

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 an amendment to	)	
power purchase agreement.	)	Case No. U-20896
_____	)	

At the March 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 November 5, 2020, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, pursuant to Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j, and other applicable law, requesting approval of an amendment to the company's power purchase agreement (PPA) with Midland Cogeneration Venture Limited Partnership (MCV). In its application, Consumers explains that the original PPA, dated July 17, 1986, between the company and MCV was an avoided cost contract authorized under the Public Utility Regulatory Policies Act of 1978, PL 95-617; 92 Stat 3117.

Consumers recounts the history of the contract stating that in 2008, the company and MCV agreed to amend and restate the original PPA, which was approved in Case No. U-15320. Consumers application, p. 5 (referencing the June 10, 2008 order in Case No. U-15320). The primary changes associated with the amended and restated PPA were a change in the capacity

payment rate and a change in the way the variable energy cost would be calculated and the MCV plant dispatched. This allowed MCV to be dispatched on the basis of natural gas prices instead of coal prices and significantly reduced the pricing risk for MCV. Consumers explains that, since 2005, the Midcontinent Independent System Operator, Inc. (MISO) has operated a day-ahead and real-time energy market that has allowed MCV and Consumers to realize economies in dispatching the MCV plant pursuant to the PPA. The amended and restated PPA was amended for the first time in 2010 (Amendment No. 1) to allow MCV to become the MISO market participant of the MCV plant commercial pricing node. Consumers' application, pp. 1-2.

Turning to the instant request, Consumers explains that the amended and restated PPA provides Consumers the unilateral option beginning December 1, 2023, and continuing through March 15, 2024,¹ to either purchase the MCV plant or extend the PPA for five years at a reduced capacity rate. *Id.*, pp. 2-3. Pursuant to this provision, Consumers and MCV negotiated and ultimately executed Amendment No. 2, dated October 7, 2020, which provides for a five-year extension to the amended and restated PPA, from March 16, 2025, through May 31, 2030. Amendment No. 2 ensures that the PPA will continue through the end of the MISO resource adequacy period, thereby ensuring that the company can utilize, and receive market revenue from, the zonal resource credits delivered to the company under the PPA through the entire contract term. Amendment No. 2 further provides for a new capacity price of \$5.00 per megawatt hour (MWh), effective March 16, 2025, and continuing until the end of the extension period, and a new fixed energy price equal to \$6.30 per MWh for on-peak hours and \$6.00 per MWh for off-peak hours, beginning with that portion of the month including and following the

¹ Without executing the extension, the amended and restated PPA would terminate on March 15, 2025. Consumers' Direct testimony of Keith Troyer, p. 14.

effective date of Amendment No. 2 and continuing until the end of the extension period.

Amendment No. 2 also modifies the renewable energy support payment made from MCV to Consumers by providing that those payments shall cease effective March 15, 2025. *Id.*, p. 3.

According to Consumers, the reduced capacity rate of \$5.00 per MWh is consistent with the amended and restated PPA that provides for a five-year extension at a reduced capacity price. The capacity price included in Amendment No. 2 represents more than a 50% reduction from the current capacity price of \$10.14 per MWh. Amendment No. 2 also retains the capacity delivery performance requirement that allows Consumers to reduce capacity payments if the contract capacity factor for the MCV plant is less than 0.6. *Id.*, pp. 3-4. Consumers states that the fixed energy price paid to MCV under the amended and restated PPA is based on the fixed cost of Consumers' coal-fueled generating plants. The parties agreed to a levelized fixed energy price for all deliveries from the effective date of Amendment No. 2 through the term of the agreement. According to Consumers, the fixed energy payment under the original PPA and amended and restated PPA was based on the company's expense of operating coal-fueled generating plants, even though the MCV plant is fueled by natural gas. Given the mismatch between the fuel used by the MCV plant and the type of plants used to determine fixed energy compensation, and the fact that the company's coal-fueled generating plant fleet is decreasing due to plant retirements (which has the potential to distort operating costs), the parties agreed to a levelized fixed energy price methodology that will provide greater cost certainty to both parties. *Id.*, p. 4. Consumers states that the variable energy price of the amended and restated PPA is unaffected by Amendment No. 2. Consumers' Direct Testimony of Keith Troyer, p. 12.

Consumers contends that its economic analyses of Amendment No. 2 determined that Amendment No. 2 provides a value to customers. Specifically, the company compared the cost

of Amendment No. 2 to the cost of exercising the company's option to extend the amended and restated PPA without a change to the fixed energy price, as provided by Amendment No. 2, and determined a \$5.3 million cost benefit related to Amendment No. 2. The company has also determined a cost benefit of \$3.5 million related to changing the fixed energy price methodology on the effective date of Amendment No. 2 instead of beginning with the extended term period on March 16, 2025. Moreover, Consumers' analysis determined that, when including the cost benefit related to changing the fixed energy price methodology, Amendment No. 2 will result in a cost savings for customers of \$61.4 million compared to the cost of allowing the amended and restated PPA to terminate on March 15, 2025, and procuring replacement energy and capacity from the wholesale market. *Id.*, pp. 4-5 (citing Exhibits A-3 and A-4). In addition to the cost benefits, Consumers avers that Amendment No. 2 provides the following other benefits: (1) the establishment of a levelized fixed energy price increases certainty for MCV and the company; (2) better clarification with respect to MCV's required fuel security demonstration; (3) capacity planning certainty for MCV and the company; (4) clarification regarding the early termination payment during the five-year extension period; and (5) ensuring that Consumers can rely on a proven capacity resource within MISO Zone 7 to serve its customers between 2025 and 2030. *Id.*, pp. 4-6.

Consumers also asserts that Amendment No. 2 is consistent with its long-term capacity plan in that Consumers' 2018 integrated resource plan (IRP) filed in Case No. U-20165 assumed the company would exercise the option to extend the amended and restated PPA with MCV for five years. The company adds that while a financial compensation mechanism (FCM) was approved in Case No. U-20165 for new PPAs approved by the Commission on or after January 1, 2019, Consumers is not requesting an FCM for the amended and restated PPA with MCV, as amended

by Amendment No. 2. *Id.*, p. 5. To conclude, Consumers requests that the Commission approve Amendment No. 2 and approve the recovery of all payments made pursuant to the amended and restated PPA, as amended, with MCV. *Id.*, p. 6.

On November 23, 2020, the Association of Businesses Advocating Tariff Equity (ABATE) filed a petition to intervene in this matter pursuant to Mich Admin Code, R 792.10410 (Rule 410). ABATE first explains that the Commission considers intervention to be a matter of right when a petitioner can meet the two-prong test for standing which requires a showing of: (1) an injury in fact as a result of the outcome of the case, and (2) the interests allegedly endangered fall within the zone of interest intended to be protected or regulated by the statute or constitutional guarantee in question. ABATE's petition, pp. 2-3. ABATE argues that it meets the two-prong test because its members are customers of Consumers that have a direct financial interest in the amount, rates, terms, programs, and conditions of service of the utility, this proceeding has a direct impact on rates paid by ABATE members, and this interest falls within the zone of interests intended to be protected. *Id.*, p. 3. ABATE also argues that its petition meets the standard for permissive intervention by the Commission because ABATE can provide the Commission with useful and unique information relevant to the scrutiny of the reasonableness and prudence of Consumers' proposal in this case. *Id.*, pp. 3-4.

The Commission issued a notice of opportunity to comment on Consumers' application in this matter on January 15, 2021. Comments were due no later than 5:00 p.m. (Eastern time (ET)) on February 5, 2021, and reply comments were due no later than 5:00 p.m. (ET) on February 12, 2021. The Commission received no comments.

Discussion

MCL 460.6j(13) provides, in relevant part, that in a power supply cost reconciliation, the Commission shall do all of 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 reviewed Consumers' application, supporting testimony and exhibits, and Section 6j of Act 304, and finds that Consumers' application for approval of Amendment No. 2 to the amended and restated PPA should be approved. The extension and reduced capacity rates were contemplated in the approved amended and restated PPA, and therefore, Consumers' request is consistent with the approved amended and restated PPA. Amendment No. 2 is also

consistent with the company's recent IRP in Case No. U-20165, that included an assumption of the five-year extension of the PPA with MCV. The Commission finds that Amendment No. 2 will provide a benefit to customers in terms of the reduced capacity price and projected savings resulting from the fixed energy price, as well as a benefit to MCV and Consumers in terms of certainty and greater clarity in the terms of the PPA that will reduce the potential for dispute in the future. Thus, the Commission finds Amendment No. 2 to the amended and restated PPA to be reasonable and that it should be approved. Further, the Commission finds that approval on an expedited basis is warranted and approval will not result in a cost increase to ratepayers, and therefore, *ex parte* review and approval is appropriate. *See*, MCL 460.6a(3); Consumers' Direct Testimony of Keith Troyer, p. 14; Consumers' Exhibit A-3.²

THEREFORE, IT IS ORDERED that the application filed by Consumers Energy Company to amend the amended and restated power purchase agreement with Midland Cogeneration Venture Limited Partnership is approved.

² The Commission notes that while ABATE filed a petition to intervene in this proceeding, the Commission ultimately opted to provide for the opportunity for any person to comment in response to Consumers' request to adjudicate this case on an expedited basis. While the opportunity to comment was open to anyone, the Commission notes that ABATE was explicitly included in the service list, and that ABATE chose not to comment or to provide further explanation of its interest in response to this opportunity.

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, under 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 mpscdockets@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



Daniel C. Scripps, Chair

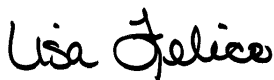


Tremaine L. Phillips, Commissioner



Katherine L. Peretick, Commissioner

By its action of March 4, 2021.



Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

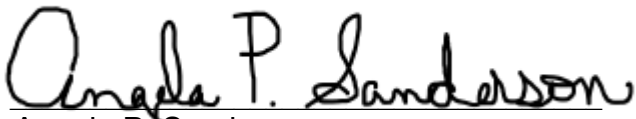
Case No. U-20896

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on March 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 Brown

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



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

Service List for Case: U-20896

Name	Email Address
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