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.
______________________________________/

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

MICHIGAN PUBLIC SERVICE COMMISSION
<u>STAFF'S EXCEPTIONS</u>

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Spencer A. Sattler (P70524)
Heather M.S. Durian (P67587)
Amit T. Singh (P75492)
Daniel E. Sonneveldt (P58222)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

DATED: March 4, 2019

Table of Contents

Page No.

I. Introduction 3

II. Statutory Framework 4

III. Exceptions 7

A. Staff does not agree that the Commission should reject Consumers' IRP because of concerns about the plan's out years. 7

B. Consumers' IRP should not be rejected because of the prospect that it could remain in place indefinitely. 10

C. Flexibility in the Company's plan alleviates the concerns that prompted the ALJ to recommend rejecting the plan. 14

D. Consumers complied with MCL 460.6t(5)(h) and (j). 16

E. The Commission should adopt Staff's recommendations concerning PURPA avoided costs. 18

1. Staff does not agree that Consumers has a capacity need by virtue of its plan to acquire long-term capacity. 20

2. Consumers supported its proposal to reduce the contract term it offers to QFs when the Company has no capacity need. 23

3. The standard offer cap should be 150 kilowatts or less. 27

4. Recent cost trends merit updating avoided cost rates and standard offer terms. 28

IV. Conclusion 28

I. Introduction

In this landmark case, the Consumers Energy Company is the first Michigan utility to file an integrated resource plan describing the present and future resources it plans to use to meet its capacity obligations. Consumers' proposed competitive-bidding process as the hallmark of its plan. It intends to use this process to gradually purchase solar power over the next decade to prepare for the capacity shortfall it expects to face by 2031 and to take advantage of declining solar prices. The Administrative Law Judge, although acknowledging the benefits of competitive bidding, recommended that the Commission deny the plan because of deficiencies in the out years of the plan—the period after the first three years of the plan—related to the Company's transmission planning and storage modeling.

Although Staff shares some of the ALJ's concerns, Staff does not believe that these concerns merit rejecting the plan and risk the Company abandoning its competitive-bidding process in a revised plan. Instead, Staff favors the changes it recommended in its direct case, which the Commission can include in its orders and that the Company can accept or reject without triggering Act 341's expedited-contested-case provision described below. See MCL 460.6t(7), (9).

Aside from the ALJ's recommendation to reject the competitive-bidding process and several of the Company's proposed modifications to its avoided cost rate and standard offer tariff and contract, Staff agrees with the ALJ's findings.

II. Statutory Framework

Act 341, Section 6t, establishes the process utilities and the Commission must follow when filing and reviewing an integrated resource plan. The first provisions that apply have already been fulfilled. Section 6t(1)–(3) required the Commission to establish "modeling scenarios and assumptions" and filing requirements with "application forms and instructions and filing deadlines" for IRP filings. MCL 460.6t(1)(f), (2)–(3). The Commission fulfilled these requirements by approving the Michigan Integrated Resource Planning Parameters in Case No. U-18418 and by approving the Integrated Resource Plan Filing Requirements in Case No. U-15896. *In re Section 6t(1) of 2016 PA 341*, MPSC Case No. U-18418, 11/21/2017 Order, Exhibit A; *In re MCL 460.6s(10) and (11)*, MPSC Case Nos. U-15896, 12/20/2017 Order, Exhibit A.

The second provision that applies requires utilities to file an IRP that "provides a 5-year, 10-year, and 15-year projection of the utility's load obligations and a plan to meet those obligations." MCL 460.6t(3). Utilities must file their plans no later than April 20, 2019—two years after Act 341 took effect. *Id.* The IRP must include information about the utility's load profile, demand forecast, and generation resources, among other things. MCL 460.6t(5). In preparing an IRP, utilities must issue a request for proposal for new supply-side generation capacity resources to be considered in the IRP proceeding. MCL 460.6t(6).

The statute also sets certain deadlines for Commission action and allows the Commission to recommend changes to a utility's plan. MCL 460.6t(7). The Commission must issue its first order no later than 300 days after the utility files

its IRP, either recommending changes to the IRP or approving or rejecting the plan. If the Commission recommends changes, it must give parties 15 days to comment on the changes and the utility 30 days to consider the changes and file a revised plan that incorporates one or more of the recommended changes. If the utility files a revised plan with one or more of the changes, the Commission must issue a final, appealable order approving the revised plan or rejecting it. It must issue this order no later than 360 days after the utility filed the plan.

The Commission must approve an IRP if it is "the most reasonable and prudent means of meeting the electric utility's energy and capacity needs." MCL 460.6t(8). The Commission must consider several factors when making this decision, including whether the plan is affordable, reliable, and diverse. The Commission must also consider whether the plan includes enough "capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement." *Id.* Beyond this, the Commission must consider whether demand response and energy waste reduction measures are reasonable and cost effective and whether the plan meets applicable state and federal environmental regulations.

If the Commission denies an IRP, the utility may revise the IRP within 60 days and the Commission must hold an expedited contested case. MCL 460.6t(9). If the utility's revisions are not substantial, in comparison to its original plan, the Commission has 90 days after the utility files its revised plan to issue an order "approving or denying, with recommendations, the revised integrated resource

plan." But if the utility's revisions are substantial, then the Commission has 150 days to issue an order. If the Commission denies the revised plan, the utility can proceed with its plan at its own risk, like it always has before. MCL 460.6t(10).

Section 6t(11) and (12) allow the Commission to identify and preapprove certain capital costs for projects that begin three years after a plan is approved. Specifically, "The costs for specifically identified investments" in a Commission-approved plan that begin within three years "are considered reasonable and prudent for cost recovery purposes." MCL 460.6t(11). Subsection 12 specifies the steps a utility must take before the Commission may preapprove the costs of a new Company-owned generating facility. MCL 460.6t(12). The statute requires utilities to file reports on the status of preapproved projects. MCL 460.6t(14).

Act 341 also allows utilities to propose, and the Commission to approve, incentives for utilities entering into power purchase agreements. The incentive has a cap. Under Section 6t(15), the Commission "shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital." MCL 460.6t(15).

Once the Commission preapproves eligible IRP costs, these costs must be included in retail rates in a later rate case and cannot be disallowed. MCL 460.6t(17) and (18). But if "the actual costs incurred by the electric utility exceed the costs approved by the commission," the cost overruns are presumed to be imprudent.

Finally, the other Section 6t provisions that are relevant to this case are 6t(19) and (20), which allow utilities to amend approved IRPs and requires utilities to file an application to have their IRPs reviewed every five years. MCL 460.6t(19) and (20). The Commission can also initiate a plan review, under Section 6t(21), on its own motion or on request.

III. Exceptions

Staff takes exception to the ALJ's recommendation to reject the competitive-bidding process and to reject several of the Company's proposed modifications to its avoided cost rate and standard offer tariff and contract.

A. Staff does not agree that the Commission should reject Consumers' IRP because of concerns about the plan's out years.

Although Staff shares some of the ALJ's concerns about later years in the Company's plan, the Company will have a chance to address these concerns before they become a problem. The ALJ recommended that the Commission reject Consumers IRP because "the record reflects concerns regarding the reasonableness and prudence of the company's plans, particularly after the near-term or first three years of the plan." (PFD, p 144.) Intermediate and long-term concerns about the Company's plan—concerns it can address in future plan cases—do not merit rejecting a plan that promises to transform how the Company purchases energy and capacity. As the ALJ acknowledged, the Company "received many positive comments on its plan," (PFD, p 143), and many of those centered around its

competitive-bidding proposal. Long-term concerns that can be addressed later, before they become a problem, should not jeopardize the benefits of the Company's proposed plan.

Staff recommends that the Commission approve the Company's IRP, preapprove certain capital costs planned for the first three years of the plan, and direct the Company to file a plan review with updated assumptions within five years. Act 341 requires no less: "An electric utility shall file an application for review of its integrated resource plan not later than 5 years after the effective date of the most recent commission order approving a plan, a plan amendment, or a plan review." MCL 460.6t(20). The Commission can then review the application using the same process and standards being applied in this case, for the initial plan, issuing an order that has the same effect as the order in this case. *Id.* Since the Company must file a plan review at least every five years, the Company will have opportunities to finetune its plan and projected expenditures.[1]

While Staff expressed concerns about issues that could arise late in the IRP planning horizon, Staff recommended approving the plan. Staff said that the Company's projected long-term demand response savings were ambitious and that the Company's projected long-term interconnection costs could be improved. (9 TR 2604, 2756.) Staff also critiqued the Company's transmission analysis, the Company's limited modeling of storage resources, and the capacity credit for solar

[1] The Company specifically proposed its plan with this in mind. It said that it may "adjust its plans in the future should lower cost technologies become available or demand not materialize as forecasted in this IRP." (8 TR 1263.)

resources, which Staff said might be reduced in the future. (9 TR 2664–2667, 2713, 2815–2819.) Despite these concerns, Staff did not call for the Commission to reject the Company's plan; Staff's concerns did not rise to this level. Rather, Staff generally hailed the plan as "the most reasonable and prudent means of meeting the Company's energy and capacity needs." (9 TR 2543.) Staff focused on the first three years of the plan because capital expenditures for these three years are the only ones that can be preapproved. MCL 460.6t(11)–(12).[2]

Staff's testimony critiquing the Company's plan was meant to inform the ALJ and the Commission in the hopes that they would require the Company to address these issues in its next plan review. Likewise, in Staff's briefs, Staff reiterated its critiques but maintained that the Company's preferred course of action was the most reasonable and prudent way to meet demand. (Staff's Revised Initial Br, pp 90–91.) Because Act 341 requires Consumers to file plan reviews every five years, there is not an urgent need to finely tune the last few years of the Company's plan in this case. The same cannot be said of the first years of the plan, which is why Staff focused on these years and seriously scrutinized the capital costs planned for those years.

[2] Under Section 6t(11), "The costs for specifically identified investments, including the costs for facilities under subsection (12) included in an approved integrated resource plan that are commenced within 3 years after the commission's order approving the initial plan, amended plan, or plan review are considered reasonable and prudent for cost recovery purposes." MCL 460.6t(11).

While the out years of Consumers' plan guide its long-term planning, it will have opportunities in later plan reviews or amended plans to fine tune the out years. Staff has critiqued many aspects of the Company's IRP, intent on improving its next IRP filing but not upending the Company's pending plan, which is a major departure from its current business model and a meaningful step in the right direction. In at least one respect, Staff's critiques were similar to the Commission's criticisms of DTE Electric's requested Certificate of Necessity in Case No. U-18419, which like Staff's critiques in this case, "were largely of DTE's longer-range forecasts." *In re DTE Electric Co's Application for Approval of Facility*, unpublished opinion per curiam of the Court of Appeals, issued February 7, 2019 (Docket No. 344031).

The Commission's criticisms in Case No. U-18419 did not prevent the Commission from approving DTE's CON or the Court from upholding the Commission's order. *Id*. Staff's critiques in this case, which also concern long-term forecasts, should not preclude approval either.

B. Consumers' IRP should not be rejected because of the prospect that it could remain in place indefinitely.

Consumers' IRP cannot remain in place for more than three to five years. The ALJ recommended rejecting the Company's plan because, in part, of concerns that "the approved plan may remain in place with no subsequently approved plan for an indefinite time period." (PFD, p 148.) But this is not a realistic possibility, assuming the Company files a plan review within five years, as it must. MCL

460.6t(20). The Company committed to file a plan review in three years, and although the ALJ was understandably cautious about viewing the Company's commitment to file a plan within three years "as a legally binding commitment," (PFD, p 147), the Commission could give it binding effect. Specifically, the Commission could make the Company's commitment to file a plan review in three years a condition of approving the Company's plan, which would force the Company to either accept or reject the condition. See MCL 460.6t(7). In any case, the Company must file a plan review within five years, MCL 460.6t(20), and the Commission can, on its own motion or on request, require the Company to file one earlier. MCL 460.6t(21).

Recognizing that Consumers will likely file plan review in three years—and will certainly file one no later than five years from an order approving its plan in this case—the plan approved in this case cannot continue for an indefinite time. This is true even if the Commission approves the Company's plan in this case and does not approve future plan reviews. If that were to happen, it would be akin to rejecting the Company's initial plan. This is because Act 341 requires the Commission to "consider a plan review under the same process and standards" used for the initial plan. MCL 460.6t(20). Under these standards, the Commission has three options: it can either recommend changes, approve the plan, or reject the plan. None of these options allow the original plan to remain in place indefinitely.

If the Commission recommends changes, the Company has an opportunity to accept one or more of the changes. MCL 460.6t(7). At that point, the Commission

either accepts or rejects the revised plan. *Id*. If the Commission denies the plan, the Company may revise and resubmit the plan. MCL 460.6t(9). If it does, the Commission is to commence a new, expedited contested case hearing to consider the revised plan, at the end of which the Commission either accepts or rejects the revised plan. *Id*. All roads lead to the same end. The Commission ultimately either accepts or rejects the plan. And under the law, the same is true for a later plan review: the Commission must either accept or reject the plan review. See MCL 460.6t(20) ("The Commission shall consider a plan review under the same process and standards established in this section for review and approval of an integrated resource plan.").

Like the Commission, the Company's options are limited. If the Commission rejects a plan, the Company can either proceed with the investments it proposed in its plan without assurances of cost recovery, see MCL 460.6t(10), or it can file a revised plan for the Commission's consideration. The Company's options, and the outcomes, are the same in a plan review. See MCL 460.6t(20). This means that if the Commission rejects the plan review and the Company does not refile, the Company does not revert to the initially approved plan; *it no longer has a plan*. The Company may nonetheless make the investments included in its initial plan, but if it does so outside of the three-year window in that plan, the Company would be required to go through the normal rate case prudency review.

Even if the Commission, on its own motion, requires Consumers to file a plan review, the outcome is the same. The Commission may, at the Department of Environmental Quality's request or on its own motion, order the Company to file a plan review. In this case, the Company has 270 days to comply. MCL 460.6t(21). In a plan review, long-term expenditures included in a previously approved plan have little bearing on whether expenditures in an updated plan are approved. This is true even if the same long-term expenditures were included in a previously approved plan. Under Section 6t(11), if these expenditures were planned more than three years out, then they were not approved for cost recovery, so their approval in a later plan review is not a foregone conclusion.

In short, Act 341 has exhaustive processes and standards. And nowhere in the Act does it say that a utility can continue operating under its initially approved plan if the Commission rejects a later plan review. The absence of specific language establishing a process like this undermines the notion that the Company can operate under its initially approved plan indefinitely if a later plan review is rejected. This is particularly true in the context of a statute that prescribes an airtight process for approval and rejection of plans and plan reviews. See *KMH Equip Co v Chas J Rogers, Inc*, 104 Mich App 563, 566 (1981) ("The Legislature elected to afford protection to equipment lessors in such statutes by specific

language. The absence of similar specific language . . . leads to the conclusion that the Legislature chose not to expand the category of persons protected . . . .").[3]

C. Flexibility in the Company's plan alleviates the concerns that prompted the ALJ to recommend rejecting the plan.

The ALJ agreed that the Company's plan is flexible and relied on this flexibility to deflect economic or reliability concerns. (PFD, p 171.) This same flexibility should alleviate many, if not all, of the ALJ's other concerns. In response to concerns that wind and solar are unreliable during winter peak demand periods and that solar costs will not decline as quickly as expected, the ALJ agreed with the Attorney General, the Company, and Staff that the Company's plan is flexible enough to avoid these pitfalls. These parties took the position that "the plan's flexibility naturally mitigates concerns about economic and reliability risk and . . . the plan can be closely monitored in future IRP filings." (PFD, p 171.) The ALJ agreed. This same flexibility cautions against rejecting the Company's plans for concerns about transmission and storage. As the ALJ acknowledged, the plan will be closely monitored in later plan filings, not to mention the regular reporting that Staff proposed and the ALJ supported. (PFD, pp 171, 295–296.) Possible flaws that

---

[3] In other contexts (e.g., renewable energy plans and energy waste reduction plans), a utility can continue operating under its initially approved plan if a plan review is rejected. But there is language in Act 341 that is not present in Acts 295 or 342. As described above, Act 341 says that the Commission "shall consider a plan review under the same process and standards" used for the initial plan. MCL 460.6t(20). Under these standards, if the Commission denies a plan, a utility has an opportunity to revise its plan, but if it does not, it is left without any assurances. See MCL 460.6t(10). Acts 295 and 342 do not have similar language.

have come to light in this case and that may come to light in the future can be corrected in a later plan review.

Transmission is a perfect example. The Michigan Electric Transmission Company (METC) said that the Company's preferred course of action could degrade the Lower Peninsula's capacity import limit, (8 TR 2498), and Staff was concerned that this degradation could complicate the Company's plan "in the later years when it depends on more imports." (9 TR 2665.) But rather than recommending that the Commission reject the Company's plan as a result, Staff recommended that the Commission order the Company to continue investigating "transmission improvements that facilitate the import of both capacity and energy, including the impact to the capacity import limit." (9 TR 2664.) Staff also recommended that the Company consider transmission investments in future plan reviews, even offering to partner with regional stakeholders to perform a more comprehensive analysis of the whole region's transmission system. (*Id.*) The Company's plan is flexible enough to accommodate Staff's recommendations.[4]

Other items in the Company's plan that Staff objected to, like the Company's proposed financial compensation mechanism, do not have to be part of the plan. And as long as these items are not incorporated into the plan as the Company proposed, they do not merit rejecting the plan. An incentive on power purchase agreements, for example, is completely discretionary. The Commission need only

[4] There are also other reasons, described in the next section, why transmission concerns do not merit rejecting the plan.

consider an incentive if the Company enters into a power purchase agreement; the Commission has no obligation to approve an incentive. MCL 460.6t(15). A financial incentive on power purchase agreements is not a necessary component of a plan. See MCL 460.6t(8) (making no mention of incentives when laying out the prerequisites for plan approval). The Commission may approve the Company's IRP without approving its proposed incentive.

In conclusion, the ALJ agrees that Consumers' plan is flexible enough to alleviate concerns about economic and reliability risks inherent in the plan; it is also flexible enough to mitigate concerns about transmission and storage. The plan's flexibility belies all recommendations to reject it. The Commission should approve the plan.

D. Consumers complied with MCL 460.6t(5)(h) and (j).

Based on concerns about Consumers' analysis of the transmission upgrades needed to support its plan, the ALJ concluded that the Company did not comply with MCL 460.6t(h) and (j). (PFD, pp 149–162.) Staff, by contrast, had concluded that the Company's transmission analysis met the filing requirements. Staff witness Lynn Beck testified that the Company worked collaboratively with METC "to evaluate potential new or upgraded electric transmission options for the utility." (9 TR 2857.) According to Ms. Beck, "The Company provided METC with six scenarios which the Company based on possible generation fleet changes." (9 TR 2599.) The Company also considered transmission alternatives and capacity import and export limits in its plan. (See Exhibit 2, IRP, Section 12.) Company witness

Donald Lynd described the Company's transmission analysis in his testimony, and Staff thoroughly scrutinized the Company's analysis. (9 TR 2598–2605.)

Although the ALJ found that Ms. Beck's testimony cast doubt on the reasonableness of the Company's transmission analysis, particularly its cost estimate, this was not Staff's intent. Staff recognized that the Company performed a transmission analysis as MCL 460.6t(h) and (j) require. Although Staff knew that METC did not specifically study the Company's proposed course of action, Staff understood that it had a good reason for not doing so. Consumers approached METC early, while it was still developing its IRP, and provided METC with different scenarios to consider. At the same time, Consumers was performing its own modeling and choosing the best resources for its plan. Because METC's transmission analysis and the Company's modeling took place concurrently, "the Company could not provide METC with the details of the Proposed Course of Action for METC to study." (9 TR 2599.)

Staff not only diagnosed the problem; Staff also recommended that the Company improve future transmission analyses by, among other things, refining its interconnection cost estimate for specific generation types. Variation in the size and location of resources—relative to the distribution and transmission grid—impacts generation costs. And the Company can do more to take resource size and location into account to refine its interconnection cost estimate. (9 TR 2600.) Staff witnesses Lynn Beck and Naomi Simpson identified several ways for the Company to continue improving its transmission analyses now and in future plan cases. (9

TR 2600–2601, 2603–2605, 2664.) Rather than reject the Company's plan over process improvements, Staff recommends the Commission instruct the Company to make these changes going forward if it wants the Commission to approve future plan reviews.

There is yet another reason why Staff's recommendations should not be construed as reasons to reject the Company's plan: cost preapprovals in this case are limited to the first three years following a Commission order approving the plan. MCL 460.6t(11). As the ALJ highlighted, "Staff expects that the limited number of resources the Company is seeking approval for in the initial three years of its IRP will have a minimal impact to the overall transmission system," (PFD, p 154), which gives the Company ample time to continue refining its transmission analysis process for its next plan case. The Company should take this time to, not only improve its projected interconnection costs, but also to investigate other stakeholder processes held by regional transmission operators that may help to evaluate the impact of the Company's long-term plan on the larger electrical grid.

E. The Commission should adopt Staff's recommendations concerning PURPA avoided costs.

Staff agrees with some of the ALJ's PURPA findings and disagrees with others. Because this is Exceptions, Staff focuses on areas of disagreement. One issue that was not addressed should be addressed in the ten-month order: the Company's obligation, or lack thereof, to purchase capacity from its interconnection queue. The Independent Power Producers Coalition of Michigan (IPPC) and the

Solar Energy Industries Association (SEIA) argued below that Consumers has a legally enforceable obligation (LEO) to purchase capacity from QFs who have started the interconnection process. (IPPC's Initial Br, pp 4–8; SEIA's Initial Br, p 16.) But the Commission has initiated a stakeholder process to define LEOs and determine when they begin; this process should be allowed to run its course before deciding whether the Company has a LEO to purchase capacity from its queue. (See Staff's Reply Br, pp 6–8.)

Under the Commission's February 22, 2018 and October 5, 2018 Orders in Case No. U-18090, Consumers is required to pay the first 150 megawatts (MW) in its interconnection queue the full-avoided capacity costs established in Case No. U-18090. Beyond this, the Commission has not made further decisions about the remaining capacity in Consumers' interconnection queue, except to say that qualifying facilities (QFs) "*may* continue to enter into contracts with Consumers at the PRA price for capacity and one of the forecasted energy prices for energy" and to "*allow* the parties to move forward." *In re PURPA Avoided Costs*, MPSC Case No. U-18090, 10/5/18 Order, pp 17–18 (emphasis added). The language the Commission used is entirely permissive. (See Staff's Reply Br, pp 6–8.)

To dispel any confusion surrounding these issues, Staff respectfully asks the Commission to confirm that Consumers does not currently have a LEO to purchase capacity from QFs in its interconnection queue and that decisions about this issue will be made after the Commission-initiated process has run its course.

1. Staff does not agree that Consumers has a capacity need by virtue of its plan to acquire long-term capacity.

Staff and the Company support a five-year, capacity-planning horizon, which is the period used to evaluate the Company's capacity need. In Case No. U-18090, "Staff proposed [and the Commission adopted] a 10-year capacity determination period in which the Company would be required to pay the full avoided cost capacity rate if it had a capacity need in any of the years within the 10-year period." (9 TR 2722.) Staff supported shortening the period to five years in this case because it has a better understanding "how the IRP and State Reliability Mechanism (SRM) process work and the requirements within these two processes." (9 TR 2722–2723.) In response to discovery, Staff said, "If the Company is actively pursuing its Commission approved capacity plan as presented in its Integrated Resource Plan, then Staff believes that the Company does not have a capacity need, provided the Company will be conducting competitive solicitations" that are open to all QFs. (Exhibit A-110.)

The ALJ did "not find a five-year horizon unreasonable" but said she "has no basis on this record to speak to the proviso, that as long as Consumers Energy plans to meet its capacity needs through competitive solicitation, it has no capacity need." (PFD, p 289.) The ALJ also found that "because the Company is planning to acquire long-term capacity," it has a capacity need. (*Id.*) If the Commission were to agree that any plan to acquire long-term capacity equates to a capacity need, this would place no outer limit on the capacity-planning horizon. The Company could project that it will have a capacity need two decades from now, and this capacity

need would be treated the same as a capacity need expected within three years. This cannot be the standard. Indeed, Staff does not believe that the ALJ intended to recommend this standard, but someone could draw this conclusion from her analysis of the issue, which is why Staff is compelled to address it.

Regardless of whether the Commission adopts a five-year or ten-year planning horizon in this case, the undisputed evidence is that the Company does not have a capacity need over the next ten years. Rather, it is planning to ramp up solar "to replace capacity *lost in 2030 and 2031* [and] to diversify the Karn Units 1 and 2 backfill plan." (7 TR 909, emphasis added.) According to Company witness Thomas Clark, the Company must begin ramping up resources now in order to prepare for the "capacity needs created by the termination of the MCV PPA; the age related retirement of Campbell Units 1 and 2 in May 2031; and the age related retirement of Karn Units 3 and 4 in May 2031." (7 TR 907.) "Combined," he said, "these terminations and retirements create nearly a 3,100 MW need in the early 2030s." (*Id.*)

Based on this evidence, the Company does not have a capacity need under any capacity-planning horizon proposed for this case, even a ten-year horizon. But looking ahead to future cases, Staff took the position that if the Company is actively seeking to fill a capacity need through competitive solicitations that are open to all QFs, the Company should not be considered to have a capacity need. (Exhibit A-110.) A capacity need would arise during the planning horizon only if the Company is unable to fill the requested capacity amount through competitive solicitations.

Staff recommended that any remaining capacity not filled by a competitive solicitation would be offered to QFs. (9 TR 2721.) This likely passes muster under PURPA, given that FERC gives states "a wide degree of latitude in establishing an implementation plan for section 210 of PURPA" in keeping with FERC's regulations. *In re California Pub Utilities Comm*, 133 FERC P 61059, ¶ 24 (2010).[5]

On a related note, the ALJ also found that "the parties arguing for a determination that the company has no capacity need as long as it is soliciting capacity through a competitive solicitation process are conflating two questions: does the utility have a capacity need; and how will avoided costs be determined when a capacity need exists." (PFD, p 288.) Staff and the other parties supporting competitive bidding are not conflating these questions, but the issues are linked. If conducting a request for proposal (RFP) to set avoided costs means that a capacity need exists, then the avoided costs for PURPA will have to be administratively set and will always run the risk of being either discriminatorily set too low or being set higher than necessary, resulting in additional costs to rate payers since there would be no other benchmark for setting avoided costs.

Competitive bidding balances these competing forces, and the parties generally agree that competitive bidding should be used to set avoided costs. The only way to do that is to conduct RFPs allowing QFs to participate and let any capacity not filled through the RFP process be filled through PURPA contracts at

---

[5] In the next section, Staff also demonstrates the Company adequately supported its proposal to reduce the contract length offered to QFs when there is no capacity need.

the full avoided capacity cost. Many parties to this case support competitive bidding, as long as a process is established to ensure the solicitation process is inclusive, unbiased, and transparent. (Staff's Revised Initial Br, p 51.) The ALJ even found that the Company's competitive solicitation is a reasonable means of acquiring capacity and establishing avoided costs. (PFD, p 196, 297, 298.)

In order to acquire resources at the lowest possible costs for ratepayers, the Commission should approve Consumers' competitive-bidding construct for determining avoided costs.

2. Consumers supported its proposal to reduce the contract term it offers to QFs when the Company has no capacity need.

Staff supports the Company's position to offer a QF an avoided energy price for a five-year contract based on a forecast of MISO locational marginal pricing (LMP) or a 15-year contract using actual LMP.[6] This contract term reduction would occur only in situations where the Company does not have a capacity need between RFPs. The ALJ said that the Company's "proposal to reduce to 5 years the term of contract offered to a QF in the event the company has no capacity need has not been supported." (PFD, p 298.) But Company witness Keith Troyer supported the Company's recommendation. Concerning the energy price for the five-year contract, Mr. Troyer said, "A short-term forecast of the MISO LMP is appropriate to use as

[6] Along with the avoided energy price, QFs would also receive a capacity price using the MISO PRA—whether the QF opted for the five-year contract or the 15-year contract. (Staff's Revised Initial Br, p 54.)

the rate for energy because, absent the QF, the Company would expect to purchase energy from the MISO market." (8 TR 1256.) He also noted that "the Company's forecast of LMPs is more accurate in the near term than in the long term due to shifts in technology and generation fuel prices that affect the market." (*Id*.)

The benefit of limiting contract lengths offered to QFs that request the forecasted LMP is that it "limit[s] financial exposure to customers due to separations between the forecast and actual market trends." (8 TR 1256.) Utilities are not obligated under PURPA to "enter contracts to make purchases which would result in rates which are not 'just and reasonable to electric consumers of the electric utility and in the public interest.' " *In re City of Ketchikan*, 94 FERC P 61,293, *5 (2001) (citing 16 USC 824a-3(b) (1994)). This suggests that the MPSC has broad discretion to set avoided cost rates to limit customers' financial exposure. Moreover, FERC has held that "while utilities may have an obligation under PURPA to purchase from a QF, that obligation does not require a utility to pay for capacity that it does not need." *Id*. at *6. And if the Company does not have to pay for capacity it does not need, it can *a fortiori* limit the contract length for capacity it does not need.

The ALJ cited *In re Hydrodynamics, Inc*, 146 FERC P 61,193 (2014), when concluding that "whether the company's proposal to revise the contract length for QFs when there is no capacity need passes muster under PURPA may thus turn on whether the contract that would be available to a QF seeking a fixed energy price, is considered a short-term or long-term contract." (PFD, p 291.) In the

Hydrodynamics case, FERC declared unlawful a Montana Public Service Commission order limiting a utility's obligation to purchase more than 50 MW of installed capacity from certain facilities. Consumers' proposals in this case are distinguishable from the Montana PSC's order.

One reason that FERC ruled against the Montana Commission was its failure to establish "that a 50 MW installed capacity limit has any clear relationship to [the utility's] actual demand for capacity." *Id.* at ¶ 35. By contrast, in this case, the Company and Staff are not proposing an artificial limit on the Company's obligation to purchase. Rather, the Company is proposing energy and capacity rates that are tied to the Company's demand for capacity. For energy rates, for example, when the Company does not have a capacity need, QFs would be able to choose from an avoided energy price for a five-year contract, based on a forecast of MISO LMP, or a 15-year contract using actual LMP.

Moreover, in the *Hydrodynamics* case, FERC said that "requiring a QF to win a competitive solicitation as a condition to obtaining a long-term contract imposes an unreasonable obstacle to obtaining a legally enforceable obligation *particularly where, as here, such competitive solicitations are not regularly held*." 146 FERC P 61,193, ¶ 32 (2014) (emphasis added). In this case, the Company has agreed to Staff's proposal to conduct competitive solicitations regularly on an annual basis. (8 TR 1281.)

The ALJ also relied on *Windham Solar*, where FERC held, among other things, that a state regulation is "inconsistent with PURPA and the Commission's

PURPA regulations to the extent that it offers the competitive solicitation process *as the only means by which a QF can obtain long-term avoided cost rates*." 156 FERC 61,042, ¶¶ 4-5 (2016) (emphasis added). In this case, however, the solicitation process is not the only way for QFs to obtain long-term avoided cost rates.

For one, Consumers has committed to paying certain QFs—those with generators that are 150 kilowatts (kW) or smaller—the full avoided cost rate regardless of capacity need, provided the Commission limits the standard offer program to generators that do not exceed 150 kW. (8 TR 1275.) Second, for QFs larger than 150 kW, besides having an opportunity to participate in the solicitation process, any capacity not filled through competitive solicitations would be offered to QFs at the full avoided cost rate. (9 TR 2721.) These factors were not present in *Windham Solar*.

In sum, the reduction to a five-year contract term is an option for QFs that will be offered if the Company has no capacity need between RFPs. This offering from the Company allows for more QF development and gives QFs another avenue for development. This passes muster under PURPA, as discussed above, particularly when viewed in the context of the "wide degree of latitude" that FERC gives states when "establishing an implementation plan for section 210 of PURPA." *In re California Pub Utilities Comm*, 133 FERC P 61059, ¶ 24 (2010).

3. The standard offer cap should be 150 kilowatts or less.

The Company proposes to extend its standard offer tariffs to QFs that are 150 kW or less. This 150 kW limit would be a reduction to the standard offer limit approved in Case No. U-18090 of two MW or less. Mr. Troyer said that 18 CFR 292.304(c) requires a standard offer of at least 100 kW, and MCL 460.1173 limits the participation in the distributed generation program to 150 kW. (8 TR 1274.) Staff supports the Company's proposal. Reducing the standard offer size limit would align the PURPA standard offer tariffs with the maximum size for distributed generation projects. And capping the standard offer at 150 kW will likely reduce the complexity of interconnections—a burden to both the Company and QFs—and will in turn reduce interconnection costs. (8 TR 1304.)

The Company made further offers regarding the standard offer if the maximum project size is lowered to 150 kW. All QFs with projects up to 150 kW will be offered a contract at the most recently approved full avoided cost, regardless of the Company's capacity need. These contracts will be offered with terms up to 25 years. The ALJ relied on the Commission's May 31, 2017 Order in Case No. U-18090 as the basis for a 2 MW standard offer size. But as the Company and Staff have pointed out repeatedly, the information from Case No. U-18090 is stale and in need of updates. The ALJ also acknowledged that the Commission has held this size limit should be revisited in future avoided cost proceedings. (PFD, p 282.)

4. Recent cost trends merit updating avoided cost rates and standard offer terms.

The Commission stated in Case No. U-20095 that PURPA avoided costs should be updated in IRP cases, and Staff supports updating the avoided cost in this IRP case. Although the ALJ generally recommended that the Commission not update the PURPA avoided cost rates and standard offer terms approved in Case No. U-18090, (PFD, pp 282–292), the time is right to make these changes. It is imperative to address the avoided cost rate in this proceeding to reflect current cost trends since it has been approximately two years since avoided cost rates were analyzed in a contested proceeding. (See Staff's Revised Initial Br, p 49.)

IV. Conclusion

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

Respectfully submitted,

MICHIGAN PUBLIC SERVICE
COMMISSION STAFF

Spencer A. Sattler (P70524)
Heather M.S. Durian (P67587)
Amit T. Singh (P75492)
Daniel E. Sonneveldt (P58222)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

DATED: March 4, 2019

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

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

PAMELA A. PUNG, being first duly sworn, deposes and says that on **March 4, 2019,** she served a true copy of the **Michigan Public Service Commission Staff's Exceptions** upon the following parties **via e-mail only:**

Consumers Energy Company
Anne M. Uitvlugt
Robert W. Beach
Bret Totoraitis
Gary A. Gensch, Jr.
Michael C. Rampe
Theresa A.G. Staley
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201
anne.uitvlugt@cmsenergy.com
robert.beach@cmsenergy.com
bret.totoraitis@cmsenergy.com
gary.genschjr@cmsenergy.com
michael.rampe@cmsenergy.com
theresa.staley@cmsenergy.com
mpsc.filings@cmsenergy.com

Administrative Law Judge
Hon. Sharon L. Feldman
Administrative Law Judge
7109 W Saginaw Hwy., 3rd Floor
Lansing, MI 48917
feldmans@michigan.gov

Michigan Environmental Council
Christopher M. Bzdok
Lydia Barbash-Riley
420 E. Front Street
Traverse City, MI 49686
chris@envlaw.com
kimberly@envlaw.com
karla@envlaw.com
lydia@envlaw.com

Energy Michigan, Inc.
Laura A. Chappelle
Timothy J. Lundgren
201 N. Washington Square, Suite 910
Lansing, MI 48933
lachappelle@varnumlaw.com
tjlundgren@varnumlaw.com

Consumers Energy Company
Anne M. Uitvlugt
Robert W. Beach
Bret Totoraitis
Gary A. Gensch, Jr.
Michael C. Rampe
Theresa A.G. Staley
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201
anne.uitvlugt@cmsenergy.com
robert.beach@cmsenergy.com
bret.totoraitis@cmsenergy.com
gary.genschjr@cmsenergy.com
michael.rampe@cmsenergy.com
theresa.staley@cmsenergy.com
mpsc.filings@cmsenergy.com

Michigan Environmental Council
Christopher M. Bzdok
Lydia Barbash-Riley
420 E. Front Street
Traverse City, MI 49686
chris@envlaw.com
kimberly@envlaw.com
karla@envlaw.com
lydia@envlaw.com

Energy Michigan, Inc.
Laura A. Chappelle
Timothy J. Lundgren
201 N. Washington Square, Suite 910
Lansing, MI 48933
lachappelle@varnumlaw.com
tjlundgren@varnumlaw.com

Environmental Law & Policy Center, Ecology Center, Union of Concerned Scientists & Vote Solar
Margrethe K. Kearney
Environmental Law & Policy Center
1514 Wealthy St. SE, Suite 256
Grand Rapids, MI 49506
mkearney@elpc.org

Cadillac Renewable Energy, LLC; Genesee Power Station, LP; Grayling Generating Station, LP; Hillman Power Company, LLC; TES Filer City Station, LP; Viking Energy of Lincoln, Inc; Viking Energy of McBain, Inc.
Thomas J. Waters
Anita G. Fox
Fraser Trebilcock Davis & Dunlap, PC
124 Allegan Street, Suite 1000
Lansing, MI 48933
twaters@fraserlawfirm.com
afox@fraserlawfirm.com

Michigan Electric Transmission Company
Richard J. Aaron
Courtney Kissel
Dykema Gossett, PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
raaron@dykema.com
ckissel@dykema.com

Michigan Energy Innovation Business Council & Institute for Energy Innovation
Laura A. Chappelle
Varnum Law Firm
201 N. Washington Square
Suite 901
Lansing, MI 48933
lachappelle@varnumlaw.com

Cypress Creek Renewables, LLC
Jennifer Utter Heston
Fraser Trebilcock Davis & Dunlap, P.C.
124 W. Allegan, Suite 1000
Lansing, MI 48933
jheston@fraserlawfirm.com

Attorney General Dana Nessel
Celeste R. Gill
Assistant Attorney General
P. O. Box 30755
Lansing, MI 48909
gillc1@michigan.gov
ag-enra-spec-lit-@michigan.gov

Midland Cogeneration Venture, LP
Jason Hanselman
John A. Janiszewski
Dykema Gossett, PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933
jhanselman@dykema.com
jjaniszewski@dykema.com

Independent Power Producers Coalition of Michigan
Timothy Lundgren
Laura A. Chappelle
Varnum Law Firm
201 N. Washington Square
Suite 910
Lansing, MI 48933
lachappelle@varnumlaw.com
tjlundgren@varnumlaw.com

Michigan Chemistry Council & Solar Energy Industries Association
Toni L. Newell
Varnum Law Firm
333 Bridge Street, NW
Grand Rapids, MI 49504
tlnewell@varnumlaw.com

Jennifer Utter Heston
Fraser Trebilcock Davis & Dunlap, PC
124 W. Allegan St., Ste. 1000

Toni L. Newell
333 Bridge Street, NW
Grand Rapids, MI 49504
tlnewell@varnumlaw.com

Residential Customer Group & Great Lakes Renewable Energy Association
Don L. Keskey
Brian W. Coyer
Public Law Resource Center PLLC
University Office Place
333 Albert Avenue, Suite 425
East Lansing, MI 48823
donkeskey@publiclawresourcecenter.com
bwcoyer@publiclawresourcecenter.com

Sierra Club
Michael Soules
1625 Mass Ave, NW, Ste702
Washington, DC 20036
msoules@earthjustice.org

Lansing, MI 48933
jheston@fraserlawfirm.com

Association of Businesses Advocating Tariff Equity
Michael J. Pattwell
Bryan A. Brandenburg
Clark Hill, PLC
212 E Cesar E. Chavez Avenue
Lansing, MI 48906
mpattwell@clarkhill.com
bbrandenburg@clarkhill.com

Invenergy Renewables LLC.
Nolan J. Moody
Brandon C. Hubbard
Dickinson Wright
215 S. Washington Sq., Suite 200
Lansing, MI 48933
nmoody@dickinsonwright.com
bhubbard@dickinsonwright.com

____
PAMELA A. PUNG

Subscribed and sworn to before me
this **4th** day of **March, 2019.**

____
De Ann M. Payne, Notary Public
State of Michigan, County of Eaton
Acting in the County of Eaton
My Commission Expires: 11-29-24