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September 26, 2017

Ms. Kavita Kale  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
P.O. Box 30221  
Lansing, Michigan 48909

**Re: MPSC Case No. U-18239**

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief on behalf of Energy Michigan Inc., as well as the Proof of Service. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/kc

Enclosures

c. ALJ

All parties of record.

**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

\*\*\*\*\*

In the matter, on the Commission's own motion, )  
to open a docket to implement the provisions of )  
Section 6w of 2016 PA 341 for )  
**CONSUMERS ENERGY COMPANY'S** )  
service territory. )  
\_\_\_\_\_ )

**Case No. U-18239**

**INITIAL BRIEF**  
**OF**  
**ENERGY MICHIGAN, INC.**

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## Contents

I.	INTRODUCTION .....	3
II.	ARGUMENT .....	3
A.	Statutory Requirements for a Capacity Charge .....	3
1.	Setting a Charge for Non-Exempt AES Load Consistent with MISO Requirements .....	3
2.	Mechanics of Setting the Charge .....	4
(a)	Requirements under Section 6w(3).....	4
(b)	Compliance with Cost of Service Principles .....	5
B.	What is Capacity? .....	6
C.	Certain Aspects of Consumers’ Application and Proposal are Inconsistent with Michigan Law and Violate MISO’s Tariff .....	8
1.	Consumers Fails to Take Into Account Michigan’s Cost of Service Principles.....	8
2.	Consumers’ Proposal Would Require it to Violate MISO’s Tariff .....	8
D.	Energy Michigan’s Proposals .....	9
1.	Cost Sharing for New Capacity .....	9
(a)	What Resources Will Qualify? .....	11
(b)	What Costs Would be Shared? .....	11
2.	SRM Charge Method A – CONE .....	15
3.	Method B – Larkin and EVA’s Calculations.....	16
4.	In Order to Satisfy Section 6w(6), the Capacity Charge Must Be Managed and Paid by the AES. ....	18
III.	Conclusions and Prayer for Relief.....	21

## **INITIAL BRIEF OF ENERGY MICHIGAN, INC.**

### **I. INTRODUCTION**

This Initial Brief is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by its attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

### **II. ARGUMENT**

#### **A. Statutory Requirements for a Capacity Charge**

##### **1. Setting a Charge for Non-Exempt AES Load Consistent with MISO Requirements**

Section 6w(2) requires that under the present circumstances (i.e., the failure of the Federal Energy Regulatory Commission ("FERC") to put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism) the Michigan Public Service Commission ("Commission") "shall establish a state reliability mechanism under subsection (8)." MCL 460.6w(2). In the course of this process, "[a] state reliability charge must be established in the same manner as a capacity charge under subsection (3) and be determined consistent with subsection (8)." *Id.* Once the capacity charge is set, and no sooner than June 1, 2018, then "[t]he capacity charge must be applied to alternative electric load that is not exempt as set forth under subsections (6) and (7)." MCL 460.6w(3). Subsection (6) provides that the capacity charge "shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier ("AES") can demonstrate that it can meet its capacity obligations through owned or contractual rights to any

resource that the appropriate independent system operator allows to meet the capacity obligation of the electric provider." MCL 460.6w(6). This brief will not explore the issues associated with how capacity obligations may be met, as those are being addressed in another proceeding. However, these provisions are important for the determinations to be made in this proceeding, as they relate to how the capacity charge is to be applied once a determination has been made that a supplier has not met its capacity obligations for a particular planning year as set by the Commission. In the same way, the sentence in the statute immediately following the one last quoted is also critical: "The preceding sentence shall not be applied in any way that conflicts with a federal resource adequacy tariff, when applicable." *Id.* Thus, how the capacity charge is applied to suppliers must, by statute, be in a manner that does not conflict with the Midcontinent Independent System Operator's ("MISO") tariffs. In addition, the charge must only be applied to the portion of the supplier's load for that planning year that was not covered by its capacity demonstration: "The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective." *Id.*

## **2. Mechanics of Setting the Charge**

If an AES does not meet the exemptions in 6w(6) and (7), then a "capacity charge" is to be assessed. Subsection (3) of Section 6w specifies how the Commission must make a determination of a capacity charge.

### **(a) Requirements under Section 6w(3)**

Section 6w(3) says the following:

In order to ensure that noncapacity electric generation services are not included in the capacity charge, in determining the capacity charge, the commission shall do both of the following and ensure that the resulting

capacity charge does not differ for full service load and alternative electric supplier load:

(a) For the applicable term of the capacity charge, include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.

(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

- (i) all energy market sales.
- (ii) Off-system energy sales.
- (iii) Ancillary services sales.
- (iv) Energy sales under unit-specific bilateral contracts.

MCL 460.6w(3). This capacity charge therefore requires a calculation based on inputs to the utility's base rates. As Mr. Zakem points out, however, Section 6w(3) cannot be read in isolation from other applicable statutes. There is another legal principle from a controlling state statute that dictates how all energy-related rates are set, and that is the cost of service principle. See 6 Tr 626-627.

**(b) Compliance with Cost of Service Principles**

Michigan's cost of service requirements are embodied in statute at MCL 460.11, and require the following:

Except as otherwise provided in this subsection, the commission shall ensure the establishment of electric rates equal to the cost of providing service to each customer class. In establishing cost of service rates, the commission shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid. [. . .] The commission shall ensure that the cost of providing service to each customer class is based on the allocation of production-related costs based on using the 75-0-25

method of cost allocation and transmission costs based on using the 100% demand method of cost allocation.

MCL 460.11(1). The principles enunciated here, which the Commission is required to uphold, include ensuring that rates equal the costs of providing service to a customer class, and that each class is assessed for its fair and equitable use of the electric grid. Therefore, if it should happen that the capacity charge calculated under the method provided by Section 6w(3) is substantially greater or lesser than the actual costs imposed on the utility by having to obtain capacity for Retail Open Access ("ROA") customers, then there would be a conflict between these two statutory provisions and the Commission, and perhaps the courts, would have to determine how to harmonize them. See, *Nowell v. Titan Ins. Co.*, 466 Mich. 478, 483, 648 N.W.2d 157 (2002) ("In such a case of tension, or even conflict, between sections of a statute, it is our duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them.").

## **B. What is Capacity?**

The core issue throughout Section 6w of PA 341, the technical conferences, and case no. U-18239 is "capacity." Capacity is the product that is required by MISO for resource adequacy, and is supplied, demonstrated, priced, replaced, shown, traded, offered, bought, and transferred. Effective implementation of Section 6w requires a uniform and consistent understanding of capacity shared by all the parties involved. Energy Michigan carefully explained "capacity" in its testimony as follows.

Mr. Zakem, citing the MISO tariff,<sup>1</sup> noted that MISO defines capacity as: "The instantaneous rate at which Energy can be delivered, received or transferred, including Energy

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<sup>1</sup> MISO Module A available here:  
[https://www.misoenergy.org/\\_layouts/MISO/ECM/Download.aspx?ID=19171](https://www.misoenergy.org/_layouts/MISO/ECM/Download.aspx?ID=19171).

associated with Operating Reserve, Up Ramp Capability, and Down Ramp capability, measured in MW." 3 Tr 614. He then explained this definition in simpler language as follows:

**Q. What is capacity, in plain language?**

A. Capacity is the rate at which energy can be converted from one form to another, ending with electricity, such as from coal to heat to mechanical energy to electricity. The rate at which energy is converted is called power, and electric power is expressed in Watts. A megawatt (MW) is one million Watts.

6 Tr 615. Therefore, capacity is not a physical generation facility or set of facilities, but rather an electric attribute of such facilities. Consequently, the cost or charge for capacity cannot necessarily simply be determined by adding up fixed costs of a set of generation facilities. Section 6w(3), in specifying the components of the SRM charge, does not call them "generation fixed costs," but rather "capacity-related generation costs." See, for example, MCL 460.6w(3)(a). Therefore, the costs to be included must relate to the cost of the electric attribute, not simply tally fixed costs of generation plants. Various methods can be used to determine the costs of the electric attribute, "capacity," including the following:

- a. the cost of "pure capacity" from the MISO "Cost of New Entry" or CONE (recommended by Staff and Energy Michigan),
- b. the capacity portion of embedded costs of generation facilities determined by economic analysis (Constellation's "average and excess" method), or
- c. the price of capacity in a competitive market (the MISO Auction Clearing Price).

Because Michigan's ratemaking principles require that the capacity charge be consistent with, and not different from, the cost of providing capacity service to the ROA customer class, which of these methods is most appropriate will depend upon how the utility will acquire the capacity to serve that customer class.



**C. Certain Aspects of Consumers' Application and Proposal are Inconsistent with Michigan Law and Violate MISO's Tariff**

**1. Consumers Fails to Take Into Account Michigan's Cost of Service Principles**

In his testimony, Mr. Zakem discussed several major flaws in Consumers' proposal, which Energy Michigan's proposal addresses. First among these is that Consumers has failed to consider the impact of the State's cost of service statute, MCL 460.11, on the implementation of the capacity charge. As discussed above, the State's cost of service principles must be considered before a capacity charge can be implemented, and doing so necessitates that the costs paid by a customer class are equivalent to those imposed on the system by that customer class. As Mr. Zakem noted, "while Consumers states that it will have to acquire additional capacity to meet any capacity requirements that it must take on under Section 6w, it still seeks to determine the cost of such additional capacity from the costs of historical investment in facilities that would not be providing the capacity service." 6 Tr 631 (emphasis in original). Thus, as Mr. Zakem notes, Consumers' proposal would violate the State's principles of cost of service if it were implemented as proposed. Instead, the capacity charge must be based on the costs of the newly acquired, incremental capacity, as Energy Michigan proposes.

**2. Consumers' Proposal Would Require it to Violate MISO's Tariff**

Mr. Zakem also notes that Consumers does not explain what authority it has to effectively remove the MISO PRMR obligation from another LSE and transfer that obligation to itself. See 6 Tr 630-631, 638. The revisions to MISO's tariff that would arguably allow for such a transfer of obligation have been rejected by FERC. As Mr. Zakem testified, "the MISO tariff would need to be changed for Consumers to accomplish these two tasks [i.e., removal of the PRMR obligation from another LSE and transfer of that obligation to itself], and such a proposed

tariff change has already been denied by the FERC. Thus, Consumers' proposal appears to be inconsistent with the MISO tariff." 6 Tr 638.

#### **D. Energy Michigan's Proposals**

The primary purpose of Section 6w, as the Commission has noted, was to establish a "new framework for resource adequacy in Michigan – that is, ensuring electric providers can meet customers' electricity needs over the long term." September 15, 2017, Order in Case No. U-18197 ("September 15 Order"), p. 5. Energy Michigan believes that this goal can be achieved best through a 2-part framework for resource adequacy that: (1) provides an opportunity for AESs to share the costs of new capacity added in the zone via a capacity sharing payment, and (2) which is then backstopped with the SRM capacity charge, which would apply if the AES does not have sufficient capacity for its load. AESs that participate in the new capacity cost sharing program will thereby ensure resource adequacy for their load, and will avoid the imposition of the costs of SRM charges, benefitting themselves and their customers. In all other cases, the SRM capacity charge would be in place to ensure resource adequacy costs are covered. Energy Michigan's two-part proposal is explained below.

##### **1. Cost Sharing for New Capacity**

As the Commission has noted, the local clearing requirement ("LCR") in Michigan is currently being met and there is no immediate concern over a shortfall. September 15 Order, p. 40. As Mr. Zakem has testified, based on the utilities' own filings, Michigan is a virtually no electric load growth area, and there is no basis for assuming this will change in the foreseeable future. 6 Tr 641; 662. We may also presume that the utilities will continue to build new plants

as needed in order to satisfy their resource adequacy requirements.<sup>2</sup> The first part of Energy Michigan's proposal, then, involves a cost sharing mechanism for new resources added to address maintenance of resource adequacy in the zone (*i.e.*, newly built generation, PURPA contracts, etc.).

As Energy Michigan witness Mr. Zakem explains, MISO's Zone 7 will continue to meet its LCR with no additional capacity other than what is needed for replacement of retiring resources in Michigan, because of the following circumstances: (i) Zone 7 currently meets the MISO LCR, (ii) virtually zero electric growth is expected in Zone 7, (iii) utilities have sufficient capacity for full-service customers but no excess capacity, and (iv) utilities intend to replace retiring capacity to maintain sufficient capacity for full service customers. 6 Tr 641.

Consequently, meeting the LCR is more a question of financial responsibility than of electric reliability, with the concern being who will pay for the capacity utilities will obtain to continue meeting zonal resource adequacy. First, it must be recognized that ROA customers have already paid approximately \$550 million for utility resources that did not provide any services to ROA customers, but have provided capacity and energy for full-service customers. 6 Tr 641-642. Put another way, ROA customers have already paid for more than their share of the existing utility capacity that is enjoyed by full service customers. The question of further capacity investment by ROA customers only arises, therefore, when existing capacity is retired and replaced by new capacity. As Mr. Zakem points out, this makes maintaining the LCR a forward looking process, as issues of who should be paying only arise when new capacity resources are acquired.

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<sup>2</sup> A clear example is DTE's recent application for a Certificate of Necessity for a 1,000 MW gas-fired power plant in U-18149.

**(a) What Resources Will Qualify?**

Future resources that would count toward the maintenance of meeting the MISO zonal LCR would qualify for cost sharing under Energy Michigan's proposal. This would include new resources built within Zone 7, including plant improvement projects that increase capacity, new demand resources, and new energy optimization resources. All new resources eligible for cost sharing must be qualified as Zonal Resource Credits ("ZRCs") by MISO. In addition, the new resources must be approved by the Commission, either through the Certificate of Necessity process or an equivalent process that affords a review of the prudence and need for the resource.

Excluded would be the purchase of an existing resource, or the output of an existing resource, that is already functioning in Zone 7, because such a purchase does not add any capacity to Zone 7, but rather is merely a change of ownership. Also excluded would be a new resource built outside of Zone 7 or the purchase of an existing resource or the output of an existing resource from outside of Zone 7. Obviously, any resource outside of Zone 7 by definition cannot satisfy the LCR for Zone 7. 6 Tr 644-645.

**(b) What Costs Would be Shared?**

The costs to be shared are the costs of the capacity – that is, an attribute of the electric output of the new resource, not the total cost of the new resource. In short, the utility should receive the capacity cost of a new resource, *i.e.*, MISO's Cost of New Entry ("CONE"). Since the utility will receive the Auction Clearing Price ("ACP") from MISO, the remaining cost of CONE – ACP would be shared pro-rata by all the load serving entities ("LSEs") in the utility's service area.

As Mr. Zakem explains:

The cost to be shared is the cost of the capacity of the new resource, not the total cost. The total cost may be much larger to gain benefits such as lower fuel costs, lower emissions, greater reliability, *etc.* MISO, with approval by the FERC, has determined that the cost of new capacity is represented by the Cost of New Entry ("CONE"). This is an annualized cost of a combustion turbine, without subtraction for sales of capacity, energy, or ancillary services. The cost is determined by zone in MISO, and MISO files an update with the FERC each year. Calculation of CONE is governed by the MISO Tariff, Module E-1, section 69A.8. At present, the CONE in Zone 7 is \$94,900 per MW per year.

As described previously, MISO pays the Auction Clearing Price for each MW of ZRC to the owner of the ZRC. Consequently, if a utility builds a new resource, it will receive the ACP for the ZRC capability of the resource. The ACP may be well under the CONE, as it has been consistently for the last several years.

Energy Michigan's proposal is that fair compensation for the capacity value of the qualified new resource should be the CONE. Since the building utility will receive the ACP from MISO, Energy Michigan proposes that the cost to be shared among the LSEs in the utility distribution area be the difference between the ACP and the CONE, or the quantity  $CONE - ACP$  for each ZRC MW, per year.

This is an annualized cost, and the  $CONE - ACP$  charge would begin when the resource is first placed in service and would continue for as long as the new resource is in service.<sup>3</sup>

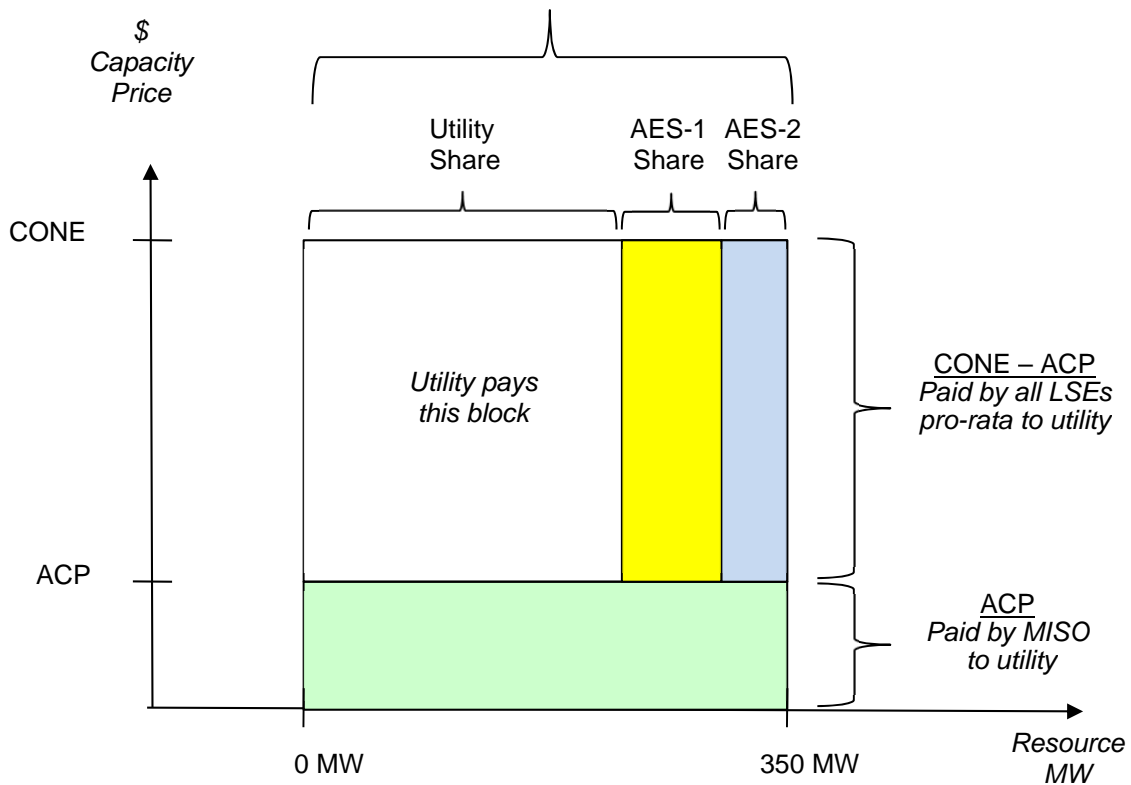
Mr. Zakem describes the prorating method on pages 40-43 of his Direct Testimony. 6 Tr 647-650. Exhibit EM-3 illustrates the concept and Exhibit EM-5 shows a numerical example.

The diagram below is from Energy Michigan's Exhibit EM-3.

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<sup>3</sup> Zakem Direct, 6 Tr 645-646. Emphasis added.

$$\text{Capacity Cost of New Resource} = 350 \text{ MW} \times \text{CONE}$$



The example below is from Energy Michigan's Exhibit EM-5.

### Scenario

IF:

- 94.7%                      Zone 7 LCR|percent.
- 8,300 MW                 ~ CE service area PRMR.
  
- \$94,900                    Zone 7 CONE, \$ per MW-year.
- \$25,550                    Zone 7 ACP, \$ per MW-year, = \$70 x 365 days.
  
- 400 MW                    AES #1 PRMR.
- 300 MW                    AES #2 PRMR. Owns 100 MW within Zone 7.

THEN:

- 7,860 MW                 Service area share of LCR, = 8300 x 94.7%.
- 379 MW                    AES #1 share of LCR, = 400 x 94.7%
- 184 MW                    AES #2 share of LCR, = (300 x 94.7%) - 100.
  
- Suppose CE builds a new ~ 350 MW (ZRC rating) plant to replace a retiring unit.

## Results

- Suppose CE builds a new 350 MW plant to replace a retiring unit.
- Then

$$\text{"LCR charge"} = 350 \times (94,900 - 25,550) / 7,860 = \underline{\$3,088 \text{ per MW}}.$$

$$\begin{aligned} \text{AES \#1 owes utility } &\underline{\$1,170,352 \text{ annually}} \text{ for its 379 MW share.} \\ &= \$3,088 \times 379 \text{ MW} \end{aligned}$$

$$\begin{aligned} \text{AES \#2 owes utility } &\underline{\$568,192 \text{ annually}} \text{ for its 184 MW share.} \\ &= \$3,088 \times 184 \text{ MW} \end{aligned}$$

### ZRC Credit

$$\text{MW credit} = \text{MW new resource} \times (\text{LCR AES} / \text{LCR area}) \times (\text{CONE-ACP}) / \text{CONE}$$

$$\begin{aligned} \text{For AES \#1} &= 350 \text{ MW} \times (379 / 7860) \times (94,900 - 25,550) / 94,500 = 350 \times 4.82\% \times 73.1\% \\ &= 12.3 \text{ MW} \end{aligned}$$

$$\begin{aligned} \text{For AES \#2} &= 350 \text{ MW} \times (184 / 7860) \times (94,900 - 25,550) / 94,500 = 350 \times 2.34\% \times 73.1\% \\ &= 6.0 \text{ MW} \end{aligned}$$

Energy Michigan's cost sharing proposal best accomplishes the goal of Section 6w, to "establish[] a new framework for resource adequacy in Michigan – that is, ensuring electric providers can meet customers' electricity needs over the long term." September 15 Order, p. 5. Even Consumers' counsel has recognized this, as she argued on the record in a Motion to Strike portions of Mr. Zakem's testimony, that "if Energy Michigan's so-called alternative proposal were accepted, the SRM charge would never apply because there would always be sufficient resource adequacy per Mr. Zakem's own proposal if his proposal were accepted under his testimony describing it." 3 Tr 137, lines 15-19 (emphasis added). Thus, Consumers apparently agrees with Energy Michigan that if Mr. Zakem's cost sharing proposal were to be adopted, then the goal of "ensuring electric providers can meet customers' electricity needs over the long term" would be met.

Nevertheless, if a LSE does not participate in paying for new resources, and therefore lacks the right to access a portion of the newly developed capacity in the state, and otherwise fails to obtain capacity necessary to meet the LCR, then a capacity charge, the "SRM charge" would apply. Energy Michigan has two proposals for how the SRM capacity charge could be assessed.

## **2. SRM Charge**

### **(a) Method A – CONE**

Energy Michigan proposes that the SRM capacity charge – to be applied to those LSEs who do not demonstrate sufficient capacity to the Commission – should be the zonal CONE. In his Direct Testimony, Mr. Zakem explains why this is the appropriate charge:

#### **Q. Why do you think that CONE is the appropriate price?**

A. CONE represents the cost of a newly built capacity product that MISO defines as meeting capacity requirements. It is also the highest cost that can be seen in the MISO auction. As shown previously in my testimony, Consumers has stated that if it has to acquire capacity for deficient LSEs, it will either buy in the MISO auction or build new. Thus, the CONE is in accordance with cost of service principles.

Theoretically, if Consumers were to buy in the auction, the cost of service price would be the Auction Clearing Price, which is less than or equal to CONE. Practically, however, pricing the SRM capacity charge for a deficient LSE at the ACP would make the deficient LSE financially indifferent to meeting its capacity requirement by paying the ACP to MISO or being deficient under PA 341 and paying the ACP to the utility. Therefore, charging CONE would provide an incentive to the LSE to meet its requirements through MISO while at the same time following Michigan's cost of service principles should the LSE fail to meet its requirements through MISO.<sup>4</sup>

As Energy Michigan has explained in its testimony, it must be recognized that PA 341 Section 6w is not the only statute that controls the pricing of utility service. While Section 6w(3)

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<sup>4</sup> Zakem Revised Direct Testimony, 6 Tr 654-655.



specifies the inclusion of "capacity-related generation costs included in the utility's base rates" and the exclusion of "all energy market sales," among other things, another statute, MCL 460.11, requires "rates equal to the cost of providing service."

Using the CONE follows the cost of providing service and so is in accordance with Michigan law. Mr. Zakem explains:

In this context, "cost of service" does not mean "the Excel file the utility normally uses in its rate case." Instead, it means discerning the principles of reasonably allocating a number of individual and joint costs, fixed and variable, to the customers or classes that affect the incurrence of such costs.

If it has to take on additional capacity obligations under PA 341, Consumers has stated it intends to buy from the MISO auction or build new. It is not going to use its existing resources to provide for additional capacity obligations, and therefore the cost of existing resources may not be relevant.<sup>5</sup>

As long as the utility is purchasing from the MISO market whatever additional capacity it may need in order to serve the capacity needs of ROA customer load, as Consumers has indicated it intends to do,<sup>6</sup> then CONE is the appropriate capacity charge, as it reflects the highest actual cost the utility would ever have to pay to provide service to that particular customer class.

**(b) Method B – Larkin and EVA's Calculations**

As Mr. Zakem discusses in his Rebuttal (6 Tr 674ff), a number of the parties in this proceeding begin with Consumers' embedded costs and subtract various costs from that. Should the Commission favor this approach, then Energy Michigan supports the subtraction of full energy market sales as well as the other factors specified in Section 6w(3). Energy Michigan

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<sup>5</sup> Zakem Revised Direct Testimony, 6 Tr 654 (emphasis added).

<sup>6</sup> 5 Tr 285.

witness Mr. Ralph C. Smith summarized the recommendations that he and Mr. Jennings make following their analysis of Consumers' data. Mr. Smith summarized this as follows:

As shown on Exhibit EM-7 (RCS-2), I started with Consumers' total capacity cost of \$1.565 billion. Consumers is projected to have \$1.060 billion of energy market, off-system energy sales and ancillary service revenue. Net of related fuel costs of \$409 million, the amount of net revenue less fuel costs is \$651 million. The net capacity cost, determined by subtracting the \$651 million net revenue amount from the \$1.565 billion total capacity cost is \$914 million. Dividing the \$914 million by Consumers' owned and purchased capacity of 8,331 MW produces an SRM capacity rate of \$109,714 per MW-Year as shown on Exhibit EM-7 (RCS-2), line 13. The SRM capacity rate can also be stated as \$300.59 per MW-Day, as shown on Exhibit EM-7 (RCS-2), line 14. As I previously noted, an SRM capacity rate of \$300.59 per MW-Day results from a method based on traditional historical embedded costs of service methods.

6 Tr 709-710.

The table below draws from Exhibit EM-7 discussed above, for ease of reference.

Line No.	Description	Total Amount (A)	Reference	(Millions of Dollars)
1	Capacity Costs Per Company	\$ 1,565	Note A	
	Less:			
2	Energy Market Sales	\$ (1,023)	Note B	
3	Off-System Energy Sales	\$ (12)	Note B	
4	Ancillary Service Sales	\$ (25)	Note B	
5	Bilateral Energy Sales	\$ -	Note B	
6	Revenue	\$ (1,060)		
7	Related Fuel Costs	\$ 409	Note B	
8	Net Revenue Less Fuel Costs	\$ (651)		
9	Net Capacity Cost	\$ 914	L1 + L8	
10	Owned and Purchased Capacity in MW	8,331	Note C	
11	SRM Capacity Annual Rate \$ Million / MW-Year	\$ 0.110		
13	SRM Capacity Annual Rate, \$ / MW-Year	\$ 109,714		
14	SRM Capacity Daily Rate, \$ / MW-Day	$\frac{\$914,026,000}{8,331 / 365}$	=	\$ 300.59 / MW-Day

Notes and Source

[A]: Company Exhibit A-2 (JCA-2), Page 1, Line 24 and Company Exhibit A-3 (JCA-3), Page 1, Line 10

[B]: Energy Michigan witness Jennings, 2018 amounts

[C]: Company's 2016 SEC Form 10-K, pages 18-19:

Description	MW
15 Owned Generation	5,643
16 Purchased and Interchange	2,688
17 Total Supply	8,331

If the Commission chooses to adopt a capacity charge mechanism that relies on Consumers' embedded capacity costs, then Energy Michigan recommends that the calculation above be adopted, as it accurately reflects the subtraction of the various sales factors specified in Section 6w(3)(b). Just as with the CONE proposal explained above, this charge would be applied to those LSEs who do not demonstrate to the Commission sufficient capacity, either through participation in Energy Michigan's cost-sharing proposal and otherwise.

**3. In Order to Satisfy Section 6w(6), the Capacity Charge Must Be Managed and Paid by the AES.**

Section 6w(6) states, in relevant part, "The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective." MCL 460.6w(6) (emphasis added). As Energy Michigan witness Mr. Lael Campbell noted, "AESs manage their customers' needs, and the resources to meet those needs, on a portfolio basis, no different than how the utilities manage a portfolio of resources to serve customers and do not designate specific resources to serve specific individual customers." 6 Tr 713-714. As Mr. Campbell notes, the above-cited statutory language "envisions this portfolio approach" when it allows an AES to only pay the capacity charge for the "portion of its load" for which it does not have sufficient capacity allocated. 6 Tr 714.

It is also important to note that allocating the capacity obligation, and therefore the capacity charge, to the AES rather than the customer is consistent with MISO's tariff, where the capacity obligation is on the AES and not on individual customers. 6 Tr 714. Further, as Mr. Campbell notes, doing otherwise would have a discriminatory impact on AESs, as compared to the utilities: "It would also create an additional competitive disadvantage for AES[s] compared to

the utilities, who have and will continue to serve their aggregate load through a combined portfolio of generation resources." *Id.*

There are also customer impacts to be considered when deciding who pays the capacity charge. If the customer itself were required to pay the charge because of the actions or inactions of its supplier, then the customer is being held responsible for actions it cannot control. If disputes arise about whether or not sufficient capacity was obtained, then the customer would be placed in the middle of these disputes and would bear the brunt of the consequences and substantial financial costs without being able to affect the result, as it cannot obtain its own capacity. Furthermore, as Mr. Campbell points out, "[s]uch disputes would be better managed by the AES and the Company as those two entities would be more knowledgeable of the capacity demonstration and SRM process." 6 Tr 714. Further, if the charge is billed through and managed by the AES, then the AES can continue to bill customers according to the contract between the AES and the customer, which may or may not include the payment of a SRM charge. Finally, allowing the AES the choice to spread the capacity cost across its load base and not requiring it to be applied on a customer-by-customer basis, allows the AES the opportunity to remove any potential discriminatory impact on individual customers, as otherwise some would have to pay the capacity charge and others might not. See 6 Tr 715.

It is not only consistent with the requirements of Section 6w for the capacity charge to be paid by the AES, but it is specifically required that this be the case. Section 6w(6) states that, "[a]ny electric provider that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years before the beginning of the applicable planning year if it does not expect to meet that capacity obligation and instead expects to pay a capacity charge." MCL 460.6w(6). This language

unequivocally establishes that it is the AES that should "expect[] to pay a capacity charge" and not the customer. Similarly, the capacity demonstration requirement under Section 6w is plainly the responsibility of the AES and not of the customer.<sup>7</sup>

Mr. Campbell provides one method for addressing, in practical terms, how AESs can be assessed the capacity charge for their load, which would likely require amendments to Consumers' ROA tariff. There may be other means for addressing this situation. In any event, what is plain is that in order to be consistent with the requirements of Section 6w(6), any capacity charge will have to be able to be managed and paid by AESs and not by their customers.

Finally, in order to avoid double-billing for any SRM charge, the SRM charge should only be applicable for the delivery year in which the AES fails to meet the capacity obligation – not the entire four-year SRM period. As Mr. Campbell stated:

Because the AES will be responsible in the eyes of MISO for its customers' capacity obligations, the AES will have to pay the Planning Resource Auction ("PRA") clearing price for that load in each MISO annual auction. In order to avoid double billing for capacity, the AES would be billed the SRM charge by the utility in an amount equal to the SRM minus the PRA clearing price for the applicable delivery year.

6 Tr 717. Billing only for the applicable delivery year does not deprive Consumers of the full SRM charge. As Mr. Campbell explained, "the utility is selling its capacity into the PRA and receiving the PRA clearing price, so when an AES pays the SRM less the PRA price it simply provides the utility with the remaining funds so that the utility receives the full SRM amount for the capacity used to serve the portion of AES load subject to the SRM." 6 Tr 717. Billing in this manner also ensures that billing for capacity by both MISO and Consumers for the SRM amount

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<sup>7</sup> See MCL 460.6w: "A capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier can demonstrate that it can meet its capacity obligations . . . ."

"marry up as much as possible and occur during the same applicable delivery year at the established capacity price for that year." 6 Tr 718. Per Mr. Campbell, "the amount an AES is billed by the utility for the SRM should be apportioned to the AES's load the same way that MISO does it, but looking at the Peak Load Contribution ('PLC') of the AES's load for that delivery year (as established by MISO)." 6 Tr 718. For all of these reasons, billing should only occur for the applicable delivery year of the applicable SRM charge.

### **III. CONCLUSIONS AND PRAYER FOR RELIEF**

WHEREFORE, Energy Michigan hereby respectfully requests that the Commission fulfill the statutory requirement to establish a "new framework for resource adequacy in Michigan" by implementing Energy Michigan's proposals for a capacity sharing mechanism and for an SRM capacity charge based on one of the methods outlined herein.

Respectfully submitted,

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**STATE OF MICHIGAN**  
**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

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In the matter, on the Commission's own motion, )  
to open a docket to implement the provisions of )  
Section 6w of 2016 PA 341 for ) **Case No. U-18239**  
**CONSUMERS ENERGY COMPANY'S** )  
service territory. )  
\_\_\_\_\_ )

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
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Kimberly Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 26th day of September, 2017, she served a copy of the Initial Brief on behalf of Energy Michigan Inc. upon those individuals listed on the attached Service List via email at their last known addresses.

\_\_\_\_\_  
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