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October 12, 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 Reply 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 Lundgren

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TJL/kc
Enclosures
c. ALJ
All parties of record.

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 **CONSUMERS ENERGY COMPANY'S** service territory.	)	**Case No. U-18239**

REPLY BRIEF

OF

ENERGY MICHIGAN, INC.

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Contents

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. INTRODUCTION

This Reply 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. Consumers' and Staff's Proposal for an Perpetual SRM is Bad Policy and Conflicts with Statutory Requirements

In their Initial Briefs, Consumers Energy Company ("Consumers") and Commission Staff ("Staff") argue respectively that, "[t]he MPSC should set a term of indefinite length, and order that the SRM shall be in effect permanently until directed otherwise by further legislative action," and that "the SRM should be effective in perpetuity." Consumers Initial Brief, p. 6; Staff Initial Brief, p. 7. Consumers proposes two reasons for its position: 1) the MPSC has to rely on the SRM charge to ensure grid reliability; and 2) Consumers "may need to plan construction of new generation facilities" and "long-term assurance that the SRM will remain in effect is essential in making such plans." *Id*. (emphasis added). Staff asserts that an SRM set in perpetuity is warranted, in part, because the "Legislature did not provide an expiration date or a sunset clause on the SRM itself, but delegated the authority to the commission to decide whether to set one." Consumers' proposal is unlawful and none of the reasons provided support the positions that Consumers and Staff are advocating.

If the Commission were to "order that the SRM shall be in effect permanently until directed otherwise by further legislative action" it would be tying the hands of future Commissions. This is unlawful. The Commission cannot bind future Commissions by creating a permanent SRM that requires legislative action to undo. See, *In the matter of the application of Midland Cogeneration Venture Limited Partnership for approval of capacity charges contained in a power purchase agreement with Consumers Power Company*, Case No. 8871, March 30, 1989, p. 5 ("we cannot bind future commissions and will not bind ourselves to prejudge the matter"); see also, *In the matter of the application of Consumers Power Company for authority to change its method of accounting for the electric fuel and purchased and net interchange adjustment clause revenues*, Case No, U-5609, May 1, 1978, pp. 7-8.

Furthermore, Consumers' and Staff's arguments in support of this unlawful proposal do not, in fact, provide any substantial basis for such an action. Consumers argues that the SRM provides a means for the Commission to address grid reliability, and cites Staff witness, Mr. Eric Stockings', testimony in support, which notes that "[t]he SRM provides the Commission with a tool to ensure the long-term reliability of the electric grid in Michigan." *Id.* citing 6 Tr 737. However, while the SRM provides a tool to the Commission for addressing reliability issues, it is not the only tool in the toolbox. As the saying goes, if all you have on hand is a hammer, then everything is treated like a nail. Likewise, it is not good policy for the Commission to predetermine for the indefinite future that it – and future Commissions – will address all reliability issues using the same tool. For some years now, even in the absence of an SRM, the Commission has been engaging in an annual review of grid reliability issues. This should continue, and during the course of this process the Commission can determine on an annual basis whether or not it needs to implement an SRM for the applicable year, that is, four years out, or

whether some other tool would better meet the current situation, or even whether no particular action needs to be taken by the State. This approach ensures that the Commission has maximum flexibility to address the situation using different tools as circumstances change.

Consumers' second basis for advocating for a perpetual SRM is that it "may need to plan" for construction of new facilities. Obviously implementing a perpetual process that impacts a variety of stakeholders and creates administrative burdens as well as costs for all parties involved merely because of a utility's speculative plans is not a good basis for sound public policy. If Consumers decides that it needs to build new generation capacity, there are already processes to address those determinations, and the Integrated Resource Plan ("IRP") and Certificate of Necessity ("CON") processes provided by the Legislature and implemented by the Commission are sufficient to address questions surrounding the need for new capacity and what the best sources for that new capacity might be. A perpetual SRM process was not provided for by the Legislature and is not needed for that purpose.

B. Consumers' 30-year Proposed Charge Duration is Unreasonable and Unlawful

Consumers proposes that if a capacity charge is assessed, that it be in place for thirty years. Consumers Initial Brief, p. 7ff. The stated rationale for this proposal is "to prevent AESs and ROA customers from having the opportunity to game the utility's capacity resources." *Id.* Consumers does not point to any basis for this concern – no examples of this occurring previously in Michigan (or anywhere else for that matter), nothing but speculation that ROA customers and AESs would engage in "gaming." Consumers also fails to identify how such "gaming" would work, how it would result in losses or harm to the utility or to its ratepayers, what the extent of such harms might be, and why the severe measures proposed by Consumers are the most appropriate way to deal with such a situation if it should happen. Once again,

Consumers is asking the Commission to implement a punitive and costly public policy on the basis of its own speculations.

Equally as important, the steps Consumers is asking the Commission to take to lock in a 30-year capacity charge lack any basis or support in the statute that must authorize anything the Commission decides to implement. Energy Michigan agrees with the concerns expressed by ABATE in their Initial Brief, that, "Consumers' [30-year] proposal is also highly anticompetitive and, despite the Company's assertions to the contrary, directly conflicts with MCL 460.6w." ABATE Initial Brief, p. 15. Similar concerns are expressed by the Attorney General, who noted that "[t]he plain language of the statute is clear that any year in which the AES can demonstrate capacity, no capacity charge should be assessed against its load. There is no exception for an AES failing in the past to meet its capacity obligations." Attorney General Initial Brief, p. 19 (emphasis added). Energy Michigan agrees with these and other parties who have pointed out that Consumers' proposal would require the Commission to not only exceed its statutory authority, but even to contradict certain statutory requirements.

The benefits that are to be gained by having the Commission adopt a flexible policy that enables it to respond with a variety of tools to any reliability concerns, which Energy Michigan discusses above, apply as well here. Again, the Attorney General describes the situation well: "Locking in a 30-year commitment would interfere with or at least complicate the Commission's ability to adjust to any statutory, regulatory or procedural changes in the future." Attorney General Initial Brief, p. 19-20. Energy Michigan shares these concerns and urges the Commission to reject Consumers' proposal for a 30-year charge in favor of the single year charge discussed in Energy Michigan's Initial Brief (see pp. 20-21).

C. The SRM Charge Should be Applied to the AES, not the Customer.

On pages 12-13 of its Initial Brief, Consumers falsely assumes that PA 341 requires that a demonstration of an AES's capacity obligation be done on a customer-by-customer basis, then – based on that false assumption – asserts that it is not able to allocate a capacity charge to the AES but rather only to individual customers. This is the classic "straw man" debating technique popularized in high school debates.

> Due to the nature of Consumers Energy's accounting and billing systems, it is not possible to allocate the capacity charge on a pro rata basis to an AES's entire customer base. For example, if an AES has five ROA customers, but can only demonstrate capacity for four of them, it would not be possible to assign one-fifth of the capacity charge to each customer. Instead, each AES should make its capacity demonstration on a customer-by-customer basis.

Consumers Initial Brief, pp. 12-13. However, it is noteworthy that the word "customer" does not appear in PA 341's explanation of the implementation and application of the SRM charge anywhere in Section 6w (1) through (8). The words used are "alternative electric supplier," "alternative electric supplier load," "alternative electric load," and "load." The term "load" (which is not defined) commonly means the amount of power being absorbed in aggregate at any point in time – it does not mean a list of a million individual Consumers' customers, and it should likewise not mean a list of individual AES customers. It is clear from the plain statutory language that the AES pays the SRM charge[1] and that if a customer switches suppliers, the AES re-assigns its capacity to another provider:

> If an alternative electric supplier ceases to provide service for a portion or all of its load, it shall allow, at a cost no higher than the determined

[1] "Any **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) (emphasis added).

> capacity charge, the assignment of any right to that capacity in the applicable planning year to whatever electric provider accepts that load.

MCL 460.6w(7) (emphasis added). An individual customer does not own the capacity, does not re-assign the capacity, and does not accept re-assignment of capacity. As explained in its Initial Brief, Energy Michigan recommends that the Commission comply with the plain statutory direction to apply any SRM charge to the AES and not to individual customers.

D. Non-ZRC Costs Should be Excluded from PSCR Factors

On pages 20-21 its Initial Brief, Consumers argues that "Section 6w(3) of Act 341 requires that the capacity-related costs included in the Company's PSCR factors must be included in the SRM capacity charge." *Id.*, p. 20. Energy Michigan does not disagree with the wording of Section 6w(3)(a), but rather with Consumers' characterization of "capacity-related" as applied to the PSCR. For purchases, "capacity-related" should mean the purchase of a capacity product that will satisfy MISO's capacity requirements – which is the purpose of PA 341. It should not mean any and all non-variable payments associated with a power purchase. Thus, if Consumers purchases a Zonal Resource Credit ("ZRC"), then that is a valid "capacity-related" expense for the PSCR and can be included in the SRM charge – if the Commission decides to follow Consumers' SRM charge methodology. Other than the purchase of ZRCs, purchased power expenses should be allocated only to full service customers, not ROA customers, as they currently are through the PSCR process.

E. Rate Design for Capacity Related Costs Should Not be Changed

On pages 22-24 of their Initial Brief, Staff defends the significant change they propose in rate design for the implementation of "capacity-related" charges under PA 341. Staff proposes to collect all capacity-related expenses in the four summer months, compared with the present

rate design of collecting all production expenses – both capacity-related and non-capacity-related – over all 12 months. Kroger and ABATE object to the change in rate design. Consumers has not proposed such a rate design, but rather continues to spread both capacity-related and non-capacity-related charges over all 12 months.

Energy Michigan does not view the implementation of PA 341 and the application of an SRM charge as a rate design issue for purposes of this proceeding. Rather, the implementation of an SRM charge should be viewed in the context of satisfying MISO's capacity requirements for resource adequacy, which is the purpose of Section 6w. Furthermore, as Energy Michigan and ABATE continue to maintain, any determinations regarding capacity charges must satisfy Michigan's cost-of-service statute, as well as Section 6w. As ABATE has stated, "Collecting SRM capacity costs across all customer classes using a uniform energy rate would therefore be contrary to the requirements of MCL 460.11, as well as the industry standard definition of rates that are equal to cost of service." ABATE Initial Brief, p. 21.

The MISO capacity obligation, the Planning Reserve Margin Requirement ("PRMR"), is an annual obligation based on the previous year's actual peak. The MISO capacity product – a ZRC – is similarly an annual product. MISO bills out the capacity charge for a supplier's capacity obligation equally over the Planning Year, per MW of PRMR. The actual peak or energy use of a supplier in the current Planning Year does not affect the amount of the MISO capacity charge for that year.

Viewed in that context, the MISO obligation and charges are the result of an annual "cost of service," so to speak, an annual reliability assessment. From Planning Years 2009/10 through 2012/13, MISO did have a monthly reliability obligation. But starting with Planning Year 2013/14 through the present, the obligation and the ZRCs that go with that obligation are annual.

For these reasons, Energy Michigan views the collection of an SRM charge or a "capacity-related" charge as simply the collection of an annual expense over the course of a year. The Commission has approved methods for collection of production costs, and the SRM charge and "capacity-related" costs are part of this collection.

The Staff proposal would dramatically and unnecessarily change the cycle of a customer's energy costs over the months of the year, making managing of energy costs more complex and requiring changes in customers' budgets and operations. There is no need to do all of this to implement an SRM charge or "capacity-related" charge. If a significant rate design change is seen as necessary, that should be done in a general rate case. Energy Michigan recommends that the Commission maintain a rate design that does not upset settled expectations that energy charges will be collected fairly equally over the months of the year.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, for the reasons set forth above, as well as in the Testimony and Exhibits filed by Energy Michigan, and in its Initial Brief, Energy Michigan respectfully requests that the Commission implement the SRM capacity charge in accordance with the requirements of Section 6w of Act 341 and the cost of service statute MCL 460.11 using the methods proposed by Energy Michigan.

Respectfully submitted,

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October 12, 2017

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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 **CONSUMERS ENERGY COMPANY'S** service territory.	))))))	**Case No. U-18239**

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Kimberly Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 12th day of October, 2017, she served a copy of the Reply 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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