

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for approval of power purchase agreement)	Case No. U-20496
amendments.)	
_____)	

In the matter of the complaint of the)	
INDEPENDENT POWER PRODUCERS COALITION)	
OF MICHIGAN against CONSUMERS ENERGY)	Case No. U-17981
COMPANY concerning violations of the Public Utility)	
Regulatory Policies Act of 1978, and related)	
Commission orders.)	
_____)	

At the April 18, 2019 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Daniel C. Scripps, Commissioner

ORDER

On March 7, 2019, Consumers Energy Company (Consumers) filed an application in Case No. U-20496 pursuant to Section 6j of 1982 PA 304 (Act 304) requesting *ex parte* approval of amendments to the power purchase agreements (PPAs) with Viking Energy Corporation (Viking) for the output of the Lincoln Plant and McBain Plant (Viking Plants).

The Viking Plants are qualifying facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 USC 2601 *et seq.* The PPAs with the Viking Plants were scheduled to expire

on December 31, 2018, but provided for year-to-year extensions until notice of termination was served by either party with at least one year's written notice. Consumers provided notice to the Viking Plants on December 15, 2017, electing to terminate the PPAs at the end of calendar year 2018. After receiving this notification, Viking joined the complaint filed by the Independent Power Producers Coalition of Michigan in Case No. U-17981. On September 28, 2018, the Commission issued an order in Case No. U-17981 (September 28 order) finding that the avoided cost payment rate, as well as other contract terms and conditions that were in effect prior to the expiration of the PPAs, shall continue until such time as new PPAs are negotiated and executed. September 28 order, pp. 3-4.

Consumers filed testimony and exhibits in support of its application, informing the Commission that Consumers and Viking had reached an agreement to amend the PPAs for the Viking Plants by executing documents titled "Amendment No. 2 to Power Purchase Agreement between Consumers Energy Company and Viking Energy of Lincoln LLC" and "Amendment No. 2 to Power Purchase Agreement between Consumers Energy Company and Viking Energy of McBain, LLC." Consumers' application, pp. 1-3. In its application, Consumers explained that the amendments do the following: (1) extend the terms of the PPAs until May 31, 2027; (2) allow for the Viking Plants to receive Biomass Merchant Plant payments pursuant to 2008 PA 286 until December 31, 2026; (3) revise the capacity and energy payments such that the rates paid to the Viking Plants under the amended PPAs are lower than the rates paid under the existing PPAs; (4) provide for the decommissioning of the Viking Plants through a monthly security payment; and (5) provide for the transfer of all renewable energy credits associated with the contracted-for energy and capacity at no additional cost. Consumers' application, pp. 2-5; Consumers' testimony, pp. 10-11.

Consumers further testified that approval of the amended PPAs will reduce costs for the company's customers when compared to the cost paid under the terms and conditions currently in effect in accordance with the September 28 order. Thus, according to the company, *ex parte* approval is appropriate as the proposed amendments will not result in a rate increase. Consumers' application, p. 5.

Discussion

MCL 460.6j(13) provides, in relevant part, that the Commission shall do the following:

(b) Not disallow the capacity charges for any facilities for which the electric utility would otherwise have a purchase obligation if the commission has approved capacity charges in a contract with a qualifying facility, as that term is defined by the Federal Energy Regulatory Commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat 3117, unless the commission has ordered revised capacity charges upon reconsideration under this subsection. A contract is valid and binding in accordance with its terms, and capacity charges paid pursuant to that contract are recoverable costs of the utility for rate-making purposes notwithstanding that the order approving that contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or by July 29, 1987 if the order was issued after September 1, 1986 and before June 29, 1987. The commission shall determine the scope and manner of the review of capacity charges for a qualifying facility. Except as to approvals for qualifying facilities granted by the commission before June 1, 1987, proceedings before the commission seeking those approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges for a qualifying facility in a contested case hearing after passage of a period necessary for financing the qualifying facility, if both of the following apply:

(i) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval.

(ii) The commission finding is set forth in a commission order subject to immediate judicial review.

The Commission has considered the language in Section 6j of Act 304, Consumers'

application, and the Commission's September 28 order and finds that the amended PPAs should be approved. *Ex parte* review and approval are appropriate, as the amended PPAs will not increase rates. *See*, MCL 460.6a(3). Because the Commission is approving amended PPAs for the Viking Plants, the Commission's directive in the September 28 order that the avoided cost payment rate and other contract terms that were in effect prior to expiration shall continue to be in effect, is no longer applicable. *See*, September 28 order, pp. 3-4.

THEREFORE, IT IS ORDERED that the power purchase agreement amendments between Consumers Energy Company and Viking Energy Corporation for the output of the Lincoln and McBain Plants are approved as in compliance with 1982 PA 304.

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 pungpl@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

Daniel C. Scripps, Commissioner

By its action of April 18, 2019.

Kavita Kale, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

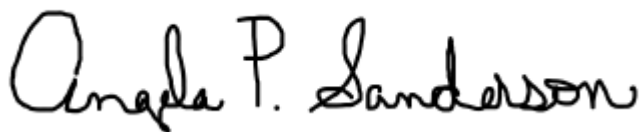
Case No. U-20496 *et al.*

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on April 18, 2019 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).


Brianna Brown

Subscribed and sworn to before me
this 18th day of April 2019.



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

Service List for Case: U-20496

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Service List for Case: U-17981

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