

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of  
**CONSUMERS ENERGY COMPANY**  
for approval of an integrated resource plan  
under MCL 460.6t and for other relief.

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Case No. **U-20165**  
(**e-file paperless**)

**MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S  
REPLY BRIEF**

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## **I. Introduction**

The Consumers Energy Company's integrated resource plan has generated controversy, some merited and some not. The controversial issues include, among other things, the Company's decision not to purchase all of the capacity in its interconnection queue, its decision to retire certain coal units but not others, the need to coordinate generation and transmission planning, and the need for procedures to govern the competitive-bidding process and requests for proposals. Despite this controversy, the parties are aligned on several issues. For instance, most parties support the Company's innovative competitive-bidding proposal if the solicitation process is inclusive, unbiased, and transparent. Most parties also oppose the Company's request for an incentive on power purchase agreements that it enters in the future. Staff falls into both camps. It strongly supports an inclusive, unbiased, and transparent competitive-bidding process, but Staff opposes any financial incentive that is more than needed to spur this process.

As for the other issues, Staff agrees with the Company's decision not to purchase all of the capacity in its interconnection queue. Instead, the Company should use its proposed competitive-bidding process to slowly secure additional supply- and demand-side resources in small increments that allow the Company to adapt as circumstances change. Staff agrees with the Company's decision to retire Karn Units 1 & 2 in 2023 but not to retire Campbell Units 1 & 2 early (subject to change in a future plan case). Staff also agrees that the Company should collaborate with METC and other interested stakeholders to coordinate generation

and transmission planning going forward. Finally, Staff agrees that the Commission should implement uniform standards on best practices for competitive bidding and requests for proposals. But the Commission should implement interim standards that allow utilities to move forward with RFPs in the meantime.<sup>1</sup>

## II. Response to Consumers

Consumers should be commended for proposing a plan to procure solar generation through a competitive-bidding process, to retire old coal generating units, and to replace the lost capacity with demand response, energy waste reduction, and conservation voltage reduction. Despite filing a cutting-edge plan, the Company requested an extravagant incentive that violates the law by exceeding the Company's weighted average cost of capital. (Staff's Revised Initial Br, pp 66-67, 80.) The Company's proposed incentive is also more than it needs to persuade it to enter into power purchase agreements. If the Commission decides that the Company needs an incentive, it should approve one that is high enough to spur competitive bidding, but no higher. (See Staff's Revised Initial Br, p 77-81.)

Consumers' retirement analysis and plans for future analyses are also a mixed bag. Although Staff agrees with the Company that retiring Karn Units 1 & 2 early in 2023 is reasonable and poses little risk, Staff disagrees with the Company

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<sup>1</sup> Staff has used this Reply Brief as an opportunity to respond to new arguments that the other parties made in briefs, without repeating arguments that Staff has already made. Unless otherwise noted, Staff continues to stand by the positions it has taken throughout the course of this proceeding.

that it should not perform a retirement analysis of its remaining coal units in its next plan case.

**A. The Company's proposed financial incentive is unlawful and more than needed to spur competitive bidding.**

Staff properly concluded that Consumers' proposed incentive violates Section 6t(15) by exceeding the Company's weighted average cost of capital. The Company claims that Staff reached this conclusion by applying the Company's proposed incentive to the wrong base. According to the Company, "Cost of capital rates are applied to capital balances (i.e., debt and equity), not expense balances." (Company's Initial Br, p 239, quoting 7 TR 752-753.) This is essentially a balance-sheet problem that Staff has solved as described below. The Company also says that if "the law intended to cap any FCM as the PPA expense times the Company's WACC it could have said so explicitly." (Company's Initial Br, p 239, quoting 7 TR 752-753.) This is semantics. It is just as easy to say that if the Legislature intended to cap the incentive at the PPA's imputed debt, "it could have said so explicitly."

Section 6t(15) is clear on its face and in context. See *Griffith v State Farm Mutual Auto Ins Co*, 472 Mich 521, 533 (2005) ("[T]he meaning of statutory language, plain or not, depends on context."). Section 6t(15) allows the Commission to authorize a PPA incentive but capped the incentive at "the utility's weighted average cost of capital," MCL 460.6t(15), which the Company properly acknowledges must be applied to some base. (Consumers' Initial Br, pp 239-240.)

One way to apply the cap to a base is to capture the PPA expense in a regulatory asset, allow a return on the regulatory asset in the form of an incentive, and apply the cost-of-capital cap to the regulatory asset. This is consistent with Section 6t(15)'s meaning, as well as regulatory accounting. Staff witness Bob Nichols gave an example of how this proposed alternative would work:

[I]f the Company were to include qualifying PPA expense of one billion dollars in the projected test year of a general rate case, the Commission may allow the Company to include a regulatory asset of \$500 million in working capital, which would earn a "return on" at the weighted average cost of capital (overall cost of capital), but no "return of" because the expense is recovered through the PSCR. [9 TR 2807.]

Staff's interpretation is consistent with past Commission orders. Utilities are permitted to earn a return on rate base, which includes net plant, working capital, and related regulatory assets. By capturing the PPA expense in a regulatory asset that flows through to working capital, the incentive can take the form of a return on the regulatory asset. The Commission has previously captured expenses in regulatory assets and allowed utilities to earn a return on those assets.<sup>2</sup> Although converting the PPA expense into a regulatory asset solves the balance-sheet problem, under Section 6t(15), the return still cannot exceed the weighted average cost of capital.

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<sup>2</sup> For instance, in Case No. U-17895, the Commission directed UPPCo to "treat the total \$59 million related to pension expense as a regulatory asset" and allowed it to "receive a return of and on that amount." *In re Upper Peninsula Power Co's 2015-2016 Rate Case*, MPSC Case No. U-17895, 9/8/2016 Order, p 38. UPPCo was allowed to earn a return of its regulatory asset in that case presumably because it was not recovered through another mechanism, like the way the PSCR process would be used to recover the PPA expense at issue in this case. (See 9 TR 2807.)

As Staff has illustrated, (see Staff's Revised Initial Br, pp 66-67, 80), the Company's proposed incentive exceeds its weighted average cost of capital and is, therefore, unlawful. As a result, there is no need to argue about S&P's method and whether it uses the net present value of all PPA payments or a single-year payment when it calculates imputed debt. (See Consumers' Initial Br, pp 232-233, 237-238.) There is also no need to address whether the incentive should apply to the capacity portion of the PPA or some larger portion. (See Consumers' Initial Br, pp 232-233, 237-238.) Regardless of the conclusion reached on these secondary issues, the Company's proposed incentive is unlawful.

**B. The Company should perform a retirement analysis of its remaining coal units in its next plan case.**

Consumers continues to argue that without an order directing it to perform a retirement analysis of its remaining coal units, like the order in Case No. U-18322 directing it to evaluate the Karn Units, the Company does not have to perform an analysis. The Company also contends that it would be burdensome to analyze its remaining coal units, and their potential retirement, in the Emerging Technology scenario in future IRPs. (6 TR 269). But the Commission already addressed this issue when it approved the modeling parameters, and there is no reason why the parameters should not apply in these circumstances. (See Staff's Revised Initial Br, p 34, quoting *In re Section 6t(1) of 2016 PA 341*, MPSC Case No. U-18418, 11/21/2017 Order, Exhibit A, p 18.) Therefore, the Commission should direct the Company to perform a retirement analysis in its next IRP like the analysis it

performed for the Karn Units (i.e., consistent with the requirements in the Commission's March 29, 2018 Order in Case No. U-18322).

### III. **Response to the Solar Energy Industries Association (SEIA)**

Consumers is not currently obligated to purchase all of the capacity in its interconnection queue. The Commission has discussed the queue in prior orders in Case Nos. U-18090 and U-20095. In its February 22, 2018 Order in Case No. U-18090, for example, the Commission temporarily limited the Company's obligation to pay "the full avoided capacity cost to the first 150 MWs of new QF capacity in the queue" and remanded the case to address other issues. *In re PURPA Avoided Costs*, MPSC Case No. U-18090, 2/22/18 Order, p 13. In a request for clarification, Staff asked the Commission to broaden the scope of the remand in Case No. U-18090 to determine which queue should be used and how the 150 MWs should apply. In response, the Commission ruled that Staff's request was moot, but it nonetheless clarified that it was referring to the interconnection queue and that "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." *In re PURPA Avoided Costs*, MPSC Case No. U-18090, 10/5/18 Order, pp 7, 17.

SEIA appears to believe that the Commission required Consumers to purchase capacity from every QF who has started the interconnection process, (SEIA's Initial Br, p 16), but SEIA is wrong. The Commission said that "[n]ew QF contracts should be offered on a first-come, first-served basis to certified QFs . . . based upon the date the interconnection application was received." *Id.* at 8. But it

said this as “guidance with respect to queue issues”; it was not an instruction to purchase all capacity in the queue. *Id.* “Consumers is not required,” the Commission said, “to purchase capacity that it does not need.” *Id.* at 15. Moreover, a project’s “position in the interconnection queue alone does not determine a QF’s right to sell capacity because a QF’s rights and obligations are determined by a number of factors, including the Commission’s final determination of a utility’s capacity need.” *In re Utilities’ Capacity Needs*, MPSC Case No. U-20095, 10/5/2018 Order, p 10.

Concerning Consumers’ long-term legally enforceable obligation (LEO) to purchase QF capacity, the Commission has not yet defined an LEO or said when it begins. The Commission is planning to revise its Electric Interconnection Standards to address this issue. *Id.* at 11. Stakeholders will have an opportunity to be heard in the formal rulemaking process. Indeed, before the Commission initiates the process, the Commission has instructed Staff to lead stakeholder discussions about potential rule changes, which include “the definition and establishment of an LEO.” *Id.*

Until the Commission permanently defines an LEO, Consumers is not obligated to purchase capacity from the queue. SEIA argues that the Company is obligated, pointing to the Commission’s October 5, 2018 Order in Case No. U-18090, which SEIA claims “unambiguously and unequivocally reaffirmed Consumers’ obligation to contract with the QFs currently seeking to sell their output to Consumers.” (SEIA’s Initial Br, p 16.) SEIA further argues that language in this

Order allowing the parties to move forward “requires Consumers to begin contracting with QFs immediately.” (*Id.*) SEIA reads too much into the order.

With respect to capacity in the queue beyond the 150 MW already addressed, the Commission said only that “QFs *may* continue to enter into contracts with Consumers at the PRA price for capacity and one of the forecasted energy prices for energy.” *In re PURPA Avoided Costs*, MPSC Case No. U-18090, 10/5/18 Order, p 18 (emphasis added). The term “may” indicates a “permissive, discretionary activity.” *Haring Charter Twp v Cadillac*, 290 Mich App 728, 749 (2010). The Commission also *allowed* parties to move forward, but this too is permissive language.<sup>3</sup>

Further, although the Commission clarified that the 150 MWs in the February Order “in no way limits the amount of capacity and energy that may be sold by QFs to Consumers,” it acknowledged that “Consumers is not required to purchase capacity that it does not need.” *Id.* at 15, 18. SEIA’s argument to the contrary falls flat.

#### **IV. Response to Parties Opposing Consumers’ Retirement Analysis and Plans**

The Midland Cogeneration Venture (MCV) continues to argue, without adequate support, that Consumers’ retirement analysis of Karn Units 1 & 2 was defective. (MCV’s Initial Br, pp 13-15.) Many of MCV’s objections challenge the

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<sup>3</sup> The word “allows” suggests a certain level of discretion. See *Brown v Nat’l City Corp*, 166 F3d 1213 (CA 6, 1998) (unpublished opinion).

veracity of the model the Company used to perform its retirement analysis, and Staff has already shown that these objections stem from a misunderstanding of how the model operates. (See Staff's Revised Initial Br, pp 14-20, 30-34.) Though MCV does raise one new objection to the retirement analysis. MCV quotes a Company exhibit, saying that "Strategist was recently described as being inadequate in determining 'optimal retirement schedules for existing assets.'" (MCV's Initial Br, p 15, quoting Exhibit A-36, p 13.) This quote is taken out of context. The full quote states:

*Strategist can identify optimal builds, but is not fully able to identify optimal retirement schedules for existing assets. As such, the above listed selections of unit retirements were selected for the following reasons; (1) due to overall plant efficiencies, the retirement of Karn units 1 and 2 would occur together rather than leaving one unit remaining, (2) the Campbell units, slightly larger were considered individually, (3) Campbell units would occur together because of the different retirement age of Campbell unit 3, and (4) the dates reflect early retirement decisions that would warrant action in the near term through this IRP. These additional sensitivities testing the retirement of these units under all scenarios was a key component of this IRP to consider the retirement of additional coal capacity in the near-to mid-term. [Exhibit A-36, p 13, emphasis added.]*

The Exhibit does not say that Strategist cannot be used to determine optimal retirement dates, as MCV suggests, merely that Strategist *alone* cannot select optimal retirement dates. This explains why specific dates and units had to be fed into the program when selecting retirement options. The Company's retirement analysis satisfied the Commission's modeling parameters and its March 29, 2018 Order in Case No. U-18322.

ABATE similarly argues that there are no good economic reasons to retire Karn Units 1 & 2 early in 2023, (ABATE's Initial Br, p 17, citing 8 TR 2133), but the evidence it relies on is outdated and misrepresents the data. (See Staff's Revised Initial Br, p 33.) Specifically, ABATE's economic evidence does not include the updated coal prices that account for price escalation beyond 2022. And Table 5 in ABATE witness Jeffrey Pollock's testimony confuses the "purchase all" scenario with the scenario showing replacement resources, truncates the Company-filed range of capacity prices and gas prices, and mislabels the 75% CONE capacity price and Consumers' gas forecast as a "do-nothing" case. (See Staff's Revised Initial Br, p 33.)

The Attorney General also relies on incorrect coal prices to argue that retiring Karn 1 & 2 early is not economical. (Attorney General's Initial Br, pp 18-19.) The Attorney General's recommendation to postpone the retirement until there is a ruling from the Michigan Department of Environmental Quality on the Company's proposed alternative to Section 316(b) compliance is not prudent. (8 TR 1750.) Although Attorney General witness Sebastian Coppola claims that the Company could save \$104 million by postponing retirement, the savings are entirely speculative, and even if they do materialize, they are overstated because Mr. Coppola used nominal dollars and not 2016 NPV dollars. (8 TR 1875.)

By contrast, SEIA says that there would be cost savings if Karn 1 & 2 were retired in 2021 instead of 2023, but SEIA acknowledges that its witness Kevin Lucas overstated the savings when he estimated them at approximately \$77.8

million. (SEIA's Initial Br, p 14, n25.) SEIA wants Consumers to add 1200 ZRCs worth of solar in the 2020-2023 timeframe partly to take advantage of higher investment tax credits, claiming that this would benefit customers. (8 TR 1985-1988.) Despite SEIA's claims, it is unclear whether SEIA's proposal would lower customers' rates because SEIA did not model its plan to show that it would result in NPV savings over the 2023 retirement scenario. (Exhibit S-20, pp 2-3.)

Several other intervening parties were concerned about allowing Campbell Units 1 & 2 to run to the end of their design lives in 2031. The Company can assuage these concerns by evaluating Campbell 1 & 2 for possible retirement in the emerging technology scenario in its next IRP. (See Staff's Revised Initial Br, pp 34-35.) As conditions change, retiring Campbell 1 & 2 early may become the best option.

#### **V. Response to the Michigan Electric Transmission Company (METC)**

METC recommends that Consumers "commit to increased collaboration with METC on the specific components and implementation of all future IRPs." (METC's Initial Br, p 6.) Staff agrees. METC witness Charles Marshall elaborates that better collaboration is needed, given the substantial capacity Consumers plans to add over the next 15 years, because existing processes and communication channels alone are insufficient to avoid piecemeal capacity additions:

The development of this IRP provides forward looking information that can be used to efficiently and cost effectively make the necessary transmission system investments, *assuming the parties collaborate*. Considering the scope, scale, and magnitude of this generation

portfolio as proposed in the PCA, this fundamentally shifts demands placed on the transmission system in these future years. Utilizing the existing processes, the current MISO generator interconnection process and communication channels, when better information is known, will result in a transmission system that is built out in a suboptimal and piecemeal fashion that is more costly, has greater impacts on property owners, and is operationally inferior to a coordinated system that recognizes and considers future generation. [8 TR 2519, emphasis added.]

METC contemplates coordinated generation and transmission planning going forward, using planning information from utility IRPs as opposed to the MISO generator interconnection queue to develop a more efficient and robust transmission grid. This is a laudable goal that Staff fully supports. Additional coordination could also help 1) ensure that resources are interconnected in an orderly fashion at optimal locations, 2) achieve the right balance between transmission investment and generation investment, and 3) inform the Company's RFP process.

One of the few drawbacks to the Company's plan to acquire all its resources through competitive solicitations is that it does not lend itself to coordinated generation and transmission planning. The sizes and locations of future generation projects will not be known until the close of the Company's RFPs and execution of contracts, which complicates matters. On the other hand, should the Commission adopt Staff's proposal to continue the 50-50 split of Company-owned and competitively procured resources, (9 TR 2564), the Company would have more control over the location of 50% of its future resources.

Under the 50% ownership scenario, information about Company-owned generation could be shared with METC going forward to plan a more efficient, cost-effective transmission grid. In addition to facilitating better coordination, Staff's 50-50 proposal would "increase[ ] competition and exert downward pressure on costs." (9 TR 2564.) The Commission could approve the 50-50 split of Company-owned and competitively procured resources in lieu of a PPA incentive or in combination with the much lower incentive that Staff proposed.

In sum, Staff urges the Company to increase collaboration with METC and other interested stakeholders to coordinate generation and transmission planning going forward. Staff's proposed 50-50 split would allow for increased collaboration with METC on transmission planning, due to the Company's control of and advanced knowledge of the location of future resources.

#### **VI. Response to Michigan Energy Innovation Business Council (MIEBC) and the Institute for Energy Innovation (IEI)**

Staff recommends that the Commission approve Consumers' proposed RFP and competitive-bidding processes, but prevent unnecessary delay to utility RFPs while uniform rules and regulations for these processes are under development. Staff disagrees with MIEBC and IEI that the Commission should approve uniform rules and regulations for RFPs and competitive bidding *before* Consumers implements competitive bidding as part of its IRP. Rather, Staff recommends that the Commission give notice and seek comments from stakeholders and the public on best practices for RFPs and competitive bidding in a separate docket. This docket

should move forward expeditiously, but it should not delay utility RFPs issued in conjunction with an IRP proceeding or in accordance with a Commission-approved IRP.

MIEBC and IEI point out that the Commission “expects competitive bidding to be of increasing importance for the selection of resources and the approved amounts under the pre-approval provisions of CONs and IRPs.” *In re DTE’s Application for a Certificate of Necessity*, MPSC Case No. U-18419, 4/27/2018 Order, p 106. Although the Commission directed “Staff to research approaches and best practices for RFP and competitive bidding in other jurisdictions,” it did not require Staff to complete its study before utilities issue RFPs. *Id.* MIEBC and IEI argue that Consumers’ proposed use of RFPs and competitive bidding “should not be implemented until such a study by Staff is completed” and uniform rules or standards are implemented. (MIEBC’s Initial Br, p 6.) Staff disagrees with MIEBC and IEI, but only concerning the timing of the implementation of uniform rules or standards on best practices. Staff agrees with MIEBC and IEI’s substantive recommendations related to RFPs and competitive bidding.

MIEBC and IEI witness Dr. Laura Sherman testified that adoption of uniform rules or best practices for RFPs and competitive bidding “should be done with stakeholder input and according to best practices, including those established in other states.” (9 TR 2839.) Staff agrees and recommends that the Commission seek comments from stakeholders and the public on best practices for RFPs and competitive bidding in a separate docket on a separate timeline. The separate

timeline is necessary to avoid interfering with the implementation of, not only Consumers' IRP, but the development and implementation of all other Michigan utilities' IRPs scheduled to be filed in the first half of 2019.

Act 341, Section 6t(6), requires utilities to conduct RFPs to “provide any new supply-side generation capacity resources” and to “use the resulting proposals to inform its integrated resource plan filed under this section and include all of the submitted proposals as attachments to its integrated resource plan filing.” MCL 460.6t(6). The statute contemplates completed RFPs with proposals attached to the utility-filed IRP applications, which are presently under development based on the IRP filing requirements approved in Case No. U-18461. Changing the rules on Michigan utilities by implementing new RFP regulations and competitive bidding processes while their applications are under development or being litigated, as in Consumers' case, is not advisable.

Staff recommends that the Commission consider all of MIEBC and IEI's specific proposals relating to best practices for RFPs and competitive bidding in a separate docket addressing uniform rules and processes for all utilities. Staff recommends that the Commission open a docket after the present IRP case is concluded, directing Staff to file its proposed best practices for RFPs and competitive bidding, while allowing for comments, reply comments, and a Commission order before the end of 2019. In the interim, the Company's proposed RFP and competitive-bidding processes, as modified by the Commission to include any of MIEBC and IEI's recommendations, should be approved. These

requirements include using a third-party administrator and allowing stakeholders to provide input and comments on a proposed RFP before the Company issues the RFP.<sup>4</sup>

## VII. Conclusion

Staff encourages the ALJ and the Commission to approve Consumers' IRP with the changes that Staff recommended in testimony and briefs.

Respectfully submitted,

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<sup>4</sup> At a minimum, the Commission should direct the Company to “continue to follow the ‘Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy’ approved by the Commission as Attachment D of the Commission’s December 4, 2008 Order in Case No. U-15800.” (9 TR 2557).

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**PROOF OF SERVICE**

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CHERIE A. RICHIE, being first duly sworn, deposes and says that on **January 11, 2019**, she served a true copy of the **Michigan Public Service Commission Staff's Reply Brief and Proof of Service** upon the following parties **via e-mail only**:

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CHERIE A. RICHIE

Subscribed and sworn to before me  
this 11<sup>th</sup> day of **January, 2019.**

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Pamela A. Pung, Notary Public  
State of Michigan, County of Clinton  
Acting in the County of Eaton  
My Commission Expires: 5-7-2025