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September 1, 2021

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Post Office Box 30221
Lansing, MI 48909

**RE: MPSC Case No. U-21131 - In the matter of the application of CONSUMERS ENERGY COMPANY for approval of criteria for the formation of a Legally Enforceable Obligation under the Public Utility Regulatory Policies Act of 1978 and for other relief.**

Dear Ms. Felice:

Enclosed for electronic filing in the above-captioned case, please find **Consumers Energy Company's Application and Testimony of Company Witnesses Nicholas B. Tenney and Emily M. Walainis**.

This is a paperless filing and is therefore being filed only in PDF. I have included a Proof of Service showing electronic service upon the parties in Case No. U-18090.

Sincerely,

Digitally signed
by Ian F. Burgess
Date: 2021.09.01
15:46:15 -04'00'

Ian F. Burgess

cc: Parties per Attachment 1 to Proof of Service

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 criteria for the formation of a Legally Enforceable Obligation under the Public Utility Regulatory Policies Act of 1978 and for other relief. | ) ) ) ) ) | Case No. U-21131 |

**APPLICATION**

Consumers Energy Company ("Consumers Energy" or the "Company") files this Application to request that the Michigan Public Service Commission ("MPSC" or the "Commission") grant approval, pursuant to the Commission's July 2, 2021 Order in Case No. U-20905 *et al.* ("July 2 Order") and other applicable law, of its proposed criteria and process for determining the formation of a Legally Enforceable Obligation ("LEO") under the Public Utility Regulatory Policies Act of 1978 ("PURPA") and for other relief. In support of this request, Consumers Energy states as follows:

1. Consumers Energy is, among other things, engaged as a public utility in the business of generating, purchasing, distributing, and selling electric energy to approximately 1.9 million retail customers in Michigan. The retail electric system of Consumers Energy is operated as a single utility system in which the same rates and tariffs are applicable. Consumers Energy's retail electric business is subject to the jurisdiction of the MPSC pursuant to various Michigan statutes and regulations.

2. On July 16, 2020, the Federal Energy Regulatory Commission ("FERC") issued an order, *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 172 FERC ¶ 61,041 ("Order 872"), which included

revisions to the implementation of statutory Sections 201 and 210 of PURPA, 16 USC 824a-3, in the rules set forth in 18 CFR Parts 292 and 375.[1] FERC Order 872 also addressed instances where a utility may be forced, under PURPA, to purchase from a Qualifying Facility ("QF") pursuant to a LEO and provided minimum guidance as to the formation of a LEO.

3. In FERC Order 872, FERC adopted the Notice of Proposed Rulemaking proposal "to require QFs to demonstrate that a proposed project is commercially viable and that the QF has a financial commitment to construct the proposed project, pursuant to objective, reasonable, state-determined criteria in order to be eligible for a LEO." FERC Order 872, pages 373-374. FERC also affirmed that "states have flexibility as to what constitutes an acceptable showing of commercial viability and financial commitment, albeit subject to the criteria being objective and reasonable." *Id*.

4. Thereafter, on January 21, 2021, the Commission issued an Order in Case No. U-20905 *et al*. that, among other things, directed each utility as part of its next biennial review of avoided costs and associated issues to provide clear guidance on the criteria it will use to evaluate a QF's commercial viability and financial commitment in determining whether a LEO has been formed. Case No. U-20905 *et al.*, January 21, 2021 Order, pages 32-33. On July 2, 2021, the Commission issued its July 2 Order which clarified its previous orders with regard to where certain utilities should submit proposed LEO criteria and directed Consumers Energy to submit its proposed LEO criteria in a standalone proceeding. See July 2 Order, page 5. In doing so, the Commission ordered that Consumers Energy file in a new docket an application containing its respective LEO criteria by September 1, 2021. As

[1] On November 19, 2020, FERC issued another order, *Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978*, 173 FERC ¶ 61,158 (2020) ("Order 872-A") that upheld Order 872 with some limited clarification.

such, this Application and supporting testimony serves as the Company's proposed LEO criteria pursuant to the Commission's July 2 Order.

5. In conjunction with this Application, the Company is filing testimony from Company witnesses Emily M. Walainis, Manager of Supply Contracts, and Nicholas B. Tenney, Senior Engineer Lead for Distribution Agreements, to support its proposed LEO criteria. The accompanying testimony is an integral part of this Application and is incorporated by reference in this Application as if fully set forth herein.

6. While the Company is presenting proposed LEO criteria in this proceeding to comply with the Commission's July 2 Order, the Company is not of the position that the adoption of LEO criteria is necessary. As explained above, FERC Order 872 provided minimum guidance for the establishment of a LEO. The Commission should affirm FERC's directive in FERC Order 872 regarding minimum requirements for the establishment of a LEO and also make clear that a QF's meeting of these requirements does not, in and of itself, mean that the QF has formed a LEO. In addition to affirming FERC's minimum LEO requirements, the Commission should clarify that, in the process of establishing whether or not a QF project has a LEO, the Commission will continue the current LEO determination process of assessing each QF project on a case-by-case basis to determine if the QF project is a real, viable project on which customers can rely.

7. In the alternative to the approach described above, the Company requests the adoption of its proposed LEO criteria and process for determining a LEO. Company witness Walainis's testimony presents the Company's proposed criteria to evaluate a QF's commercial viability and financial commitment in determining whether a LEO has been formed, along with support for each individual criterion. In addition to the adoption of the Company's proposed

criteria, the Company requests that the Commission provide an opportunity to assess other objective and project-specific factors, beyond the adopted LEO criteria, on a case-by-case basis to determine whether a QF has established a LEO. Ms. Walainis's testimony also proposes a process for when a LEO is abrogated.

8. Company witness Tenney's testimony presents the role the generator interconnection process plays in establishment of a LEO, specifically with regard to application of the Electric Interconnection and Net Metering Standards. Mr. Tenney explains some of the challenges involved with the interconnection process and why it is important for the Commission to include in the minimum LEO requirements an additional requirement that a QF complete a distribution study prior to a LEO being established.

9. Consumers Energy is requesting that the Commission affirm FERC's directive in FERC Order 872 regarding minimum requirements for the establishment of a LEO and continue the current LEO determination process of assessing each QF project on a case-by-case basis to determine if the QF project is a real, viable project on which customers can rely. In the alternative, the Company requests that the Commission adopt the Company's proposed LEO criteria and process for determining a LEO. In addition, the Company requests that the Commission adopt the Company's proposed process for the abrogation of a LEO.

WHEREFORE, Consumers Energy Company respectfully requests the Michigan Public Service Commission to grant the following relief:

(A) Grant approval of Consumers Energy Company's proposal to adopt minimum Legally Enforceable Obligation criteria and continue the current Legally Enforceable Obligation determination process of assessing each QF project on a case-by-case basis;

(B) In the alternative, grant approval of the Consumers Energy Company's proposed Legally Enforceable Obligation criteria and process for determining a Legally Enforceable Obligation;

(C) Grant approval of Consumers Energy Company's proposed process for the abrogation of a Legally Enforceable Obligation; and

(D) Grant Consumers Energy Company such other and further relief as may be lawful and appropriate.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: September 1, 2021

By: _____

Timothy J. Sparks
Vice President of Electric Grid Integration
Consumers Energy Company

Robert W. Beach (P73112)
Ian F. Burgess (P82892)
Attorneys for Consumers Energy Company
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(517) 788-1846

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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**VERIFICATION**

Timothy J. Sparks, states that he is Vice President of Electric Grid Integration; that he has executed the foregoing Application for and on behalf of Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief; and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.

Dated: September 1, 2021 By: _____

Timothy J. Sparks
Vice President of Electric Grid Integration
Consumers Energy Company

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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**DIRECT TESTIMONY**

**OF**

**NICHOLAS B. TENNEY**

**ON BEHALF OF**

**CONSUMERS ENERGY COMPANY**

September 2021

**Q. Please state your name and business address.**

A. My name is Nick Tenney, and my business address is 1945 West Parnall Road, Jackson, Michigan 49201.

**Q. By whom are you employed?**

A. I am employed by Consumers Energy Company ("Consumers Energy" or the "Company").

**Q. In what capacity are you employed?**

A. I am a Senior Engineer Lead for Distribution Agreements and Programs in the Electric Grid Integration – Contracts and Settlements Department.

## QUALIFICATIONS

**Q. Please describe your educational background and work experience.**

A. I received a Bachelor of Science Degree in Electrical Engineering from Western Michigan University in May of 2009. I am also a Professional Engineer licensed in the state of Michigan since February of 2015, license number 620106185. I joined the Company in 2009 in the Engineering Entry Program as a rotational engineer. This involved a series of four positions over my first two years with the Company including Distribution Planning and Performance, Distribution Substation Planning, Value Analysis, and Substation Design. I then worked for five years as a High Voltage System Planner performing capacity planning for the 46 kV and 138 kV distribution system in the northwest region of the state. Among other responsibilities in that position, I performed studies for proposed load and generator additions impacting my geographic planning area. In 2016, I joined Distribution Agreements & Attachments as a Distribution Agreements Engineer in the Distribution Agreements & Attachments, Electric Grid Integration department. In this position, I facilitated the generator interconnection process governed by the Electric Net

Metering & Interconnection Standards up to and including interconnection agreements across all generator categories. This work included management of the interconnection applications and process for PURPA-related proposed projects.

**Q. What are your responsibilities as Senior Engineer Lead?**

A. My present responsibilities include supervising the Distribution Agreements and Programs group within the Contract & Settlements, Electric Grid Integration organization. Our group is responsible for managing the distribution electric generator interconnection process, the distributed generation/legacy net metering programs, MISO interconnections for Company-owned facilities, wholesale distribution service agreements, and extraordinary facilities agreements typically associated with large retail customers.

## PURPOSE OF DIRECT TESTIMONY

**Q. What is the purpose of your direct testimony in this proceeding?**

A. My direct testimony will address the role the generator interconnection process plays in the establishment of a legally enforceable obligation ("LEO") by qualifying facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

**Q. Are you sponsoring any exhibits?**

A. No.

## Interconnection Standards

**Q. What MPSC rules govern generator interconnections to the Company's electric distribution system?**

A. The Commission formally adopted the Electric Interconnection and Net Metering Standards ("Interconnection Standards") in 2009 in Case No. U-15787. The Interconnection Standards establish procedures that Consumers Energy, and other public

utilities in the state of Michigan, must follow when customers or project developers seek to interconnect generation facilities to Consumers Energy's electric distribution system. The Interconnection Standards dictate a step-by-step process for a project to follow through an application process ultimately culminating in an interconnected project. The main components of the interconnection process include the interconnection application, engineering review, distribution study, and interconnection agreements.

**Q. What timeline requirements are dictated in the Interconnection Standards?**

A. Each time the Company receives an interconnection application, the Company must review that application and determine if it is complete within 10 business days. The Company then has an additional 10 working days to review the application and determine whether an engineering review is required. Deadlines for completing engineering review and for completing subsequent distribution studies where necessary, vary by project size. Most commonly, engineering reviews for Category 4 projects (projects that are "greater than 550 kW and not more than 2 MW") and Category 5 projects (projects that are "greater than 2 MW") must be completed and provided to the applicant within 25 business days and 45 business days, respectively, of receiving the applicant's notification to proceed with the engineering review and its corresponding payment. The distribution study for Category 4 and Category 5 projects must be completed and provided to the applicant within 45 and 60 business days, respectively, of receiving the applicant's notification to proceed with the study and its corresponding payment.

**Q. What is the present cost for engineering reviews and distribution studies?**

A. At the time of this filing, engineering reviews for Category 4 and greater projects typically cost $1,200 and $4,500 for low voltage distribution connected projects and high voltage

distribution connected projects, respectively. Distribution studies typically cost $5,000 at all voltage levels.

It is important to note that these are the costs for Consumers Energy employees to complete this work; if the Company were to hire contractors to do this work, it would be more expensive. Also, we review these costs on a regular basis and update them based upon review of hours to perform typical studies, personnel involved in typical studies, and changes to the process to perform studies as requirements change over time, so there is no guarantee that these will be the study costs in the future.

**Q. Have project developers had a significant role in the delay of interconnection of projects in the past?**

A. Yes. There are numerous points in the interconnection process where applications can remain dormant for months on end awaiting developer activity. These delays are most typically experienced in the application review stage when Consumers Energy is awaiting updates from a project developer so the project can be deemed complete and move forward through the process. There is also room for significant delay in moving forward with either engineering review or distribution study. When such delays occur, it causes great uncertainty with regard to both (i) capacity resource planning as further discussed by Company witness Emily M. Walainis and (ii) operational resource planning. Consumers Energy has had a difficult time setting aside resources for construction of interconnection facilities given the continuously sliding schedules of interconnection projects caused by developer delays.

**Q. What control does the Company have in the timing or provision of application review, engineering review, and distribution study results?**

A. The Company does not have control over the schedule of these activities as the timelines associated with the application review, engineering review, and distribution study are mandated through rules promulgated by the Commission.

**Q. Have the outcomes of the Commission's interconnection and distributed generation standards working group under Case No. U-20344 to update the interconnection standards resulted in any further ability for either party to delay the interconnection process?**

A. No. Both the project developer and utility deadlines in the draft rulesets reviewed to date, including the latest draft dated July 12, 2021, have much more cohesive timeline requirements throughout the process compared to the existing rules. Under the proposed rules, the ability for either the project developer or utility to delay the project without risk of penalty or withdrawal of the project would be reduced, not increased.

**Q. What analysis has been performed at the time the generator interconnection application is deemed complete?**

A. At the time the application is deemed complete, the preliminary design of the project is known to the Company. This includes proposed equipment, nameplate capacity, and location, among other details. At this stage, Consumers Energy has performed no studies

and has provided no guidance as to the feasibility or cost to interconnect the proposed project to its electric distribution system.

**Q. What analysis is included in the engineering review process and what is provided in the subsequent report provided to the applicant?**

A. When applicable, the engineering review process primarily involves the modeling of the impact of the proposed generator interconnection on the Company's electric distribution system. This process includes both steady-state and short-circuit analysis to determine if there are any negative impacts as a result of the proposed interconnection which would violate our system planning and/or system protection criteria. These criteria ensure safe and reliable operation of the Company's distribution system. The results provided to the project developer include a summary of the results of the aforementioned study as well as the proposed plan to interconnect the proposed generator to our electric distribution system. This report includes a non-binding cost estimate "to assist the applicant in determining whether to proceed with the project" as defined in R 460.620(7) of the Interconnection Standards. The Company commonly refers to the engineering review as a feasibility study when introducing the process to potential applicants and new project developers. A follow-up distribution study would then be required to determine final estimated costs for use in preparation of interconnection agreements.

**Q. What analysis is included in the distribution study process and what is provided in the subsequent report provided to the applicant?**

A. When applicable, the distribution study process is focused on providing a detailed cost estimate and project scope for any distribution upgrades required for the connection of the project to the Company's distribution system. The results of these studies are then

incorporated into interconnection agreements upon request of project developers. The results provided to the project developer include the scope of work performed by Consumers Energy for any distribution upgrades required to interconnect the project as well as the detailed cost. This is the final estimate used to collect payment in advance of construction of any distribution upgrades.

**Q. How many projects drop out before distribution study?**

A. Almost all projects requiring distribution studies are category 4 or greater. 601 category 4 or greater projects applications were received between January 1, 2017 and August 5, 2021. Of those projects, 361, or 60%, of projects, *did not* move forward with a distribution study.

**Q. What impact do material modifications have on the interconnection process, and what is the corresponding impact to LEOs?**

A. A significant portion of projects that receive an engineering review and/or distribution study are then required to later be restudied as a result of developer-initiated project design changes that have a significant impact on previously performed studies. These material modifications create significant delay and uncertainty, especially for projects that have completed distribution studies and may be reviewing interconnection agreements. In certain cases, a project with a completed distribution study needs to restart the entire process and receive both a new engineering review and distribution study, delaying the project by several months, at minimum, or potentially rendering the project infeasible.

In terms of LEOs, material modifications can jeopardize the formation of a LEO. The Company requires all factors to be complete and current at time of requesting a LEO. If a project initiates a material modification prior to the formation of a LEO, the material

modification process must be completed before the project is again eligible from an interconnection standpoint.

**Q. Please summarize the Company's request with respect to the interconnection steps that must be completed prior to the formation of a LEO.**

A. Requiring a distribution study, or the equivalent facilities study in the most recent proposed ruleset from July 12, 2021, to be completed is a minimum reasonable requirement for the formation of a LEO. Without this study information, neither the applicant nor the Company has enough information to determine whether the proposed project is cost prohibitive or can be legitimately connected to the electric distribution system.

**Q. Does this complete your direct testimony?**

A. Yes, it does.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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**DIRECT TESTIMONY**

**OF**

**EMILY M. WALAINIS**

**ON BEHALF OF**

**CONSUMERS ENERGY COMPANY**

September 2021

**Q. Please state your name and business address.**

A. My name is Emily M. Walainis, and my business address is 1945 West Parnall Road, Jackson, Michigan 49201.

**Q. By whom are you employed and in what capacity?**

A. I am employed by Consumers Energy Company ("Consumers Energy" or the "Company") as Manager of Supply Contracts in the Electric Grid Integration Contracts and Settlements Department.

**Q. Please describe your educational background and business experience.**

A. I received a bachelor's degree in finance from Michigan State University and a Master of Business Administration degree from the University of Michigan.

Prior to joining Consumers Energy, I worked as an Investment Banking Analyst at Wells Fargo from 2008 to 2011. In this role, I built comprehensive financial models, completed due diligence and credit analysis, and developed offering memoranda and investor presentations to support the origination and execution of syndicated leveraged loans and high yield bonds. From 2011 to 2015, I worked as a Financial Analyst at Atlas Energy L.P., an oil and gas exploration and production company. In this position, I was the liaison between the decentralized corporate accounting team and operational groups and performed quantitative and qualitative analysis for financial, operational, and combined projects. I joined Consumers Energy in 2016 as a Senior Financial Analyst in the Enterprise Risk department. In this role, I facilitated the enterprise risk management program, which consisted of working with risk owners across corporate and operational groups, to identify, analyze, and present risks to senior management. From 2017 to 2021, I was a senior associate in the Corporate Strategy Department where I was responsible for managing the

gas, electric, and retail businesses and supporting organizations' strategy development. I also worked on the electric vehicle strategy and supported electric vehicle pilot program testimony and exhibits to ensure electric vehicles are successfully integrated into the electric grid for the benefit of all customers. I started in my current role at Consumers Energy as the Manager of Supply Contracts in the Electric Grid Integration Contract and Settlements Department in 2021.

**Q. What are your responsibilities as Manager of Supply Contracts?**

A. I am responsible for implementing the Company's Clean Energy Plan including: 1) the development of annual competitive solicitations for the procurement of wholesale electric generation; 2) negotiations and development of power purchase agreements; and 3) implementation and compliance with the Public Utility Regulatory Policies Act of 1978 ("PURPA"). I am also responsible for managing the: 1) Renewable Energy Plan; 2) Experimental Advanced Renewable Program; 3) Renewable Energy Credit administration and compliance; and 4) procurement of supply for the Company's Voluntary Green Pricing Programs.

**Q. Have you previously provided testimony before the Michigan Public Service Commission ("MPSC" or the "Commission")?**

A. Yes. I provided direct testimony in MPSC Case No. U-21009, the Company's 2020 Renewable Energy Cost Reconciliation case, regarding the actual and expected expenses incurred to implement the Company's approved Renewable Energy Plan in 2020, the billed

surcharge revenues, and a discussion on the Company's Regulatory Liability Balance projection.

**Q. What is the purpose of your direct testimony in this proceeding?**

A. My direct testimony will present the Company's proposed criteria to evaluate a Qualifying Facility's ("QF's") commercial viability and financial commitment in determining whether a Legally Enforceable Obligation ("LEO") has been formed. My direct testimony will also propose a process for when a LEO is abrogated.

**Q. Are you sponsoring any exhibits?**

A. No.

**Q. Please address the Commission's direction with respect to the formation of a LEO by QFs under PURPA.**

A. In its July 2, 2021 Order in Case No. U-20905 et al. ("July 2 Order"), the Commission found as follows:

> Each utility utilizing the standalone proceeding for the LEO criteria, namely, Consumers, UPPCo, UMERC, and I&M, shall file an application in a new docket no later than 5:00 p.m. (ET) on September 1, 2021. The application shall be limited to the LEO criteria the utility proposes to use to evaluate a QF's commercial viability and financial commitment in determining whether an LEO has been formed. [July 2, 2021 Order, pages 15-16.]

Pursuant to the Commission's direction in the July 2 Order, my direct testimony presents the Company's proposed criteria to evaluate a QF's commercial viability and financial commitment in determining whether an LEO has been formed. Company witness Nicholas B. Tenney is also providing direct testimony addressing the role the generator interconnection process plays in the establishment of a LEO by QFs under PURPA.

**Q. Does the Company believe it is necessary for the Commission to adopt LEO criteria?**

A. No. In the Federal Energy Regulatory Commission's ("FERC") July 16, 2020 Order, 172 FERC ¶ 61,041 ("FERC Order 872"), FERC provided minimum guidance for the establishment of a LEO. FERC established new regulations, effective at the end of 2020, "to require QFs to demonstrate that a proposed project is commercially viable and that the QF has a financial commitment to construct the proposed project, pursuant to objective, reasonable, state-determined criteria in order to be eligible for a LEO." FERC Order 872, pages 373-374. FERC also affirmed that "states have flexibility as to what constitutes an acceptable showing of commercial viability and financial commitment, albeit subject to the criteria being objective and reasonable." *Id*.

The Commission should affirm FERC's directive in FERC Order 872 regarding minimum requirements for the establishment of a LEO and also make clear that a QF's meeting of these requirements does not, in and of itself, mean that the QF has formed a LEO. In particular, the MPSC should emphasize that a QF must demonstrate that it is commercially viable and has made appropriate financial commitments to demonstrate its viability before a LEO can be established. In addition to affirming FERC's minimum LEO requirements, the Commission should clarify that, in the process of establishing whether or not a QF project has a LEO, the Commission will continue the current LEO determination process of assessing each QF project on a case-by-case basis to determine if the QF project is a real, viable project on which customers can rely.

If the Commission desires to establish specific LEO criteria, in the alternative to the current case-by-case approach described above, the Company requests that the Commission adopt its proposed LEO criteria, as discussed in more detail below.

**Q. Why is it important for a QF to prove its commercial viability and financial commitment in determining whether a LEO has been formed?**

A. A sufficient demonstration of project viability is critical to the Company's ability to adequately plan on QF resources from a technical and financial standpoint – and thereby, among other things, to ensure system safety, reliability, and resource adequacy. In order to provide customers with adequate capacity and energy, the Company must be able to rely on the commercial operation date and performance obligations of generation resources included in capacity planning. The Commission itself has previously emphasized the importance of viability in the context of LEO requirements, stating in its February 22, 2019 Order in Case No. U-20095 that a LEO arises, at a minimum, "when a QF makes a viable offer to sell its electricity to a specific electric utility." Case No. U-20095, February 22, 2019 Order and Notice of Opportunity to Comment, page 4. FERC acknowledged the importance of viability in the context of LEO requirements by finding "that requiring a showing of commercial viability and financial commitment, based on objective and reasonable criteria, will ensure that no electric utility obligation is triggered for those QF projects that are not sufficiently advanced in their development, and therefore, for which it would be unreasonable for a utility to include in its resource planning." FERC Order 872, page 374.

**Q. What is the Company's proposed criteria to evaluate a QF's commercial viability and financial commitment in determining whether an LEO has been formed?**

A. The Company recently proposed criteria for the formation of a LEO on May 1, 2020 in the context of Staff's LEO Workgroup. The Company has further modified that proposed criteria based on FERC's July 16, 2020 Order, 172 FERC ¶ 61,041 ("FERC Order 872")

and the common starting point criteria that the Commission provided in its July 2 Order. The Company specifically proposes that a LEO is established between the QF and the electric utility when a QF has proven project viability and demonstrated a commitment to enter into a power purchase agreement at the utility's avoided cost rates including the following criteria:

1. Provided documentation to the electric utility of having obtained "qualifying facility" status from FERC pursuant to the certification procedures set out in 18 CFR 292.207.

2. Provided documentation to the electric utility of all of the following:

   (i) a description of the location of the project and its proximity to other projects within one mile of the project and within 10 miles of the project, which are owned or controlled by the same developer or owner or otherwise affiliated with the qualifying facility;

   (ii) an estimated, non-binding, good-faith estimate of the energy production for the project that includes the kilowatt-hours or megawatt hours to be produced by the QF for each month and year of the entire term of the project's anticipated power purchase agreement;

   (iii) an Internal Revenue Service ("IRS") Form W-9;

   (iv) evidence of an engineering, procurement, and construction program that will result in commercial operation of the project (and the project's interconnection) on a defined schedule that is consistent with the capacity needs of the purchasing utility;

(v) evidence of a secured commitment from major equipment manufacturers for the delivery and/or installation of all major equipment to be utilized by the project;

(vi) evidence that the project is financeable; and

(vii) proof of fuel security, or, if the project is for wind, solar, or hydroelectric generation, the amount of available fuel at the project's location.

3. Demonstrated it has taken meaningful steps to obtain site control adequate to commence construction of the project at the proposed location.

4. Submitted all applications, including filing fees, to obtain all necessary local permitting and zoning approvals.

5. If qualifying as a "cogeneration facility" as defined by 18 CFR 292.202(c), written proof, provided to the electric utility, of a steam host that is willing to contract for steam over the full term of the project's anticipated power purchase agreement for a cogeneration facility.

6. Submitted an interconnection application and completed the process of obtaining any necessary interconnection study results (engineering review and/or distribution system study results) from the Company under R 460.620.

7. Agreed, in writing, to pay the system construction or modification costs identified in any interconnection study pursuant to R 460.620(10).

8. Unilaterally signed and tendered a proposed power purchase agreement ("PPA") to the purchasing utility if a standard offer PPA is available for a QF of that size or, if a standard offer PPA is not available for a QF of that size, agreed, in writing, to reasonable PPA terms and conditions at a price term consistent with the purchasing

utility's avoided costs, with the specific beginning and ending dates for delivery of energy, capacity, or both to be purchased by the utility.

9. Demonstrated project commercial operation date ("COD") is within 365 days of an LEO being formed.

10. Demonstration that the proposed facility will be at a size which is at or below the purchasing utility's PURPA purchase obligation threshold as determined by FERC.

**Q. Proposed criterion 1 was listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. Under PURPA, utilities are not required to purchase from generators that are not QFs. Therefore, it is essential that a project demonstrate that it has been certified by FERC as a QF before any determination is made regarding the PURPA-based legal obligations of a utility.

**Q. Proposed criterion 2 part (i) was listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. The Company agrees with the Commission on including this criterion because this information is necessary to determine if a proposed project is in the Company's service territory and if the project is a sufficient distance from other projects owned by the developer so that it may be considered a separate project. The location may also be used to determine the amount of generation originating in an area and any associated risks related to congestion, losses, fuel supply, permitting, and customer acceptance. The Company added "or owner or otherwise affiliated with the QF" in part because the

developer is not necessarily the owner or operator of the QF. It is important to include the owner or other affiliated parties in this criterion because the intent of the criterion is to understand which projects in the vicinity are "owned or controlled" by the same entity.

**Q. Proposed criterion 2 part (ii) was listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. The Company agrees with the Commission on including this criterion because the Company needs to understand how the project contributes to utility capacity and energy plans and needs.

**Q. Proposed criteria 2 parts (iii) through (vii) were not listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include these criteria?**

A. These proposed criteria are based on the Company's actual experience to date, which includes encountering developers with significant uncertainty regarding project financing, equipment availability, project construction schedules, and project development progress.

An IRS Form W-9 requirement is consistent with MISO's interconnection rules which also require a developer to submit an IRS Form W-9. This form provides basic taxpayer information and allows MISO to identify legally-binding relationships held by developers. It would be reasonable for the Company to make similar identification for entities connecting to its distribution system.

Evidence of an engineering, procurement, and construction program that will result in commercial operation of the facility (and the facility's interconnection) on a schedule that is consistent with the capacity needs of the utility is important because to the extent

the project is able to be completed on schedule, a contract is able to be maintained without price adjustments or terminations for cause. Such a schedule shows the developer's commitment to the project and evidence that a project is viable.

Evidence of a secured commitment from major equipment manufacturers is important because for solar and wind project developers, it is necessary to demonstrate that sufficient panels or turbines have been, or will be, secured in order to appropriately develop the proposed project. This is also important due to recent solar supply chain challenges. Solar materials including aluminum and polysilicon became harder to obtain and shipping costs have increased.[1] These factors could negatively impact the viability of a project; therefore, proof of secured commitment from major equipment manufacturers provides evidence that a project is financially and operationally viable.

Proof that a project is financeable demonstrates that a project is financially viable if a contract or LEO is secured.

Proof of fuel security (or amount of fuel if wind, solar, or hydro) is important because if a QF requires fuel to operate, proof of fuel commitment demonstrates a commitment to the project and evidence that a project will be viable if a contract or LEO is secured. For wind, solar, and hydro facilities, the amount of fuel available with a 90% confidence (or probability) level provides a basis to estimate the financial viability of the project and establish reasonable performance expectations

[1] See, e.g., https://www.canarymedia.com/articles/solar-industry-has-supply-problem.

**Q. Proposed criterion 3 was listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. Demonstration of meaningful steps to obtain site control shows a greater certainty that a project is viable and will be sited in the location proposed by the developer.

**Q. Proposed criterion 4 was listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. Submission of all applications, including filing fees, to obtain all necessary local permitting and zoning approvals shows a greater certainty that a project is viable and will be sited in the location proposed by the developer.

**Q. Proposed criterion 5 was listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. Certain projects can only qualify for QF status if they provide cogeneration (i.e. electricity and steam). For such projects, it is necessary to demonstrate that a steam host is willing to contract for the steam output of the proposed project because without such a steam host, the project would not qualify as a QF and the utility would have no PURPA-based obligation to purchase electricity.

**Q. Proposed criteria 6 and 7 were not listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include these criteria?**

A. The Company is proposing, consistent with the Commission's existing interconnection rules, that QFs be required to obtain any necessary interconnection studies from the Company and then agree, in writing, to pay any system construction or modification costs identified in those studies. 'Agreed, in writing' may be satisfied by executing a facilities agreement or more simply provide written notice that the QF has reviewed interconnection study results and will move forward with the project at the estimated interconnection costs. These requirements do not place formation of a LEO solely in the hands of the Company because the process and timing for such studies is objective, predictable, and governed by Commission rules. In the Company's recent experience as further discussed by Mr. Tenney, many proposed QF projects have turned out to either be non-viable, or otherwise ceased development, upon receipt of interconnection studies and cost estimates. A critical part of ensuring that a QF is in fact commercially viable, consistent with FERC Order 872, is to ensure that the QF has obtained interconnection cost estimates under the MPSC-prescribed process and agreed to pay those costs.

As described and expanded upon in Company witness Tenney's testimony, the Company does not have control over the interconnection study schedule as the timelines associated with the application review, engineering review, and distribution study are mandated through rules promulgated by the Commission.

**Q. What deposit amount for a system impact or facilities study, such as an engineering review or distribution study, does the Company recommend?**

A. There should not be a deposit for a system impact or facilities study, such as an engineering review or distribution study. As explained in Company witness Tenney's testimony, obtaining any necessary interconnection study results (engineering review and/or distribution system study results) should be a criterion to forming an LEO.

In the event the Commission disagrees with the Company's position for a distribution study, the total deposit should be the cost of outstanding studies. The cost of engineering reviews and distribution studies are described in Company witness Tenney's testimony.

**Q. Proposed criterion 8 was not listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. A fully executed PPA directly relies on action by the utility and therefore should not be a criterion to establish a LEO. However, a unilaterally signed and tendered PPA or written agreement to reasonable terms and conditions and price that are all publicly available does not rely on the utility. It is important for a QF to recognize and agree with PPA terms because if reasonable terms or price are prohibitive to a QF being able to have a viable project, a LEO should not be formed.

**Q. Please explain why proposed criterion 8 does not violate FERC Order 872.**

A. The intent of the minimum criteria discussed in FERC Order 872 is to ensure that the utility is not able to delay the formation of a LEO. The Company's proposed criterion does not require a fully executed PPA. The proposed criterion requires the QF to sign and tender

the publicly available standard offer PPA, if applicable, or provide a written commitment to reasonable terms and price which is publicly available through the standard offer PPA or terms and conditions of similar QFs as filed with the Commission and an avoided cost rate which is also publicly filed by the Company with the Commission.

**Q. Proposed criterion 9 was not listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. It is important that a LEO is formed within 365 days of COD because the project should only be eligible for avoided cost rates consistent with current avoided costs set close to the project's COD to ensure that customers are not saddled with the expense of outdated avoided costs. Since the avoided cost rates for the Company are updated on an annual basis, 365 days is a reasonable amount of time to allow between forming a LEO and project COD.

**Q. Proposed criterion 10 was not listed in the common starting point criteria that the Commission provided in its July 2 Order. Why is it important to include this criterion?**

A. If the size of the proposed facility is above the purchasing utility's PURPA purchase obligation threshold, the utility is not required to enter into a PPA with the proposed facility.

**Q. Does a developer's assertion that it has met the LEO criteria above result in the automatic formation of a LEO?**

A. No. The Commission should also clarify that additional objective factors may be assessed on a case-by-case basis in determining whether a QF has established a LEO. If a utility disputes the formation of a LEO, the utility should be provided with the opportunity to

challenge a developer's assertions regarding the LEO criteria in a Commission proceeding, such as a complaint proceeding which may be initiated by the developer or the utility. In such a proceeding, the Commission should consider additional information, beyond what is provided in the above criteria, to the extent that information shows that a LEO has or has not been formed. In other words, to establish a LEO, a developer would need to meet the LEO criteria and the Commission should also consider project-specific information which may show that a LEO has or has not been formed. Any adopted LEO criteria should not simply serve as a check list which could be manipulated to suggest that a non-viable project has a LEO.

**Q. Should LEO determinations be subject to termination?**

A. Yes. Even after a LEO is formed by a QF, there may be modifications made which materially change the nature, and potential viability, of a proposed project. For example, a QF that proposes a material modification to its project design, and therefore will require new interconnection studies and new interconnection cost estimates, should be required to re-affirm its commitment to paying those costs, that it has taken meaningful steps toward site control for the modified project, and provide evidence that the revised project remains financeable. If at any point the QF cannot reasonably meet its planned commercial operation date, the utility must have the right to terminate the LEO. Additionally, the LEO should terminate with the PPA if the QF fails to meet the PPA requirements and a new LEO would be needed before the utility is required to enter into a new agreement.

**Q. Should there be consistent standards for LEO criteria for all Michigan utilities?**

A. Yes, there should be one set of LEO standards for all Michigan utilities. If the Commission desires to adopt specific criteria for the formation of a LEO, the Commission should

consider such criteria in a proceeding that involves all Michigan utilities. There should be uniformity in the LEO criteria required of all Michigan utilities so that one or more utilities are not required to utilize a potentially less stringent LEO standard. In DTE Electric Company's recent PURPA avoided cost case in Case No. U-18091, the Commission approved changes to the structure of DTE Electric Company's Standard Offer "in the interest of more uniform QF development across the State." Case No. U-18091, July 31, 2017 Opinion and Order, page 21. The Commission should reach a similar finding with respect to the criteria for LEO formation. The Commission should adopt the Company's proposed criteria and find that the criteria should be uniform throughout Michigan.

**Q. Does this complete your direct testimony?**

A. Yes, it does.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

| | | |
|---|---|---|
| In the matter of the application of **CONSUMERS ENERGY COMPANY** for approval of criteria for the formation of a Legally Enforceable Obligation under the Public Utility Regulatory Policies Act of 1978 and for other relief. | ) ) ) ) ) ) | Case No. U-21131 |

**PROOF OF SERVICE**

STATE OF MICHIGAN )
) SS
COUNTY OF JACKSON )

Jennifer Joy Yocum, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on September 1, 2021 she served an electronic copy of the **Consumers Energy Company's Application and Testimony of Company witnesses Nicholas B. Tenney and Emily M. Walainis** upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

Jennifer Joy Yocum

Subscribed and sworn to before me this 1st day of September 2021.

Melissa K. Harris, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 06/11/2027
Acting in the County of Jackson

**ATTACHMENT 1 TO CASE NO. U-21131**
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