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 agreements.	))))	Case No. U-20838

At the February 4, 2021 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER

On December 16, 2020, Consumers Energy Company (Consumers) filed an application in Case No. U-20838 pursuant to Section 6j of Public Act 304 of 1982 (Act 304), requesting *ex parte* approval of four power purchase agreements (PPAs) with members of the Independent Power Producers Coalition of Michigan (IPPC). The PPAs are between Consumers and Energy Developments Byron Center, LLC (Byron Center) for the output of the Byron Center landfill gas-fueled electric generation facility (Byron Center Plant); Energy Developments Coopersville, LLC (Coopersville) for the output of the Coopersville landfill gas-fueled electric generation facility (Coopersville Plant); Energy Developments Grand Blanc, LLC (Grand Blanc) for the output of the Grand Blanc landfill gas-fueled electric generation facility (Grand Blanc Plant); and Energy Developments Pinconning, LLC (Pinconning) for the output of the Pinconning landfill gas-fueled electric generation facility (Pinconning Plant). Consumers provided the following history for each PPA.

On May 29, 1990, Consumers and Granger Renewable Resources, Inc. (Granger Renewable Resources) entered into a PPA for the output of the Landfill No. 2 Plant (now known as the Byron Center Plant). The PPA was assigned to Granger Electric Company (Granger Electric) on March 29, 1991. That PPA was amended three times: once in 1990, and twice in 1993. An amended and restated PPA was entered into on August 14, 1995, which was later amended with a second amended and restated PPA dated September 12, 1997. The PPA was assigned in 2008 to Granger Electric of Byron Center and later sold to Energy Developments, Inc. (EDL) in 2017. The PPA's initial term was set to terminate on April 10, 2026. In conjunction with an agreement reached by Consumers and Byron Center for a new PPA, on March 22, 2019, Consumers issued a notice to Byron Center that the original PPA would terminate on May 31, 2019, and the new PPA would start June 1, 2019, and continue through May 31, 2039.

Consumers entered into PPAs for the output of the landfill gas-fueled electric generation facilities at the Seymour Road generation facility on September 12, 1997, and the Ottawa generation facility on September 2, 1993. The Seymour Road and Ottawa facilities exercised subsequent plant site provisions and transferred to the Coopersville Plant. The previous PPAs and subsequent plant site provisions were sold to EDL in 2017. The PPA's initial term terminated on June 20, 2029. In conjunction with an agreement reached by Consumers and Coopersville for a new PPA, on March 22, 2019, Consumers issued a notice to Coopersville that the original PPA would terminate on May 31, 2019, and the new PPA would start June 1, 2019, and continue through May 31, 2039. Upon execution of the new PPA with Coopersville, the

Ottawa and Seymour facilities are no longer under agreement with Consumers; the PPA with Coopersville encompasses all facilities.

On January 21, 1993, Consumers and Granger Renewable Resources entered into a PPA for the output of the facility now known as the Grand Blanc Plant. An amended and restated PPA was signed on September 2, 1993, and later assigned to Granger Electric. Consumers and Granger Electric subsequently entered into the first, second, third, and fourth amended and restated PPAs in 1994, 1995, 2000, and 2002, respectively. The Grand Blanc Plant was sold to EDL in 2017. The PPA's initial term terminated on July 27, 2029. In conjunction with an agreement reached by Consumers and Grand Blanc for a new PPA, on March 22, 2019, Consumers issued a notice to Grand Blanc that the original PPA would terminate on May 31, 2019, and the new PPA would start June 1, 2019 and continue through May 31, 2039.

On July 24, 1990, Consumers and Granger Renewable Resources entered into a PPA for the output of Granger Landfill No. 1 (now known as the Pinconning Plant). The PPA was assigned to Granger Electric on May 28, 1992 and amended three times: once in 1992, and twice in 1993. An amended and restated PPA was signed on August 14, 1995 and later amended in 2009. The Pinconning Plant was sold to EDL in 2017. The PPA's initial term was set to terminate on January 22, 2028. In conjunction with an agreement reached by Consumers and Pinconning for a new PPA, on March 22, 2019, Consumers issued a notice to Pinconning that the original PPA would terminate on May 31, 2019, and the new PPA would start June 1, 2019 and continue through May 31, 2039.

Consumers filed testimony and exhibits in support of its application and provided unredacted copies of the PPAs.

In its application, Consumers explains that the four PPAs are based on the Standard Offer PPA approved for contracts subject to the Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117, with a few minor exceptions that are noted in the contracts. The purchase of capacity pursuant to the PPAs is based on the Midcontinent Independent System Operator, Inc.'s zonal resource credits (ZRCs). Capacity payments for the PPAs are made monthly at a fixed rate of $11,708.75/ZRC-month. Energy payments for each PPA are fixed at $63.96 per megawatt-hour. The PPAs contain a regulatory disallowance clause, a monthly administrative charge, and an early termination provision. As part of an agreement reached by the parties, the PPAs contain a subsequent plant site provision. The PPAs also include Exhibit D-Notice of Election to Provide Energy and Capacity from a Subsequent Plant Site and Exhibit E-Notice of Election to Reduce Contract Capacity.

The new PPAs for Byron Center, Coopersville, Grand Blanc, and Pinconning have an estimated cost of $163,792,740, and provide a net cost increase of $3,127,751 when compared to the rates paid under the original PPAs. The Commission previously approved eight PPAs with other IPPC members in the July 23, 2020 order in this docket. The total expected cost of the 12 new IPPC PPAs (i.e., those previously filed and approved in this docket and the four contained herein) is approximately 0.157% higher than the cost pursuant to the previous PPAs in total. The 0.157% cost increase is, in part, attributable to the new energy and capacity that Consumers and its customers are receiving from the new PPAs with Tower Hydro Plant and Kleber Hydro Plant that were added to the supply portfolio.

All four of the PPAs are for existing qualifying facilities (QFs) that held previous PPAs with Consumers. In its May 31, 2017 order in Case No. U-18090 (May 31 order), the Commission found that "existing QFs with expiring contracts should have their contracts renewed at the full avoided cost rate, whether or not the company forecasts a capacity shortfall over the planning horizon." May 31 order, p. 18. All four PPAs are subject to the financial compensation mechanism approved in Case No. U-20165.

Discussion

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

> (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:
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> (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.
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> (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, the application and supporting exhibits and testimony and finds that the PPAs should be approved. *Ex parte* review and approval are appropriate because approval of the PPAs will not affect rates or rate schedules and will not increase the cost of service to customers. *See*, MCL 460.6a(3).

THEREFORE, IT IS ORDERED that the power purchase agreements between Consumers Energy Company and Energy Developments Byron Center, LLC; Energy Developments Coopersville, LLC; Energy Developments Grand Blanc, LLC; and Energy Developments Pinconning, LLC are approved as in compliance with Public Act 304 of 1982 and the May 31, 2017 order in Case No. U-18090.

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

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of February 4, 2021.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-20838

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on February 4, 2021 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 J. Brown

Brianna Brown

Subscribed and sworn to before me
this 4th day of February 2021.

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-20838**

Name	Email Address
Consumers Energy Company 1 of 2	mpsc.filings@cmsenergy.com
Consumers Energy Company 2 of 2	michael.torrey@cmsenergy.com
Robert W. Beach	robert.beach@cmsenergy.com