018, a joint statement of concurrence was filed by Consumers, the Staff, IPPC, Cypress Creek, and ELPC; and a statement of non-objection to the joint statement of concurrence was filed by the BMPs.[2] Additionally, on July 13, 2018, initial briefs were filed by IPPC, the Staff, Cypress Creek, and Consumers. On August 14, 2018, reply briefs were filed by the same parties.

On August 16, 2018, sPower Development Company (sPower) filed a petition for leave to intervene out of time. On August 24, 2018, IPPC and the BMPs filed responses opposing the petition. At a hearing on August 27, 2018, the ALJ denied the petition. 6 Tr 480-481.

Consistent with the Commission's decision to read the record, the ALJ transmitted the case to the Commission on August 27, 2018.

On September 7, 2018, sPower filed an application for leave to appeal the ALJ's ruling denying intervention. On September 21, 2018, Cypress Creek filed a response indicating that it does not object to sPower's request to intervene for the purpose of prompting an order.

Application for Leave to Appeal

[2] The joint statement of concurrence narrowed the number of issues that needed to be addressed in the briefs by presenting the agreed-upon portions of the standard offer PPA. The redacted portions of the standard offer PPA in the joint statement of concurrence indicate provisions still in dispute.

Mich Admin Code, R 792.10433(2) (Rule 433(2)) governs appeals to the Commission from the rulings of presiding officers, and states:

> The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:
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> (a) A decision on the ruling before submission of the full case to the Commission for final decision will materially advance a timely resolution of the proceeding.
>
> (b) A decision on the ruling before submission of the full case to the Commission for final decision will prevent substantial harm to the appellant or the public-at-large.
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> (c) A decision on the ruling before submission of the full case to the Commission for final decision is consistent with other criteria that the Commission may establish by order.

In light of the fact that the full case has been submitted to the Commission and is addressed in this order, sPower's application for leave to appeal is dismissed as moot.

Petitions for Rehearing

The Staff's Petition

Pursuant to Mich Admin Code, R 792.10437 (Rule 437) and 792.10436 (Rule 436), the Staff seeks to add an issue to the reopened proceeding to resolve an alleged unintended consequence of the February 22 order. The Staff argues that the Commission needs to clarify whether the "first 150 MWs of new QF capacity in the queue" refers to Consumers' existing interconnection queue or a list of providers that expressed an interest in obtaining a PURPA contract after issuance of the November 21 order. The Staff avers that potential QFs in the interconnection queue may not be in Consumers' PURPA database, and potential QFs in the PURPA database may not appear on the interconnection queue.

The Staff notes that the Commission found that Consumers would need additional capacity by 2022, but then limited Consumers' obligation to pay the full avoided cost to only the first 150

MWs of new QF capacity. The Staff states that it has learned that Consumers has both a PURPA list and an interconnection queue, and contends that the February 22 order will cause confusion, thus justifying rehearing or reopening under Rules 437 and 436, respectively. The Staff contends that Consumers should be directed to create a "PURPA queue," with QFs placed on the queue according to the day that the QF entered either the interconnection queue or contacted Consumers about a PURPA contract.

IPPC opposes the Staff's petition, arguing that the issue is important enough to merit a new, separate proceeding. IPPC contends that this proceeding has been focused on the avoided cost and standard offer issues, and that the parties most interested in the queue issue have not intervened in this proceeding because the issue of placement in the queue was not intended to be litigated.

ELPC also opposes the Staff's petition, arguing that the February 22 order referred to the interconnection queue and thus there is no unintended consequence. ELPC points out that the utility itself referred to the number of MW sitting in the interconnection queue in its petition for rehearing, p. 11, thus making clear that the utility understood the Commission to be referring to that queue. ELPC also notes that the only word used by the Commission to modify "queue" was "interconnection," and no party ever spoke of a "PURPA queue." *See*, February 22 order, pp. 8, 16. ELPC contends that the Staff's real concern is when an LEO arises. ELPC asserts that, given the age of this case and the existence of other dockets for addressing capacity needs and the LEO, the scope of the record in this case should not be expanded at this point.

Consumers supports the Staff's petition. The utility states that the queue question has caused confusion for Consumers, and argues that it may be best not to use an existing queue for the first 150 MW. Consumers argues against a separate proceeding on grounds that this issue is closely

tied to the determination of the avoided cost. Consumers urges the Commission to set a second prehearing in the third reopened proceeding.

Cypress Creek opposes the Staff's petition and the suggestion for a separate proceeding, arguing that Case No. U-20095 provides a forum for all interested parties to comment on the allocation methodology. Cypress Creek urges the Commission to establish a standard offer tariff and PPA without further delay. Cypress Creek contends that simply contacting Consumers should not be used to establish an interconnection queue position, but the allocation of capacity need should be based on an LEO.

With the conclusion of the remanded proceeding, the Commission finds that the Staff's petition for rehearing should be denied as moot. However, the Commission finds that it is appropriate to provide the following guidance with respect to queue issues.

Consumers has been complying with the requirements of PURPA through use of the interconnection queue for decades. The February 22 order, and the prior orders, have consistently referred to the "interconnection queue" and thus the Commission is not persuaded that there are unintended consequences to that order. As it has historically been, the interconnection queue is the source for any new interconnection, QF or non-QF. New QF contracts should be offered on a first-come, first-served basis to certified QFs (excluding QF interconnection requests for participation in the distributed generation program) based upon the date the interconnection application was received. Finally, the Commission notes that Case No. U-20095 has been opened to allow, among other things, for interested persons to engage on the issue of the creation of an LEO, and the Commission has issued an order today in that docket. This interim process utilizing the interconnection queue for offering QF contracts is a temporary measure.

Geronimo's and Ranger's Petitions

Ranger contends that, although it is not a party to this proceeding, it may seek reconsideration or rehearing pursuant to Rule 437. Ranger argues that the May 31 order, p. 3, limited this proceeding to determinations of the avoided cost and standard offer tariffs, and that the February 22 order, for the first time in this proceeding, made a determination introducing a cap on Consumers' obligation to purchase capacity from QFs. Ranger asserts that this cap is not grounded in record evidence, and that affected parties were not provided any notice that the issue of Consumers' future capacity needs would be addressed in this matter. Ranger opines that any cap violates the PURPA must-purchase obligation. *See*, 18 CFR 292.303(a)(1). Ranger asserts due process violations, and urges the Commission to open a separate proceeding to address the issues of the cap, the interconnection queue, and capacity allocation.

Geronimo, also a nonparty, seeks reconsideration or rehearing pursuant to Rule 437. Geronimo asserts that the February 22 order significantly affected the rights of QFs without providing notice that Consumers' future capacity needs would be addressed in this proceeding and without taking evidence or holding a hearing on this issue prior to making a determination. Geronimo argues that 18 CFR 292.303 and 18 CFR 292.304(d) contain a mandatory purchase obligation that is absolute absent a waiver from the Federal Energy Regulatory Commission (FERC). Geronimo contends that the Commission has committed a clear error of law in setting the 150 MW cap in the absence of any record evidence showing that Consumers' capacity need would be zero once the cap is reached. Geronimo further asserts that the Commission has issued a rule of general applicability in a contested case rather than through rulemaking, in violation of MCL 24.232(6).

Cypress Creek supports these two petitions, urging the Commission to grant rehearing and revoke the cap, and to decide future capacity determinations in Case No. U-18491, a separate

proceeding filed by Consumers on December 20, 2017, for a determination of future capacity need. Cypress Creek contends that the issue of the allocation method does not require an evidentiary hearing, and could be addressed in Case No. U-20095. Cypress Creek advocates for certainty and finality as soon as possible in the instant proceeding.

The Staff argues that capacity need was an issue in this proceeding, which was made clear by Consumers' application. The Staff notes that many QFs intervened in this proceeding, and that Geronimo did not identify any notice issues. The Staff contends that the Commission has not created a permanent arbitrary cap on purchases from QFs, but only a temporary measure to allow the Commission time to verify Consumers' actual needs in the integrated resource plan (IRP) proceeding that Consumers was required to file by June 15, 2018, pursuant to MCL 460.6t. *See,* December 20, 2017 order in Case Nos. U-15896 *et al.*, p. 4. The Staff notes that the Commission did not hold that QFs outside of the first 150 MW are not entitled to payment if they sell capacity to Consumers. Finally, the Staff contends that Ranger and Geronimo, as nonparties, may not seek rehearing, because the Commission has held that only parties may file petitions for rehearing.

With respect to rehearing, MCL 24.287(1) provides that "An agency may order a rehearing in a contested case on its own motion or on request of a party." With respect to reopening, Rule 436(2) provides that "After the date for filing exceptions . . . the commission may reopen a proceeding upon its own motion or motion of any party." Under Mich Admin Code, R 792.10402(f), "'Party' means a person by or against whom a proceeding is commenced or a person who is permitted to intervene . . . or the staff of the commission in any proceeding in which the staff participates. Parties to a proceeding shall designate themselves as applicants, complainants, intervenors, respondents, protestants, or staff according to the nature of the proceeding and the relationship of the parties." Geronimo and Ranger did not petition to intervene in this proceeding

and have presented no evidence showing that they fall under any of these designations. Thus, as non-parties to this proceeding, these companies may not seek rehearing or reopening. *See,* July 29, 2013 order in Case No. U-16582; and December 18, 2007 order in Case Nos. U-14800 *et al.* The Commission denies the petitions filed by Geronimo and Ranger.

Cypress Creek's Petition

Cypress Creek seeks rehearing and clarification, pursuant to Rule 437 and MCL 460.351, of the determination to set the 150 MW limit on payment of the full avoided cost. Cypress Creek notes that, in the February 22 order, p. 12, the Commission found that Consumers has a capacity need beginning in 2022, which increases until the end of the 10-year planning horizon, and the Commission also referred to Consumers' need to increase its renewable energy portfolio. Thus, Cypress Creek contends that the Commission erred when it placed a cap on Consumers' obligation to pay avoided costs, and that the determination to allow the price to revert to the MISO PRA (after the cap is met) effectively grants Consumers a stay of its purchase obligation. Cypress Creek argues that Consumers' assertion of no capacity need for the next 10 years is based on a number of assumptions that lack evidentiary support. Cypress Creek contends that the avoided cost set in the November 21 order cannot be changed until modified in a future contested evidentiary proceeding under MCL 460.6v, and cannot be changed, effectively, to zero after the first 150 MW on the basis of unsupported assertions made by Consumers in a rehearing petition. Cypress Creek argues that the parties were denied the right of cross-examination provided in Mich Admin Code, R 792.10430(3) of the evidence regarding Consumers' alleged lack of a capacity need.

Cypress Creek argues that the Commission, in effect, granted Consumers' motion for a stay under MCR 7.123(E)(3) for all but 150 MW of capacity without making the findings that are

required under that court rule, including irreparable injury, likelihood of prevailing on the merits, and no harm to the public interest. Cypress Creek contends that, in any case, Consumers did not present evidence sufficient to make these findings. Cypress Creek posits that the upcoming IRP proceeding under MCL 460.6t is the most appropriate forum for determining capacity needs. Cypress Creek alternatively recommends that the Commission proceed with a contested case in Case No. U-18491, recently commenced by Consumers for the purpose of determining Consumers' 10-year capacity need.

Cypress Creek points out that, in the February 22 order, the Commission acknowledged that Consumers needs at least 600 MW of additional renewable capacity by 2021, and that Consumers itself asserts a need for 625 MW in Case No. U-18231.[3] Thus, Cypress Creek argues, should the Commission decide to retain a temporary limit on purchases from QFs, it should not set that limit below 625 MW. Cypress Creek also asks that the Commission clarify that the 150 MW limit is actually 150 zonal resource credits (ZRCs), and that any limited capacity need be allocated on the basis of "the temporal priority of LEO formation." Cypress Creek's petition, p. 21.

ELPC supports the petitions filed by Cypress Creek, Geronimo, and Ranger, noting that Consumers' petition for rehearing contained factual assertions that were not tested by the parties. ELPC argues that, in the February 22 order, the Commission changed the avoided cost rate to the MISO PRA rate for all QFs beyond the first 150 MW of new QF capacity, and agrees with the petitioners that this aspect of the order raises a legitimate claim of error under Rule 437. ELPC urges the Commission to revoke the limit and address the future capacity need issue in Case No. U-18491 on an expedited contested basis. ELPC argues that the record evidence in this case shows a clear capacity need, and that the evidence filed with Consumers' petition for rehearing

[3] *See*, MCL 460.1028(1)(c). Cypress Creek cites to the Direct Testimony of Teresa E. Hatcher, p. 13, Case No. U-18231.

was not made part of the record. ELPC contends that the 150 MW limit bears no logical relationship to the record.

The Staff opposes Cypress Creek's petition with respect to the cap but supports it with respect to the issue of how to allocate the 150 MWs of new QF capacity. The Staff describes the February 22 order as a "temporary stopgap measure," and states that the cap should remain in place only until the Commission issues a final order in Consumers' IRP proceeding, noting that Consumers must pay the PRA clearing price for any capacity it purchases until that time beyond 150 MW. Staff's response, p. 1. The Staff posits that Consumers' capacity need was indeed an issue in this case, and that all parties had access to the confidential data pursuant to the protective order. The Staff notes that the February 22 order, p. 12, made explicit reference to the confidential record in the case when setting the 150 MW cap. The Staff contends that Cypress Creek has identified no legal or factual errors.

The Staff further argues that the Commission did not stay the utility's obligation to purchase, but simply limited the obligation to pay the full avoided cost for capacity. The Staff points out that the Commission noted that there is no obligation to purchase capacity where there is no capacity need. *See,* May 31 order, p. 19. And the Commission stated that it would address the need in more detail in the IRP proceeding, and would address the LEO determination in Case No. U-20095. February 22 order, p. 11. The Staff argues that Cypress Creek's request to reset the 150 MW limit is premature because there is no need to revisit the limit until the IRP proceeding is concluded.

The Staff supports Cypress Creek's requests to clarify the allocation process, to base the allocation on ZRCs, and to establish an LEO. The Staff contends that these issues could be dealt with in the expanded reopened proceeding.

With the exception of the issue of the allocation process, Consumers opposes Cypress Creek's petition. Consumers contends that its December 20, 2017 filing in Case No. U-18491 (an application to reset avoided cost rates), December 1, 2017 filing in Case No. U-18441 (capacity demonstration filing), and September 29, 2017 filing in Case No. U-18402 (2018 power supply cost recovery plan) show that it has no current need for additional capacity for the next 10 years. Consumers states that it will file its IRP on June 15, 2018,[4] and that its future capacity needs should be determined in that case, in light of the fact that the Commission has not yet acted in Case No. U-18491. Consumers argues that Cypress Creek has failed to show any error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from the February 22 order.

Consumers further contends that the February 22 order did not cap the utility's obligation to purchase capacity but simply adjusted the rate to the MISO PRA after the first 150 MW are purchased, and that the ability to set rates under PURPA is squarely within the Commission's jurisdiction. Consumers notes that both the November 21 order, p. 31, and the February 22 order, p. 12, state that Consumers' capacity requirement was not fully examined in this proceeding, and the utility posits that the Commission's capacity determination was interim in nature. Consumers also notes that the Commission determined in the May 31 order, p. 19, that there is no obligation to purchase capacity if there is no need for the capacity, and that "if no capacity is needed during the 10-year planning horizon, then Consumers shall make a filing so indicating, and the avoided cost for capacity shall be reset to the MISO PRA." Consumers states that it filed the application in Case No. U-18491 pursuant to this option. Consumers contends that, in asserting that the real need is at least 625 MW, Cypress Creek is relying on outdated evidence.

[4] Consumers made this filing in Case No. U-20165.

Consumers agrees with Cypress Creek that the IRP proceeding is the most appropriate forum for determining the capacity need, and recommends that the Commission do so in that proceeding. But if the Commission decides to take more evidence on Consumers' capacity position, the company urges the Commission to set a second prehearing in the third reopened proceeding to allow additional interventions.

Finally, Consumers contends that the February 22 order needs no clarification because it clearly referred to MWs and not to ZRCs with respect to the cap, despite referring to ZRCs in numerous other places in the order. Consumers also argues that Cypress Creek's request is unreasonable because ZRCs vary by resource type and vary on a year-by-year basis, and so the same level could not be set for all QFs. Finally, Consumers supports expanding the scope of the reopened proceeding to fully consider the development of a QF project queue for the 150 MWs.

As the Commission has previously found, Consumers is not required to purchase capacity that it does not need, and this finding comports with FERC orders. *See, City of Ketchikan, Alaska,* 94 FERC ¶ 61293 (2001); and *Connecticut Light & Power Co,* 70 FERC ¶ 61012 (1995). In *Hydrodynamics Inc.*, 146 FERC ¶ 61193 (2014), FERC found that the Montana commission erred in adopting a permanent 50 MW installed capacity limit on the availability of the avoided cost rate for capacity applicable to wind QFs larger than 100 kilowatts. FERC found that the limit adopted by the Montana commission was inconsistent with the goal of PURPA to encourage QF development and with FERC's regulations, in particular the 'must-buy' obligation. *See,* 16 USC 824a-3(a); 18 CFR 292.303(a); and 18 CFR 292.304(d)(2). This holding is often cited as standing for the concept that no limit can be placed on the obligation to purchase QF capacity at the avoided cost. However, in *Hydrodynamics,* FERC is careful to note that "when the demand for capacity is zero, the cost for capacity may also be zero," and that a "capacity limit should represent the point

at which [the utility's] demand for capacity equals zero." *Hydrodynamics*, 146 FERC ¶ 61193 at P 35.

The Commission notes that *Hydrodynamics* involves several factual differences from the instant case, including the adoption of a permanent capacity limit, placement of the limit only on certain QFs, and adoption of a requirement that the QFs win a competitive solicitation (despite the fact that competitive solicitations were not regularly held). While the Commission is unable to make any finding regarding when Consumers' capacity need will actually hit zero on this record, the reasoning of *Hydrodynamics* does not persuade the Commission that the setting of a temporary limit on the amount of new QF capacity sold at the higher avoided cost is per se unlawful.

This proceeding established a 10-year horizon over which to determine if a utility has a capacity need. Evidence presented by the parties focused on whether there was a need – not how much or when the need is expected. And depending on future events and decisions, the need is substantially different. Under the current framework, if a need exists the higher avoided cost payment is made; if no need exists the payment reverts to the market-based capacity pricing. Waiting until the need becomes zero, and then conducting a contested case to confirm such a finding before instituting the lower capacity price could result in substantial harm to ratepayers through excess capacity charges. Until a new approach can be instituted to more closely and nimbly match the utility's obligation to pay for capacity under PURPA with its actual needs, the Commission finds it is reasonable and necessary, based on the information before it in this proceeding, to project the need in advance to avoid excess capacity charges. This approach does not affect the utility's obligation to purchase energy and capacity under PURPA, only the rate for compensating QFs for capacity.

That said, the Commission agrees with Cypress Creek and ELPC that, while capacity need was an issue in this proceeding, the amount of the future need was not litigated thoroughly enough to allow the Commission to make detailed findings regarding capacity need over the long run on this record. Other evidentiary sources regarding capacity need have serious impediments to their use as well. The affidavit supplied by Consumers with its petition for rehearing was offered after the close of the record. The confidential record does not supply sufficient information to arrive at a precise amount either; and the evidence from proceedings addressing renewables (even assuming that the Commission chose to rely on it) does not provide a sound basis for determining that QFs will be the source of that future capacity. In other proceedings (Case No. U-18491 and the annual capacity demonstration), Consumers has claimed the need is zero. This claim has not, however, been fully vetted and the Commission finds it is more reasonable to allow QFs the opportunity to receive the higher capacity payment established in this docket, up to 150 MW, based on the fact that the utility is required to secure additional renewable energy independent of its need for new capacity or decisions related to its existing generation portfolio. The Commission looks forward to the ability to rely on a significantly stronger record on this issue, and on the issue of the time horizon over which to evaluate need under PURPA, in Consumers' IRP proceeding, Case No. U-20165, in which a final order will issue in the spring of 2019.

In both this proceeding and in Case No. U-20095 the participants agree that the IRP is the optimal proceeding for making capacity need determinations. However, in the meantime, the Commission finds that it is important to finalize this PURPA proceeding and allow the parties to move forward. As the Staff correctly characterized it, the 150 MW need determination is a temporary stopgap measure intended to allow Consumers and QFs to enter into agreements while the IRP proceeding is pending. As the parties know, the limit on the amount of capacity sold at

the full avoided cost in no way limits the amount of capacity and energy that may be sold by QFs to Consumers. If that threshold is met, QFs may continue to enter into contracts with Consumers at the PRA price for capacity and one of the forecasted energy prices for energy. *See, e.g.,* Exhibit A-48. Finally, the Commission finds that the 150 MW amount should be stated in terms of MWs rather than ZRCs. Nameplate capacity remains relevant to interconnection studies and PURPA determinations (despite the fact that MISO deals in ZRCs), and retaining the MW designation avoids the complication which arises from the fact that the conversion to ZRCs depends on the generation resource.

Thus, the Commission provides this clarification but denies the petition for rehearing filed by Cypress Creek.

Remanded Proceeding

Positions of the Parties

Consumers Energy Company

Through direct witness testimony and cross-examination, Consumers addressed several issues and sponsored two exhibits into the record. Consumers first addressed the updates to the standard offer tariff that it proposed, which included: (i) Energy Rate Options 2 and 3, annual rates for years 2037, 2038, 2039, and 2040; (ii) Energy Rate Options 4A and 4B, levelized 5-, 10-, 15-, and 20-year energy payment rates with levelization periods beginning in years 2018, 2019, 2020, and 2021; (iii) updated line loss factor and corresponding calculations; and (iv) removed headings detailing the components for rate options. 5 Tr 348.

Consumers next rebutted testimony that had been presented by the Staff, Cypress Creek, and IPPC. Specifically, the company stated its agreement with the Staff's proposed changes to the standard offer tariff and the standard offer PPA, including adjustments in the tariff to the energy

rates and the emissions allowances in the PPA. 5 Tr 353-355. Consumers expressed disagreement with IPPC's claims that the PPA between Consumers and a QF, T.E.S. Filer City Station Limited Partnership (Filer City), and the 2017 transfer price are relevant to this proceeding, as well as IPPC's argument that the Commission should strike or revise the Regulatory Disallowance and Nonseverability provision and replace or add a Change in Law provision. 5 Tr 355-359. Consumers supported its position against IPPC regarding the company's definition of emergency and the related Exempt Operational Periods provision, testifying that these sections allow the company to declare and respond prudently to emergencies. 5 Tr 359-360. Consumers also rebutted IPPC's arguments regarding the definitions of Incidental Energy, Incidental Energy Price, Interconnection Agreement, Seller's Plant, and Test Energy, as well as IPPC's concerns regarding the Payment Security, Early Termination, Qualifying Facility Status, Metering, Capacity Payments, Billing, Disputes, Administrative Charges, Breach, Indemnity, Arbitration, and Variable Interest Entity provisions in the standard offer PPA. 5 Tr 361-371. Consumers also defended related provisions that IPPC proposed to revise in the standard offer tariff, but agreed to some changes suggested by IPPC including removing the words "as needed" from Section C18.A regarding Availability. 5 Tr 371-373.

Consumers responded to Cypress Creek's proposed change to the Early Termination provision in the standard offer tariff, testifying that, "the Company does not agree with reducing the early termination security required in later years for QFs that chose a letter of credit as the form of security." 5 Tr 374. Consumers also rejected Cypress Creek's proposed two-tiered approach to pre-commercial liquidated damages and its changes to the Regulatory Disallowance and Exempt Operation Period provisions, but agreed that a surety bond could be used a form of performance security and that QFs may retain the emission allowances. 5 Tr 375-378.

During cross-examination, Consumers explained and clarified the company's proposed standard offer tariff and standard offer PPA as well as the company's policy regarding the interconnection agreement requirements for QFs. 5 Tr 380-382. The company also explained the need for the Early Termination, Qualifying Facility Status, and the Exempt Operational Period provisions, the inclusion of language to provide for a cure period, and the company's definition of emergency. 5 Tr 382-403.

The Environmental Law and Policy Center, the Ecology Center, the Solar Energy Industries Association, and Vote Solar

EPLC provided testimony through one witness in this matter to respond to the Staff's analysis of the standard offer PPA's treatment of renewable energy credits. 5 Tr 407. ELPC testified that it did not agree with the Staff's analysis and instead found that the standard offer PPA would indisputably render the RECs unusable for Green-e certified programs because, as proposed, the QFs would not be able to sell their RECs to voluntary green power programs in Michigan. 5 Tr 408-409. ELPC testified that there is no reason to render a QF's RECs ineligible for Green-e programs. 5 Tr 410.

The Commission Staff

The Staff's testimony focused on its recommended revisions to the standard offer tariff and the standard offer PPA. As to the tariff changes, the Staff testified that annual rates for Energy Rate Options 2 & 3 should be added for years 2037, 2038, 2039, and 2040 and that levelized 5-, 10-, 15- and 20-year energy payment rates should be added to the tariff with levelization periods beginning in years 2018, 2019, 2020, and 2021. 5 Tr 417. The Staff proposed a modification to the emission allowances and environmental attributes provision in the standard offer PPA. 5 Tr 418.

Independent Power Producers Coalition of Michigan

IPPC began its testimony by expressing concern about the decreased energy rates applicable to run-of-the-river hydro QFs, and the amended PPA that Consumers entered into with Filer City. 5 Tr 424-425. The next portion of IPPC's testimony centered on its proposed changes to the standard offer PPA, which included: (1) insert a Change in Law provision as an addition to the standard offer PPA or as a replacement for the Regulatory Disallowance and Nonseverability provisions, which IPPC found to be unfair to QFs; (2) remove the parenthetical phrase "in the Buyer's sole judgment" from the Emergency or Emergencies provision of the standard offer PPA; (3) revise the Environmental Attributes provision such that the non-REC environmental attributes are not separated from the REC itself; (4) revise the Exempt Operation Periods provision to comply with 18 CFR 292.304(f); (5) redefine the terms "incidental energy" and "incidental energy price;" (6) relieve existing QFs from being required to enter into a new interconnection agreement; (7) address the one-sided burden on and discrimination towards QFs under the Payment Security and Early Termination provisions; (8) provide an opportunity to cure under the Qualifying Facility Status provision; (9) adjust the Metering provision to be consistent with 18 CFR 292.304(e)(4); (10) revise the penalty under the Capacity Payment provision; (11) reflect the factors set out in 18 CFR 292.304(e) in the Energy Payments provision; (12) remove language from the Billing provision allowing the utility to estimate billing in the event its meter is inoperable; (13) adjust the Disputes provision such that the QF is not penalized for the utility's overpayment error; (14) remove the Administrative Charge provision; (15) amend the Breach provision to better balance the interests of the QF and utility; (16) add a 90-day cure period to the False Representations provision; (17) revise the Indemnity provision to reflect reciprocity between the QF and utility; (18) allow for Commission or court oversight in the Arbitration provision; and (19) remove the

Variable Interest Entity. 5 Tr 425-439. As to the standard offer tariff, IPPC proposed changes to the sections regarding "Availability," "Distribution Requirements for Seller Connected to Company System," "Monthly Rate," and "Early Termination." 5 Tr 439-442.

Cypress Creek Renewables, LLC

Cypress Creek's testimony centered on the following recommendations and conclusions:

> Consumers' proposed early termination provision in its Standard Offer Tariff should be modified to establish a two-tiered approach for compensating Consumers for early termination damages it may incur and for providing Consumers with security for the payment of such damages by its PPA counterparty. Prior to commercial operation, any harm to Consumers due to early termination by a small QF is minor and difficult to ascertain. Thus, Cypress Creek recommends liquidated damages in the amount of $5,000/MWac if the PPA is terminated prior to the QF achieving commercial operation and performance security in that amount. Consumers' proposed early termination security amounts are appropriate both for the amount of liquidated damages and the associated performance security once a small QF achieves commercial operation, provided that the proposed security amount is adjusted downward each year to reflect the reduction in the remaining term of the PPA.
>
> QFs should also be permitted to utilize a surety bond for the early termination security. Surety bonds are commonly used security instruments and can be designed to provide Consumers adequate protection in the event of seller default and early termination.
>
> Consumers' proposed PPA must be modified . . . to comply with the Public Utilities Regulatory Policies Act, 16 U.S.C. 824a-3 and to provide commercially reasonable terms and conditions for the purchase of QF capacity and energy.

5 Tr 447-448.

Discussion

The Commission finds the agreed-upon provisions of the standard offer PPA set forth in the joint statement of concurrence to be reasonable and accepts those provisions for inclusion in the final standard offer PPA.

In addition to the joint statement of concurrence, the Commission specifically notes that Consumers accepted changes proposed by the Staff to the standard offer PPA and the standard

offer tariff. The Staff proposed a change in the tariff to correct "a mismatch between the 20-year contract term available for qualifying facilities" and the number of the energy payment rate available in Consumers' tariffs and recommended adding payment rates to the tariff for the missing years. 5 Tr 417. Consumers agreed. 5 Tr 354. The Staff's second recommendation was that the levelized 5, 10, 15, and 20-year energy payment rates be added to the tariff with levelization periods starting in 2018, 2019, 2020, and 2021. 5 Tr 417. Consumers agreed to this change also. 5 Tr 354. The last modification suggested by the Staff was for the standard offer PPA to permit QFs to retain the emission allowances and the environmental attributes associated with the power that they sell to Consumers. 5 Tr 418. Consumers conceded this was an appropriate change. 5 Tr 354-355.

The Commission addresses the remaining disputed provisions of the standard offer tariff and the standard offer PPA below.

1. Zonal Resources Credits or Megawatts

IPPC asserted that QFs should be able to choose compensation for capacity based on the QF's nameplate capacity in MWs or ZRCs, arguing that FERC's rules implementing PURPA allow QFs to calculate capacity in the most favorable method to the QF's production. 5 Tr 440-441; IPPC's initial brief, p. 8. IPPC argued that using the ZRC method for all QFs is discriminatory and violates PURPA. *Id*.

Consumers argued that the Commission's May 31 order directed Consumers to use ZRCs as the basis for capacity payments, not MW. Consumers explained that it complied with the order by including a reference to ZRCs in its definitions of capacity purchase price, contract capacity target, and resource adequacy capacity in the proposed standard offer PPA. Consumers also included the ZRC reference in the proposed standard offer tariff. Consumers' initial brief, pp. 6-7. Consumers

disagreed with IPPC's position, pointing out that IPPC ignored a clear Commission ruling in the May 31 and July 31 orders, failed to seek rehearing on the issue, and offered no rationale for the Commission to revisit the ZRC issue. *Id*., pp. 7-8.

In its reply brief, IPPC maintained that contrary to Consumers' assertions, IPPC properly responded and raised the ZRC issue, explaining that it did not seek rehearing to the May 31 order because IPPC agreed with the decision, but that it did seek rehearing in response to the July 31 order when the Commission revised the ZRC decision to apply to all QFs. IPPC's reply brief, p. 2. IPPC argued that it properly raised the ZRC issue in this third reopened proceeding because the Commission requested input on any disputes over the terms and conditions in the draft PPA, and IPPC disputes the Commission's ruling on the ZRC application to all QFs. *Id*., p. 3.

In the May 31 order, the Commission ruled that capacity payments based on ZRCs should be applied to intermittent QF generation like wind and solar. May 31 order, p. 17. However, the Commission also noted in the order that this issue should be revisited in Consumers' next PURPA review. *Id*., pp. 17-18. This issue was again raised and addressed in the July 31 order where the Commission made the following finding:

> The Commission finds that its initial regulatory response, limiting the use of the ZRC capacity structure to intermittent resources like wind and solar, merits revisiting. On reconsideration, the Commission finds that the MISO ZRC capacity construct should be applied to all QFs entering new contracts. While IPPC's contention that ZRCs are traded or sold in the PRA to cover incremental capacity shortfalls is true, that is not their sole function. . . .
>
> While PURPA requires that QFs are not discriminated against in contracts for capacity and energy; the reverse is also true, and the rates paid to QFs should not favor these resources over company-build resources or non-QF PPAs. In this case, the Commission sees no justification to limit the application of ZRC capacity credits to only wind and solar, especially considering the fact that MISO applies ZRCs to all generating units, whether company-owned or not. Therefore, the Commission agrees with Consumers that the ZRC capacity construct should be applied to all QF generators. Accordingly, Consumers shall revise the standard

offer to reflect this determination.

July 31 order, pp. 25-26. The Commission again addressed the issue of ZRC application to all QFs in the November 21 order in response to IPPC's petition for rehearing filed on August 11, 2017. In the November 21 order, the Commission denied IPPC's petition and reasoned as follows:

> The Commission emphasizes that, for computing capacity, the ZRC construct provides a data-driven, transparent, and consistent manner to measure the capacity associated with a particular generating resource, and therefore is as appropriately applied to QFs as it is to the company's own resources.

November 21 order, pp. 22-23.

The Commission finds that it has made adequate findings based on the record in this case, given all parties ample opportunity to respond to this issue, and made a final determination. IPPC has not presented any evidence that persuades the Commission to deviate from its previous determination on this issue. Therefore, the Commission finds that capacity payments shall be based on ZRCs rather than MWs for all QFs.

2. Avoided Costs in the Standard Offer Tariff and Standard Offer Power Purchase Agreement

IPPC argued that the avoided cost rate provided in Consumers' proposed standard offer PPA and standard offer tariff is discriminatory when compared to the recent Amendment No. 2 PPA between Consumers and Filer City, which was adopted by the Commission in the February 5, 2018 order in Case No. U-18392. IPPC's initial brief, p. 5.

> The key discriminatory component of the standard offer PPA and standard offer Tariff for independently-owned existing baseload QFs remains the avoided capacity and energy price. The Filer PPA's capacity payment in 2018 was approved by the Commission at the rate of $160,560/ZRC-year. Given the capacity rate's escalation at one-half of the Consumers Price Index ("CPI") each year of the contract, the 2033 capacity payment will be $184,560/ZRC-year. Case No. U-18392, 2 Tr 85. This compares with a $140,505/ZRC-year capacity purchase price for independently-owned QFs under Option 1 of the standard offer Tariff and PPA – with no CPI annual adjustment – if the Company has a capacity need over the 10-year planning horizon.

Id., p. 6. IPPC contended that the energy price for Filer City is also favorable compared to those for independently-owned QFs. *Id*. IPPC insisted that allowing higher energy and capacity costs and more favorable contractual terms for Filer City while disallowing similar costs for other QFs is discriminatory. *Id*.

IPPC additionally argued that language should be added to the standard offer tariff's avoided cost calculation and the avoided costs reflected in the standard offer PPA to allow the parties to consider the factors affecting rates for purchases, codified in 18 CFR 292.304(e), hereinafter the Section 304(e) factors. IPPC's initial brief, p. 11. IPPC testified in support of this position as follows:

> IPPC continues to maintain that Section 304(e) requires the Commission, not the utility, to consider and quantify the benefits that QFs bring to Consumers' system. The Commission, however, has deferred those determinations to be made by the utility on a "case by case" basis. While preserving IPPC's objection to this finding, IPPC has, at the very least, included proposed language in the standard offer PPA that allows a quantification of these benefits between the QF and the utility for the purposes of completing the avoided cost compensation pursuant to PURPA. In the absence of some such inserted language as IPPC is suggesting, there is no recognition in Consumers proposed PPA of the need to add value for the Section 304(e) factors, in accordance with the Commissions instructions in its November 21 19 order.

5 Tr 434, quoting the November 21 order, p. 33.

Consumers responded to IPPC's arguments, claiming that they are inappropriately raised because the Commission made a final decision on the revised avoided cost rates in the February 22 order and IPPC failed to seek rehearing on the Commission's decision. Consumers' reply brief, p. 3. Consumers stated that IPPC's arguments regarding avoided costs are beyond the scope of the third reopened proceeding and should be rejected. *Id*. In responding to the merits of IPPC's argument, Consumers stated that the Filer City original PPA required Consumers to pay "avoided cost rates that were substantially higher than what it will pay under the Filer City Amendment No.

2" and that the PPA was amended to reduce those then-existing avoided cost rates. 5 Tr 355. Consumers maintained that the Filer City PPA is not relevant to this proceeding and was a "special circumstance" as opposed to the standard offer contract, which is a "standard offer – and QFs that sign it will not be in the same unique situation as the seller in the Filer City PPA." 5 Tr 356; Consumers' reply brief, pp. 3-5.

With respect to IPPC's argument that the Section 304(e) factors should be addressed in the standard offer tariff and the standard offer PPA, Consumers contended that the Commission has already ruled on this issue finding that the consideration of these factors should be negotiated on a case-by-case basis. Consumers' reply brief, p. 12. Further, the company reasoned that IPPC's request is inappropriate because the "standard offer PPA is intended to be the company's standard offer to QFs, and is not designed to address specific unique cases" and that the company will continue to negotiate the Section 304(e) factors on a case-by-case basis consistent with the November 21 order. *Id*., p. 13.

The Commission agrees with Consumers that IPPC's dispute regarding the avoided costs set forth in the standard offer tariff and applicable to the standard offer PPA is beyond the scope of the third reopened proceeding. The Commission addressed the avoided cost rates through a lengthy contested proceeding and arrived at a final revised avoided cost in the February 22 order. IPPC has expressed the same disagreement with the avoided cost rates and argument regarding the Filer City PPA that it raised previously, and the Commission has not seen any new evidence that would convince it to revisit this issue. The Commission also agrees with Consumers' position regarding the inclusion of language addressing the Section 304(e) factors in the standard offer tariff and standard offer PPA. In the November 21 order, the Commission found as follows:

> Finally, the Commission emphasizes that it is not possible to establish all of the other avoided costs that may be taken into account for an individual QF as part of a

> negotiated contract. For example, some QFs may be able to provide overall system support, black start service, emergency power supply, voltage support, or the ability to quickly ramp up or down, among other significant benefits. *See, e.g.*, 18 CFR 292.304(e). Accordingly, as part of its contract negotiations, Consumers shall, on a case-by-case basis, take into consideration these additional benefits even if the values of these additional services cannot be precisely quantified.

November 21 order, p. 24.

The standard offer tariff and standard offer PPA are just that, standard. They are not consistent with the case-by-case consideration that the Commission previously directed in the November 21 order. Therefore, the Commission rejects IPPC's request to include language related to the Section 304(e) factors in the standard offer tariff and standard offer PPA. Nonetheless, the Commission recognizes that there may be unique attributes of local generation that, if quantified, could be reflected in contract terms, and encourages Consumers to remain open to considering such attributes on a case-by-case basis.

3. Regulatory Disallowance and Change in Law Provisions in the Standard Offer Power Purchase Agreement

On March 1, 2018, Consumers filed its standard offer tariff and standard offer PPA, which included the following "Section 7.4, Regulatory Disallowance" provision:

> If the MPSC has indicated in an order that it is unlikely that Buyer will be permitted complete recovery from its customers of the capacity and energy charges to be paid pursuant to Section 7, Compensation, then Buyer shall have the right to require that the charges to be paid by Buyer under Section 7 be adjusted to the charges which the MPSC indicates Buyer can recover from its customers. Any such adjustment shall be effective no earlier than the date of such MPSC indication. Pending appellate review of such indication and final determination of the charges that may be recovered by Buyer pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination.

> Seller shall refund to Buyer any portions of the capacity and energy charges paid by Buyer to Seller under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer's sole option, Buyer shall offset said amounts against amounts owed Seller by Buyer as provided in Section 9, Billing.
>
> The provisions of this Subsection 7.4 shall govern over any conflicting provisions of this Agreement.

Consumers' standard offer tariff and standard offer contract, p. 15.

IPPC disputed the Regulatory Disallowance provision, arguing that Consumers' proposed language is entirely one-sided in favor of Consumers, places all risk on the QF, and is abnormal contractual language in that it fails to safeguard the business relationship between the QF and the utility. 5 Tr 435. IPPC explained that, "[i]n ordinary business relationships, once the parties have reached an agreement, they seek to preserve the benefits of that bargain for both parties despite regulatory or legal changes." 5 Tr 426. IPPC argued that Consumers' Regulatory Disallowance provision and Nonseverability provision (discussed *infra*) "arguably violate state and federal law." *Id*. IPPC cited to Section 6v of 2016 PA 341, MCL 460.6v, in support, explaining that the statute is "meant to protect the sanctity of 'existing power purchase agreements' pursuant to PURPA" and that, "[a]llowing Consumers to break a PURPA PPA upon a change in capacity and/or energy prices to its benefit would violate MCL 460.6v." *Id*.

Thus, IPPC proposed the following Change in Law provision to replace Consumers' proposed Regulatory Disallowance provision:

> If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Energy Regulatory Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of rights or obligations of the parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations legally unenforceable, then the Parties shall further amend this Agreement or enter into other agreements reasonably necessary to preserve and maintain the business agreement between the Parties described in this Agreement as of the Effective Date

> of this Agreement and the material terms and provisions of such relationship contemplated in this Agreement.

Exhibit IPP-43, pp. 18-19. IPPC argued that its proposed Change in Law provision is similar to the Change in Law provision set out in the PPA between Filer City and Consumers and negates the need for the Regulatory Disallowance provision. IPPC's initial brief, p. 13.

Cypress Creek also took issue with the Regulatory Disallowance provision proposed by Consumers and argued that the provision gives Consumers an "out" from its payment obligations rendering the PPA "unfinanceable because they eliminate the certainty that financing parties require regarding the payments to which a Seller is entitled to under the PPA." 5 Tr 453. Cypress Creek also argued that the Legislature recognized the unreasonableness of regulatory disallowances with the enactment of MCL 460.6j(13)(b), which, according to Cypress Creek, prohibits the Commission from disallowing cost recovery of a PURPA contract. Cypress Creek's initial brief, pp. 8-9. "[O]nce a contract has been approved and the appeal period has ended the Commission is not permitted to disallow capacity charges for any reason for a PURPA QF during the 17.5 year financing period." *Id*., p. 9. Accordingly, Cypress Creek supported the removal of the provision. 5 Tr 453. However, in the alternative, Cypress Creek proposed a regulatory disallowance provision that would make the following corrections:

> (1) Under Consumers' provision, an "indication" by the Commission of disallowance would trigger Consumers' right to stop paying the QF. Whatever "indication" means, which is unclear, it is an inappropriate trigger for altering the parties' contractual obligations. That should only occur, if at all, after a final, non-appealable order by the Commission. (2) Although one would not expect Consumers to seek disallowance, it could do so if for some reason it was looking for an out from the contract. It should be clear that Consumers may not seek disallowance and thereby eviscerate its contractual commitment to the QF. (3) It should be clear that the QF is not waiving the right to challenge the legality of a disallowance order. (4) As discussed above, the QF must have the ability to terminate the PPA in the event of disallowance rather than remaining obligated to continue delivering a product for which it is not being paid.

Cypress Creek's initial brief, pp. 11-12.

In response to Consumers' proposed Regulatory Disallowance provision and Cypress Creek's suggestion to strike the provision, the Staff proposed the following: (1) any adjustments to charges recovered by Consumers would be triggered by a Commission order, not an "indication;" (2) Consumers may not seek to disallow costs and must oppose a proposal to disallow costs, but would not be prevented from consenting to a disallowance or required to appeal a disallowance; and (3) in the event of a disallowance, the QF would have the option to terminate the PPA with 30 days' notice. Staff's reply brief, pp. 1-2.

Consumers did not agree to remove the Regulatory Disallowance provision because, according to the company, the Change in Law provision does not erase the need for the Regulatory Disallowance provision, which provides Consumers protection "in the event the Commission indicates that the Company is unlikely to receive complete recovery from customers" of the costs of the PPA. 5 Tr 359. However, the company did agree to add a Change in Law provision to the standard offer PPA. 5 Tr 358-359. Consumers proposed the following language for the Change in Law provision:

> 14. CHANGES IN LAW. In the event that there is a change in applicable law or regulation, including but not limited to laws or regulations of the State of Michigan, the Federal Energy Regulatory Commission or MISO, or in the event MISO ceases or modifies its operations or rules such that such modifications have a material effect on this Agreement or either Party's obligations hereunder, then Seller and Buyer shall amend this Agreement or enter into other agreements reasonably necessary to preserve and maintain the business agreement between the Parties described herein as of the Effective Date and the material terms and provisions of such relationship contemplated herein.

5 Tr 359.

IPPC did not dispute the company's proposed language but added that it should be included in the final standard offer PPA. IPPC's initial brief, p. 13.

In its reply brief, the company echoed its support for its proposed Regulatory Disallowance provision and contested the arguments made by IPPC and Cypress Creek. First, Consumers disputed IPPC's claim that the Regulatory Disallowance provision is "one-sided" by explaining that since Consumers is the only party subject to Commission regulation and the only party to which Section 7.4 applies, it is the only party in need of its protection. Consumers' reply brief, pp. 13-14. Consumers also argued that IPPC's claim that Section 7.4 violates MCL 460.6v is vague and nothing in the statute addresses regulatory disallowances, let alone prohibits a regulatory disallowance provision. *Id*., p. 14. Next, the company addressed Cypress Creek's claims regarding MCL 460.6j(13)(b) and argued that nothing in the statute eliminates the need for Section 7.4 because, in the event the Commission disallows PPA costs after the 17.5-year financing period, Consumers still requires the protection provided by Section 7.4. Consumers also argued that Cypress Creek's suggestion that the charges recovered under the PPA should not be impacted until a final appellate review or collateral challenge by the QF is completed is unreasonable because, under the suggested scenario, Consumers could be left overpaying for energy and capacity for many months or years. *Id*., p 15. Consumers did agree that language should be included to ensure that the QF is not waiving the right to challenge a potential regulatory disallowance by the Commission but proposed its own language:

> Nothing in this Agreement shall constitute a waiver of any rights Seller may have to appeal or collaterally challenge an order indicating that Consumers Energy is unlikely to receive complete recovery from its customers of the capacity and energy charges to be paid pursuant to the PPA as a violation of Seller's rights or as otherwise unlawful.

Id., pp. 15-16.

The Commission finds that the Change in Law provision as proposed by Consumers and undisputed by IPPC is reasonable and should be adopted into the final standard offer PPA. The

Commission does not agree, as IPPC argued, that the Change in Law provision is similar enough in substance and purpose to be considered duplicative of the Regulatory Disallowance provision, thus making the Regulatory Disallowance provision unnecessary. The Change in Law provision addresses a broader scope of laws governing and impacting the PPA between the utility and QFs, while the Regulatory Disallowance provision describes a specific regulatory action by the Commission and resulting impact on the PPA. Therefore, the addition of the Change in Law provision shall not replace the Regulatory Disallowance provision. Additionally, the Change in Law provision shall not replace the Nonseverability provision, which IPPC argues for but does not adequately support in its initial brief. IPPC's initial brief, p. 13.

As to the Regulatory Disallowance provision, the Commission finds that some modification to Consumers' proposed language is necessary to strike a better balance of benefit and risk between the parties to the contract. While Consumers is correct that it is the only regulated party to the PPA in the sense that its costs may be disallowed by the Commission, Consumers is not the only party impacted by a potential disallowance, and thus, both parties' interests must be protected by the provision. The Commission finds the language proposed by the Staff to be reasonable. IPPC and Cypress Creek demonstrated on the record in this matter that Consumers' proposed provision exposes them to undue risk of being left on the hook to continue providing energy and capacity for reduced compensation. While MCL 460.6j(13)(b) moves that risk beyond a 17.5-year financing period, a PPA can have a life beyond 17.5 years. The language set forth below mitigates the risk to both Consumers and the QFs.

Therefore, the Commission finds that the Regulatory Disallowance provision of the standard offer PPA shall read as follows:

> If the MPSC has ruled in an order that Buyer will not be permitted complete recovery from its customers of the capacity and energy charges to be paid pursuant

to Section 7, Compensation, then Buyer shall have the right to require that the charges to be paid by Buyer under Section 7 be adjusted to the charges which the MPSC indicates Buyer can recover from its customers. Any such adjustment shall be effective no earlier than the date of such MPSC order. Pending appellate review of such order and final determination of the charges that may be recovered by Buyer pursuant to this Agreement, the amounts not paid to the Seller due to any such adjustment shall be placed by Buyer in an interest-bearing separate account with the administrative costs incurred by that account to be borne by the account. The balance in the separate account, less administrative costs, shall be paid to the appropriate Party upon the completion of appellate review which establishes the charges that Buyer will be permitted to recover from its customers. Future capacity and energy charges to be paid by Buyer shall be no greater than will be recoverable from Buyer's customers pursuant to such final appellate determination. Seller shall refund to Buyer any portions of the capacity and energy charges paid by Buyer to Seller under this Agreement which Buyer is not permitted, for any reason, to recover from its customers through its electric rates, or at Buyer's sole option, Buyer shall offset said amounts against amounts owed Seller by Buyer as provided in Section 9, Billing.

Buyer shall not seek a Disallowance Order and shall use goodfaith, commercially reasonable efforts to oppose any proposal to disallow costs included in the Agreement. Nothing in the Agreement shall constitute a waiver of any rights Seller may have to appeal or collaterally challenge a Disallowance Order as a violation of Seller's rights or as otherwise unlawful.

Notwithstanding the foregoing, Seller shall have the right to terminate this Agreement without further liability at any time following a Disallowance Order up to sixty (60) Days following final resolution of any appeal of or collateral challenge to such order by giving Buyer thirty (30) days' notice of such termination.

The provisions of this Subsection 7.4 shall govern over any conflicting provisions of this Agreement.

4. Nonseverability Provision in the Standard Offer Power Purchase Agreement

Consumers proposed the following language for "Section 20, Nonseverability" in the standard offer PPA:

If any essential provision of this Agreement is declared invalid in whole or in part by any court or other tribunal of competent jurisdiction, then unless otherwise agreed by the Parties, the entire Agreement shall be deemed void and inoperative. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the

provision or provisions of this Agreement.

Consumers' standard offer tariff and standard offer contract, p. 23.

Cypress Creek opposed Consumers' proposed language asserting that it is highly unusual, since the norm for commercial contracts is a severability clause that attempts to retain as much of the negotiated-for benefit of the agreement as possible in the event a portion is deemed void. Cypress Creek's initial brief, p. 12. Cypress Creek requested that the Commission reject Consumers' proposed provision or, in the alternative, amend it. Cypress Creek's suggested amendments are as follows: (1) a final, non-appealable order by any court or tribunal of competent jurisdiction must find a provision of the PPA declared void, in whole or in part; (2) the adversely affected party has the right to terminate the agreement with 30 days' notice; (3) as a condition of termination, the parties must enter into a new agreement that preserves the rights and obligations of the party in light of the invalidated portion; (4) if the parties are unable to reach a new agreement, the matter shall be submitted to the Commission for resolution; (5) unless invalidated or otherwise agreed to, the new agreement shall contain the same energy and capacity price and a contract term that extends at least to the last day of the original contract; and (6) any non-essential provision deemed invalid is ineffective only to the extent of its invalidity and shall not impact the remainder of the contract. *Id*., pp. 12-13. Cypress Creek argued that its amendments are more reasonable and in line with the purchase obligations set out in PURPA. *Id*., p. 13.

IPPC echoed Cypress Creek's position that the nonseverability provision should be removed from the standard offer PPA. IPPC's initial brief, pp. 12-14. IPPC argued that the nonseverability clause threatens a QF's financing prospects. *Id*., p. 14. Similar to its arguments regarding the Regulatory Disallowance provision, IPPC contended that the Change in Law provision, which

Consumers agreed to add to the standard offer PPA, negates the need for the nonseverability clause. *Id*., p. 13.

Consumers contended that the arguments against the Nonseverability provision raised by IPPC and Cypress Creek are without merit. Specifically, Consumers alleged that the requirement to enter into a new agreement in the event Section 20 is triggered is too severe, especially since the company discussed in its brief that the parties could "convene to discuss a new PPA to replace the inoperative one." Consumers' reply brief, p. 17, quoting Consumers' initial brief, p. 14. Consumers also rejected Cypress Creek's amendment to allow the adversely affected party to terminate the PPA and contended that the "cleaner option" is for the PPA to be void, and the parties can determine how to continue business. *Id*. Lastly, in response to Cypress Creek's proposed Section 20, Consumers argued that, "Section 20 should not be limited to cases in which a party is adversely affected, but also needs to cover the case where the invalidated provision rendered the PPA unworkable, impracticable, or nugatory." *Id*.

The Commission agrees with Cypress Creek and IPPC that the Nonseverability provision proposed by Consumers does not sufficiently preserve the bargained for agreement that is the PPA. In coming to this conclusion, the Commission first considers the obligation imposed by PURPA on electric providers to purchase energy and capacity from a QF. 16 USC 824a-3(a)(2); 18 CFR 292.303(a). This statutory obligation is not to be easily circumvented by a single provision within a PPA. The Commission also considers that a basic principle of contract law holds that, in general, to preserve the bargained for agreement to the farthest extent possible, a void section of a contract can be severed if it is not essential to the whole. *See*, *Peeples v City of Detroit*, 99 Mich App 285, 296; 297 NW2d 839, 843 (1980); *see also* 2nd Restatement of Contracts § 607. The Commission acknowledges that Consumers' Nonseverability provision states that a

provision must be essential to void the entire PPA; however, the provision is problematic in that it does not fairly balance the interests of both parties. The Commission finds it reasonable to align the Nonseverability provision with the Regulatory Disallowance and Change in Law provisions and add language that brings both parties into good faith negotiations to remedy the invalidated provision or enter into a new PPA to replace the void PPA.

Consumers stated in its reply brief that a contractual requirement to re-enter negotiations or replace the agreement goes too far when the company indicated that the parties "could convene to discuss" a replacement PPA or remedy to the invalidated provision. While the Commission does not question the sincere intent of the utility, the speculative nature of what the parties "could" do carries little weight for a party seeking the benefit of rights and obligations solidified within a contract. Therefore, the Commission finds the following Nonseverability language reasonable for adoption into the final standard offer PPA:

> If any essential provision of this Agreement is declared invalid in whole or in part in a final, non-appealable order by a court or other tribunal of competent jurisdiction, then a Party adversely affected by such invalidation shall have the right to terminate this Agreement by giving the other Party thirty (30) days' notice of such termination. Concurrently with, and as a condition of, termination of this Agreement, the Parties shall enter into goodfaith negotiations to amend this Agreement to remedy the invalidated provision(s) or enter into a new agreement that reasonably preserves the rights, obligations and economic positions of the parties under this Agreement in light of the invalidated provision(s). If the parties cannot reach an agreement, they shall submit any disputed matters to the Michigan Public Service Commission for binding resolution. If any non-essential provision in this Agreement is held to be invalid or unenforceable, it shall be ineffective only

> to the extent of the invalidity, without affecting or impairing the validity and enforceability of the remainder of the provision or provisions of this Agreement and without giving rise to any right to termination.

The Commission finds the above language to be a reasonable balance of the interests of both parties and in line with the purchase obligations codified by PURPA. Additionally, the Commission finds the above language to be efficient in terms of preserving a contract that is the result of an involved and thorough process of negotiating a PPA and interconnecting a QF into the utility's distribution system.

5. Interconnection Agreement Requirements in the Standard Offer Tariff and Standard Offer Power Purchase Agreement

In the standard offer PPA that Consumers proposed on March 1, 2018, the company defined and later revised the term "interconnection agreement" and requested that the Commission approve the following definition:

> "Interconnection Agreement" – Means the agreement between Seller and the applicable electric system owner and/or operator which describes the terms and conditions regarding the connection of Seller's Plant to such electric system owner and/or operator.

5 Tr 381-382, 398-399; *see also* Consumers' initial brief, pp. 20-21. Section C18.B.(5) of the standard offer tariff incorporates the company's definition of interconnection agreement and requires that QFs have an interconnection agreement that meets certain minimum standards:

> The seller must meet the Interconnection Standards referenced in Rule B8 of this Electric Rate Book, Electric Interconnection and Net Metering Standards, R 460.615 - R 460.628, for the class of generator installed. Per these standards, testing and utility approval of the interconnection and execution of a parallel operating agreement must be completed prior to the equipment operating in parallel with the distribution system of the utility. Additionally, the Company will confirm and ensure that an electric generator installation at the seller's site meets the IEEE 1547 anti-islanding requirements.

Exhibit A-48, p. 2. The term "interconnection agreement" is again incorporated into Section 4.3 of the standard offer PPA, which prescribes the start date of the PPA:

> The Start Date of this Agreement will be the date identified by Seller to Buyer in writing pursuant to this Subsection 4.3 which is on or after the Expected Start Date after which Seller has provided Buyer proof that all of the following conditions precedent have been satisfied:
> (i) Seller has obtained all necessary licenses, permits, certificates and approvals in accordance with Subsection 3.1, Permits and Laws;
>
> (ii) Seller has executed an Interconnection Agreement and received written authorization to operate Seller's Plant in parallel with applicable electric distribution or transmission system . . ..

Joint Statement of Concurrence, Attachment, p. 11; *see also*, Consumers' reply brief, p. 9. Consumers requested Commission approval of each of the above quoted sections.

IPPC requested that the Commission clarify Section 4.3 of the standard offer PPA that requires a QF to prove that it has an executed interconnection agreement and is authorized to operate the QF's plant in parallel with the applicable electric system. IPPC argued this provision requires clarification because, in cross-examination, the company testified that even if a QF has a current interconnection agreement, the QF may have to execute a new interconnection agreement when renewing its contract. 5 Tr 380-381. IPPC stated that the standard offer language does not support the company's interpretation and requested that the Commission "clarify that a new Interconnection Agreement is not necessary unless the requirements to obtain one under the Commission's Interconnection Rules are triggered." IPPC's initial brief, p. 9.

IPPC also argued that because Consumers testified that its distribution agreements group evaluates the need for a new interconnection agreement on a case-by-case basis, the company could unilaterally slow or stall viable QF projects. 5 Tr 380-381; IPPC's initial brief, p. 10. IPPC clarified that it is not seeking to excuse QFs with existing interconnection agreements from complying with the Commission's interconnection standards and interconnection technical requirements. Rather, IPPC stated that it opposes Consumers' attempt to require new interconnection agreements for all new QF contracts. 5 Tr 429-430; IPPC's reply brief, pp. 4-5.

In support of its position, IPPC provided reasons why a new interconnection requirement is unnecessary for an existing QF, including the following:

> [T]he resulting unfettered ability for the utility to slow or stall existing QF project renewals; no such requirement in the Commission's Interconnection standards and rules; and clear direction from [FERC] that "requiring a QF to tender an executed interconnection agreement is equally inconsistent with PURPA and our regulations." . . . IPPC would further note that requiring an already interconnected QF to go through the interconnection process, to pay additional fees, and to negotiate and sign new interconnection agreements imposes additional burdens of cost and delay on QFs before they can begin commercial operation under their renewal contract. Consumers has not shown why QFs should be required to shoulder this considerable burden.

IPPC's reply brief, pp. 5-6. IPPC also referenced *FLS Energy, Inc*, 157 FERC ¶ 61,211 (2016) to support its point that the Commission cannot require an interconnection agreement as a condition of an LEO. IPPC's initial brief, p. 10.

In response, Consumers argued that IPPC is merely requesting to be excused from maintaining up-to-date interconnection standards and requested that the Commission reject IPPC's request for clarification for several reasons. Consumers' reply brief, pp. 8-9. First, according to Consumers, nothing in Section 4.3 of the standard offer PPA limits the proof of an interconnection agreement to a new QF. *Id*., p. 10. Second, Consumers claimed that IPPC's position is inconsistent with the standard offer tariff, which requires all QFs to have interconnection agreements that meet certain standards, and does not distinguish between new and existing QFs that are already interconnected. *Id*. Consumers argued that Section 4.3 is necessary to "provide updated data, maintain consistency and verify that proper equipment is in place and operational." *Id*. Third, Consumers contended that IPPC's claim that the company could unilaterally slow QF projects is without merit because the company has an objective set of criteria set forth in Section C18.B.(5) of the standard offer tariff used to evaluate the need for new interconnection agreements and the company must comply with the Commission's interconnection standards. *Id*., pp. 10-11. Fourth, Consumers attested that

IPPC's reliance on *FLS Energy* was misplaced because Consumers is not seeking to have an interconnection agreement established as a pre-condition of an LEO. *Id*., p. 11. Lastly, the company maintained that IPPC's unsupported claim that no additional interconnection processes should be required for an existing QF was rebutted by the following Consumers' testimony:

> [M]any existing QFs have Interconnection Agreements ('IAs') that are either out of date, embedded in the existing PPA, or simply are not up to today's standards. As a practice, when the Company enters into a new PPA, the counterparty is required to provide evidence that it meets the interconnection standards at the time the PPA is executed. This verification is completed through the interconnection process. QFs are required to file a new interconnection application and sign an IA that meets the current interconnection standards.

5 Tr 363.

In reviewing the standard offer tariff and the standard offer PPA, the Commission does not find that the clarification requested by IPPC is necessary. As IPPC stated, it is not seeking to be excused from maintaining up-to-date interconnection standards, which is what the language in the standard offer tariff and the standard offer PPA seeks to accomplish. IPPC's fear that Consumers will arbitrarily slow down or stall executing new PPAs with existing QFs is unsubstantiated. The tariff references the objective criteria set out in the company's electric rate book, the Commission's interconnection rules, and the technical standards set out in IEEE 1547; all of which, must be complied with by the company and the interconnecting QF, whether it is a new QF or existing QF. The company, therefore, must apply these standards when determining whether a new interconnection agreement is required for an existing QF, not the arbitrary or discriminatory method feared by IPPC. The Commission also finds that Consumers has adequately supported the importance of ensuring that *all* QFs are meeting the interconnection requirements and technical standards to ensure the safety and reliability of the electric distribution and transmission systems. Further, Consumers acknowledges, and the Commission agrees, that neither Section C18.B.(5) of

the standard offer tariff nor Section 4.3 of the standard offer PPA purport to impose an interconnection agreement as a pre-condition of an LEO.[5]

Therefore, the Commission rejects IPPC's request for clarification and adopts Consumers' proposed definition of interconnection agreement, Section C18.B.(5) of the standard offer tariff language, and Section 4.3 of the standard offer PPA language, into the final standard offer tariff and standard offer PPA.

Avoided Cost Review

With the resolution of the rehearing petitions and final decisions on the standard offer PPA and tariff contained herein, the Commission finds that the suspension of implementation of the approved avoided costs issued on December 20, 2017, should be lifted.

Having, at length, brought this case to a conclusion, the Commission must concede that during the pendency of this proceeding the energy landscape changed so rapidly that the primary evidence related to the avoided cost of power relied upon by the Commission in making its determinations is woefully out of date. The contested part of this proceeding was commenced on June 17, 2016, with Consumers' filing of avoided cost methods and costs. Consumers filed its direct testimony and exhibits on September 1, 2016, and the Staff filed its on October 27, 2016. Thus, this proceeding is well over two years old, and the evidence underlying the costs approved by the Commission is just short of two years old. In the current renewable energy environment, that is a long time. In the May 31 order in this matter, p. 28, the Commission found that a biennial review of PURPA avoided costs is appropriate. MCL 460.6v(1) requires a review no less than every five years.

[5] In Case No. U-20095, the Commission indicates its intention to address the definition of the LEO through rulemaking.

As stated, the Commission is concerned that the evidence in the instant case underlying decisions about costs, cost methodology, the size of eligible facilities, and the term length of the standard offer is now stale. The Commission is addressing this concern by adopting a temporary limit on the amount of capacity sold at the higher approved avoided cost, and by ensuring that PURPA issues may be reviewed in Case No. U-20165. *See,* October 5, 2018 order in Case No. U-20165. Today, the Commission affirms its prior determinations that PURPA issues should be integrated with IRP proceedings. In light of today's order in Case No. U-20165, the Commission finds that the timing of Consumers' next avoided cost review should be addressed at the conclusion of Case No. U-20165.

THEREFORE, IT IS ORDERED that:

A. The petitions for rehearing filed by the Commission Staff, Ranger Power LLC, Geronimo Energy, and Cypress Creek Renewables, LLC, are denied.

B. Consumers Energy Company's Standard Offer Power Purchase Agreement is approved as described in this order, and Consumers Energy Company shall revise the Standard Offer Tariff to conform to the approved Standard Offer Power Purchase Agreement.

C. The suspension of implementation of the approved avoided costs in the December 20, 2017 order is lifted.

D. Consumers Energy Company shall file an application for a review of its avoided costs under MCL 460.6v(1) as determined in Case No. U-20165.

E. Within five business days of the date of this order, Consumers Energy Company shall file copies of the approved Standard Offer Power Purchase Agreement and Standard Offer Tariff in this docket, and shall file the Standard Offer Tariff sheets.

F. Consumers Energy Company shall file executed contracts with qualifying facilities in this docket for Commission approval.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of 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 October 5, 2018.

Kavita Kale, Executive Secretary

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

STATE OF MICHIGAN)

Case No. U-18090

County of Ingham)

Lisa Felice being duly sworn, deposes and says that on October 5, 2018 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 5th day of October 2018

Angela P. Sanderson

_____

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

Service List for Case: U-18090

Name	Email Address
Anita Fox	afox@fraserlawfirm.com
Anne Uitvlugt	anne.uitvlugt@cmsenergy.com
Brian W. Coyer	bwcoyer@publiclawresourcecenter.com
Christopher M. Bzdok	chris@envlaw.com
Consumers Energy Company 1 of 2	mpsc.filings@cmsenergy.com
Consumers Energy Company 2 of 2	matorrey@cmsenergy.com
David E.S. Marvin	dmarvin@fraserlawfirm.com
Don L. Keskey	donkeskey@publiclawresourcecenter.com
Jennifer U. Heston	jheston@fraserlawfirm.com
John W. Sturgis	jwsturgis@varnumlaw.com
Justin Ooms	jkooms@varnumlaw.com
Laura A. Chappelle	lachappelle@varnumlaw.com
Margrethe Kearney	mkearney@elpc.org
Michael C. Rampe	michael.rampe@cmsenergy.com
Robert W. Beach	robert.beach@cmsenergy.com
Sharon Feldman	feldmans@michigan.gov
Spencer A. Sattler	sattlers@michigan.gov
Thomas J. Waters	twaters@fraserlawfirm.com
Timothy J. Lundgren	tjlundgren@varnumlaw.com
Toni L. Newell	tlnewell@varnumlaw.com

GEMOTION DISTRIBUTION SERVICE LIST

kadarkwa@itctransco.com	ITC
tjlundgren@varnumlaw.com	Energy Michigan
lachappelle@varnumlaw.com	Energy Michigan
CBaird-Forristall@MIDAMERICAN.COM	Mid American
david.d.donovan@XCELENERGY.COM	Xcel Energy
ddasho@cloverland.com	Cloverland
bmalaski@cloverland.com	Cloverland
vobmgr@UP.NET	Village of Baraga
braukerL@MICHIGAN.GOV	Linda Brauker
info@VILLAGEOFCLINTON.ORG	Village of Clinton
jgraham@HOMEWORKS.ORG	Tri-County Electric Co-Op
mkappler@HOMEWORKS.ORG	Tri-County Electric Co-Op
psimmer@HOMEWORKS.ORG	Tri-County Electric Co-Op
frucheyb@DTEENERGY.COM	Citizens Gas Fuel Company
mpscfilings@CMSENERGY.COM	Consumers Energy Company
jim.vansickle@SEMCOENERGY.COM	SEMCO Energy Gas Company
kay8643990@YAHOO.COM	Superior Energy Company
ebrushford@UPPCO.COM	Upper Peninsula Power Company
christine.kane@we-energies.com	WEC Energy Group
jlarsen@uppco.com	Upper Peninsula Power Company
dave.allen@TEAMMIDWEST.COM	Midwest Energy Coop
bob.hance@teammidwest.com	Midwest Energy Coop
tharrell@ALGERDELTA.COM	Alger Delta Cooperative
tonya@CECELEC.COM	Cherryland Electric Cooperative
bscott@GLENERGY.COM	Great Lakes Energy Cooperative
sculver@glenergy.com	Great Lakes Energy Cooperative
panzell@glenergy.com	Great Lake Energy Cooperative
kmarklein@STEPHENSON-MI.COM	Stephson Utilities Department
debbie@ONTOREA.COM	Ontonagon County Rural Elec
ddemaestri@PIEG.COM	Presque Isle Electric & Gas Cooperative, INC
dbraun@TECMI.COOP	Thumb Electric
rbishop@BISHOPENERGY.COM	Bishop Energy
mkuchera@AEPENERGY.COM	AEP Energy
todd.mortimer@CMSENERGY.COM	CMS Energy
jkeegan@justenergy.com	Just Energy Solutions
david.fein@CONSTELLATION.COM	Constellation Energy
kate.stanley@CONSTELLATION.COM	Constellation Energy
kate.fleche@CONSTELLATION.COM	Constellation New Energy
mpscfilings@DTEENERGY.COM	DTE Energy
bgorman@FIRSTENERGYCORP.COM	First Energy
vnguyen@MIDAMERICAN.COM	MidAmerican Energy
rarchiba@FOSTEROIL.COM	My Choice Energy
greg.bass@calpinesolutions.com	Calpine Energy Solutions
rabaey@SES4ENERGY.COM	Santana Energy

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GEMOTION DISTRIBUTION SERVICE LIST

cborr@WPSCI.COM	Spartan Renewable Energy, Inc. (Wolverine Power Marketing Corp)
cityelectric@ESCANABA.ORG	City of Escanaba
crystalfallsmgr@HOTMAIL.COM	City of Crystal Falls
felicel@MICHIGAN.GOV	Lisa Felice
mmann@USGANDE.COM	Michigan Gas & Electric
mpolega@GLADSTONEMI.COM	City of Gladstone
rlferguson@INTEGRYSGROUP.COM	Integrys Group
lrgustafson@CMSENERGY.COM	Lisa Gustafson
tahoffman@CMSENERGY.COM	Tim Hoffman
daustin@IGSENERGY.COM	Interstate Gas Supply Inc
krichel@DLIB.INFO	Thomas Krichel
cityelectric@BAYCITYMI.ORG	Bay City Electric Light & Power
Stephen.serkaian@lbwl.com	Lansing Board of Water and Light
George.stojic@lbwl.com	Lansing Board of Water and Light
jreynolds@MBLP.ORG	Marquette Board of Light & Power
bschlansker@PREMIERENERGYLLC.COM	Premier Energy Marketing LLC
ttarkiewicz@CITYOFMARSHALL.COM	City of Marshall
d.motley@COMCAST.NET	Doug Motley
mpauley@GRANGERNET.COM	Marc Pauley
ElectricDept@PORTLAND-MICHIGAN.ORG	City of Portland
gdg@alpenapower.com	Alpena Power
dbodine@LIBERTYPOWERCORP.COM	Liberty Power
leew@WVPA.COM	Wabash Valley Power
kmolitor@WPSCI.COM	Wolverine Power
ham557@GMAIL.COM	Lowell S.
AKlaviter@INTEGRYSENERGY.COM	Integrys Energy Service, Inc WPSES
BusinessOffice@REALGY.COM	Realgy Energy Services
landerson@VEENERGY.COM	Volunteer Energy Services
Ldalessandris@FES.COM	First Energy Solutions
cmcarthur@HILLSDALEBPU.COM	Hillsdale Board of Public Utilities
mrzwiers@INTEGRYSGROUP.COM	Michigan Gas Utilities/Upper Penn Power/Wisconsin
djtyler@MICHIGANGASUTILITIES.COM	Michigan Gas Utilities/Qwest
Teresa.ringenbach@directenergy.com	Direct Energy
christina.crable@directenergy.com	Direct Energy
angela.schorr@directenergy.com	Direct Energy
ryan.harwell@directenergy.com	Direct Energy
johnbistranin@realgy.com	Realgy Corp.
jweeks@mpower.org	Jim Weeks
mgobrien@aep.com	Indiana Michigan Power Company
mvorabouth@ses4energy.com	Santana Energy
sjwestmoreland@voyager.net	MEGA
hnester@itctransco.com	ITC Holdings
lpage@dickinsonwright.com	Dickinson Wright
Karl.J.Hoesly@xcelenergy.com	Xcel Energy

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GEMOTION DISTRIBUTION SERVICE LIST

Deborah.e.erwin@xcelenergy.com	Xcel Energy
mmpeck@fischerfranklin.com	Matthew Peck

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