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March 27, 2018

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-18444

Dear Ms. Kale:

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

Sincerely yours,

VARNUM

Timothy Lundgren

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TJL/df
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 contested case proceeding for determining the process and requirements for a forward locational requirement under MCL 460.6w for the following named parties: **ALPENA POWER COMPANY, et al.**	)	Case No. U-18444

INITIAL BRIEF

OF

ENERGY MICHIGAN, INC.

March 27, 2018

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INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. INTRODUCTION

At its October 11, 2017 meeting, the Michigan Public Service Commission, ("MPSC" or "Commission") issued an order on its own motion opening this docket to determine the process and requirements for a forward locational requirement under MCL 460.6w (the "Order"). The Order directed MPSC Staff ("Staff") to submit a proposal with supporting testimony by November 15, 2017 that addressed a number of questions set forth in the Order. See Order, pp. 3-4. The Commission also noted its intention to read the record itself, thereby foregoing a Proposal for Decision in this proceeding. At a scheduling hearing on December 12, 2017 a schedule was set for this proceeding that involved the filing of testimony and briefing by the various named parties and intervenors. Energy Michigan accordingly timely filed Direct and Rebuttal Testimony through its expert witness, Mr. Alex Zakem. This filing constitutes the Initial Brief of Energy Michigan in this proceeding.

II. FACTS AND ARGUMENT

A. What is the MISO LCR for each zone?

The Midcontinent Independent System Operator ("MISO") annually calculates a local capacity requirement ("LCR") for each of its zones. Staff testified to the current LCR for MISO Zones 2 and 7. 2 Tr 253. Mr. Zakem testified to an error in MISO's calculation of the LCR that has been raised at MISO, but not yet addressed. 2 Tr 79-82, citing in part, *Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc.*, FERC docket no. ER13-2298-000, October 4, 2013. While this error does not cause significant variation in the early years of an incremental approach, it can have significant impact either when the increment approaches 100% of the load serving entity's ("LSE's") pro rata share, or if a pro rata model is

adopted instead of an incremental approach. Mr. Zakem calculates that without correction, when LSEs are covering 100% of their pro rata share, Zone 7 will end up with about 300 MW of excess capacity, at a cost of approximately $180 million in initial investment, plus annual operating and maintenance expenses. 2 Tr 81-82.

While the Commission's ability to unilaterally adjust the zonal LCR from what MISO has approved may be limited by the requirement at MCL 460.6w(8)(c) that the Commission set the LCR "consistent with federal reliability requirements," that does not prevent the Commission from seeking to have MISO correct the error discussed by Mr. Zakem. Thus Energy MI encourages the Commission to work with MISO to address the issue as it promised to do in its October 4, 2013 *Answer* in FERC docket no. ER31-2298. Should MISO not act in a reasonable period of time, then Energy Michigan believes that the State should file with the FERC to seek a correction to the MISO LCR calculation. Doing so will save Michigan ratepayers potentially hundreds of millions of dollars of unnecessary costs.

B. How should the LCR, for purposes of Section 6w, be projected four years into the future as set forth in the law?

The Staff proposed an incremental approach to setting a forward locational requirement in Exhibit S-25. Energy Michigan believes that an "incremental need" approach to projecting forward LCR requirements best satisfies the spirit and letter of PA 341. Energy Michigan therefore supports Staff's proposal with certain important modifications.

First, if there are LSEs who are unable to meet their forward capacity obligation and consequently customers are paying the SRM to the utility, then the Commission needs to be clear about what the expectation is from the utilities. As Mr. Zakem points out, if a utility is receiving an SRM payment to cover the capacity costs of AES's customer, then it is not sufficient for that utility to simply purchase the necessary capacity on the MISO PRA. 2 Tr 72-73. If that were to

happen, then Mr. Zakem explains that "the remedy by the utility is to take the very action the LSE was prohibited from taking to meet its capacity obligation." 2 Tr. 72. Because having that customer served from the PRA by the utility is no different in terms of zonal resource adequacy than having that customer served from the PRA by the AES, such an outcome would fail to advance the goals of PA 341 and also be discriminatory against AESs.

Instead, the utility should have to meet the same standard that the AES's are required to meet – that is, "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). If the utility owns or has contracted for capacity resources that are available and qualify to meet the capacity need, then the statutory requirement would be satisfied. If they do not, then the payment should go toward purchase of new forward capacity resources – either by means of new contracts or new construction – so that such resources will be available when the need arrives.

C. Should the MPSC implement an LCR for individual electric providers?

It is Energy Michigan's view that an individual, mandatory LCR for load serving entities in Michigan is both unlawful under the requirements of PA 341, and unnecessary to fully implement a four-year forward resource adequacy review. A four-year forward zonal LCR, modeled on MISO's prompt-year zonal LCR, would be sufficient to assure resource adequacy in Michigan, consistent with the requirements of PA 341.

1. The MPSC lacks legal authority under PA 341 to implement a mandatory individual LCR requirement.

Energy Michigan believes that PA 341 does not give the MPSC the legal authority to implement an individual, mandatory LCR requirement on electric providers. In fact, PA 341

would prohibit such by means of its requirements that the Commission's implementation be "consistent with federal reliability requirements" which contain no such mandatory individual LCR. MCL 460.6w(6). Energy Michigan has argued these issues before the Commission already in its filings in U-18197, and the issue is currently before the Michigan Court of Appeals. See COA dockets 340600 and 340607. Therefore, for the sake of efficiency, we will not repeat these arguments fully here. Nevertheless, Energy Michigan does not waive these arguments by means of any of the positions taken in this proceeding.

2. Additional, practical considerations make a mandatory individual LCR a poor policy choice.

In addition to the legal reasons that Energy Michigan believes would prevent the Commission from lawfully implementing a mandatory individual LCR, there are practical considerations that argue against it.

(a) A mandatory individual LCR would not improve zonal reliability.

Reliability in MISO is sufficiently accomplished by a zone meeting its LCR in total. MISO does not impose, nor does it need to impose, additional LCR obligations on individual LSEs. The only time when LSEs are required to specify zonal resources is when they choose to opt out of the PRA through a Fixed Resource Adequacy Plan ("FRAP"). However, this optional path allowed by MISO is not justification for imposing a mandatory zonal resource requirement on individual providers. 2 Tr. 90-91. As Mr. Zakem testified, under MISO's reliability requirements, the ZRCs submitted in a FRAP are not dedicated to serve the LSE that submitted the FRAP. 2 Tr 91. Rather, since April 1, 2005,

> MISO uses all resources to serve all loads. Thus, the idea that the resources owned by a particular LSE are used to serve and to provide supply/demand reliability to that particular LSE has been obsolete for over 12 years. The MISO

> annual auction process is a method to allocate financial responsibility to LSEs for the total cost of all resources, not to allocate specific resources to specific LSEs.
>
> 2 Tr 91.

As Mr. Zakem points out, the FRAP process was created by MISO to solve a specific situation, "and [MISO] instituted rules to prevent the FRAP process from being gamed." 2 Tr 94. Trying to emulate a FRAP outside of the context of MISO's tariffs and market thus risks opening up Michigan's LSEs to gamesmanship by those with significant market power.

As long as the MISO criteria for capacity within a zone and within MISO are met, all LSEs within a zone and within MISO receive the same reliability. If there are insufficient local resources within a zone to meet MISO requirements, all LSEs within that zone still receive the same reliability, although lower than other zones. Individual LSEs within a zone always receive the same reliability under MISO rules and operations. Therefore, there is no benefit to reliability from imposing a mandatory individual LCR rather than a zonal one, and MISO's FRAP mechanism provides neither a reasonable analogue for such a requirement, nor justification for imposing it.

(b) A mandatory individual LCR requirement would increase costs.

Imposing a mandatory individual LCR obligation on LSEs within a zone has the very real potential to result in the total resources for the zone determined by the local method to be greater than the total required by MISO for the zone, to meet the same MISO reliability standard. The practical result of this is overbuilding, which is a problem that can cost Michigan citizens hundreds of millions of dollars. The Commission should weigh the potential costs of a mandatory individual LCR against the reliability benefits that could accrue (of which there are

none), and determine that even if it has the legal authority to impose one, the costs of doing so outweigh the benefits.

(c) A mandatory individual LCR can allow utility gamesmanship, due to utility market power.

Under an individual LCR obligation, any LSE that controls more local resources than the minimum required for its own obligations, effectively removes those resources from the zonal pool used to meet the total requirements of LSEs within the zone. The two largest utilities in the state – Consumers Energy and DTE Electric – have this capability. See 2 Tr 354-355 and Exhibits S-11 and S-12. The market power they possess through control of so many in-zone resources can be used to create anti-competitive conditions that will drive AESs out of business and eliminate Electric Choice. Such a result is contrary to the requirements of PA 341, which preserved a 10 percent Choice market. It also will increase costs to Michigan's electric customers.

The Staff similarly addressed some of the concerns an individual LCR obligation can raise in their Comments filed on May 26,2017 in U-18197 (see pp. 2-8).[1]

D. If the MPSC implements an LCR for individual electric providers, it should implement an incremental approach similar to Staff's recommended approach.

If in spite of the considerations Energy Michigan raises above, the Commission chooses to implement a mandatory individual LCR requirement for Michigan load serving entities, then Energy Michigan supports the Staff's incremental approach, as discussed above. The incremental approach allows the issues of excessive costs and market power to be more effectively addressed than under any of the other alternatives presented.

[1] Staff Comments on May 26, 2017 in Case No. U-18197, are available on the Commission's own website:
https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000001UVQ9

The three non-utility parties in this proceeding who offered an opinion on the preferred method of implementing an individual LCR obligation, if the Commission were to order one, *i.e.*, ABATE, Constellation, and Energy Michigan, all preferred the incremental method. Only the two large utilities want a different method, a "load ratio share" by Consumers Energy and an "Effective Capacity Import Limit" method by DTE Electric. Energy Michigan believes that only the Staff's proposal effectively addresses the resource adequacy concerns of PA 341 without causing additional concerns over market power and imposition of unnecessary costs on Michigan's electric customers. Nevertheless, Energy Michigan has an additional option for addressing load changes that it believes the Commission should consider that could improve administrative efficiency and reduce the need for show-cause hearings.

1. Changes in load levels for each LSE over time must be accounted for.

Accounting for changes in load levels among LSEs is a critical issue under any approach imposing a mandatory individual LCR obligation on LSEs into the future. Energy Michigan explains the issue of transfer of capacity obligation in Mr. Zakem's Direct Testimony. 2 Tr 73-74. Staff likewise recognizes the issue in the Direct Testimony of Ms. Catherine E. Cole. 2 Tr 348-349.

Staff has recommended a "show-cause" contested case for determining changes in the forward capacity obligation between LSEs. 2 Tr 349. Mr. Zakem observes that a show-cause proceeding can be complex and time consuming, and recommends that an additional option be included for LSEs to settle capacity obligations at the MISO public market clearing price when customers transfer from one LSE to another. 2 Tr 74-75. Mr. Zakem testified:

> While a show-cause proceeding would remedy the transfer quantity, a contested case can be complex and can take a while. So there

> is still the issue of timing between the transfer of a customer and the revision to capacity obligations.
>
> MISO has already solved this issue for one year, the Planning Year. If there is a transfer of customers from one LSE to another, MISO decreases the losing LSE's capacity bill and increases the gaining LSE's capacity bill as of the date of the change, and it uses the Planning Year Auction Clearing Price ("ACP"). A solution here can use a similar process.
>
> My recommendation for the forward locational requirement is to offer the losing LSE and the gaining LSE the option to settle with each other at the ACP. The gaining LSE would pay the losing LSE the ACP times the PLC of the load switch, and this would continue until the end of the next two-year re-assessment case. The ACP of each year in the interim period would be used (not the same ACP for all interim years).
>
> Thus, if the LSEs agree to settle under this option, (a) there is no need for a contested show-cause case, (b) both LSEs are treated fairly financially, (c) both LSEs can assess the value of serving or losing a customer without an unknown outcome of a contested case, and (d) the total local capacity remains the same.
>
> If the LSEs do not agree, then the show-cause contested case becomes the default process.

2 Tr 74-75 (emphasis added). Thus, Energy Michigan supports Staff's proposed method for addressing changes in load, but believes that the additional option proposed by Mr. Zakem would allow for increased efficiency and predictability in many situations, eliminating much of the need for costly and time-consuming show-cause contested cases.

E. All resources recognized by MISO should count towards meeting Michigan's forward locational requirement.

Act 341 mandates that the new resource adequacy requirements established by the MPSC be consistent with MISO and not conflict with federal resource adequacy standards. Thus, Section 6w(6) states as follows:

> 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 through owned or contractual rights to any

> resource that the appropriate independent system operator [i.e., MISO] allows to meet the capacity obligation of the electric provider. The preceding sentence shall not be applied in any way that conflicts with a federal resource adequacy tariff, when applicable.

MCL 460.6w(6) (emphasis added). This provision requires that the MPSC allow any such resource that MISO would allow, and that any conditions the MPSC places on capacity resources available to meet the Commission's requirements not conflict with MISO's FERC-approved tariffs. Similarly, Section 6w(8)(c) states:

> In order to determine the capacity obligations, request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and planning reserve margin requirement. If the appropriate independent system operator declines, or has not made a determination by October 1 of that year, the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements.

MCL 460.6w(8)(c) (emphasis added). Again, the statute requires that the Commission be consistent with federal and MISO requirements. Therefore, in order to comply with the legislative directions in Section 6w(6) and (8), the Commission should allow any external resources that would qualify under MISO's requirements to similarly qualify to meet the State's standards, as explained below in subsection 2.

1. Use of new and existing resources.

One issue that needs to be decided is how new and existing resources will be integrated into the incremental approach model. Energy Michigan believes that an existing plant should be removed from existing resources only after (a) there is a public announcement of the retirement and (b) MISO has determined that the plant will not be a System Support Resource.

A new resource should be included in available resources only after either (a) construction has started or (b) in the case of a demand response resource, the resource has been accepted as a Planning Resource and assigned a value by MISO.

2. Recognition of additional resources MISO allows to count toward resource adequacy requirements.

Michigan's rules should be adjusted to be consistent with the MISO rules over time, as is required in PA 341 to maintain consistency with MISO requirements. For instance, if MISO recognizes the use of external resources to meet resource adequacy needs, then Michigan should adapt its requirements to do so as well.

When MISO uses the term, "external" resources, MISO means resources external to the MISO region, not simply external to a particular MISO zone. MISO does not include the transmission import capability from another RTO region in determining the LCR of a zone in MISO. Therefore, MISO allows an external resource, that is, a resource from another RTO region, to qualify as a local resource in the MISO zone that is the interface with the other RTO region, provided there is firm transmission from the external resource to the border interface CPNode in MISO, plus firm transmission either to a load or a demonstration of deliverability within MISO. See the MISO Tariff Module E-1, section 69A.3.a.c.1.

Since such an external resource is allowed by MISO to meet the capacity requirement of the zone, PA 341 requires that the state reliability mechanism implemented by the Commission allow such a resource to satisfy the LSE's capacity obligation, consistent with MISO. Energy Michigan therefore recommends that the Commission allow such resources to qualify towards meeting an LCR obligation once MISO has accepted them for purposes of meeting MISO's LCR.

Further, MISO is currently developing procedures for external resources to be able to submit offers into the annual MISO auction. If MISO implements such procedures, Energy

Michigan recommends that external resources that offer into the MISO auction be counted as existing resources internal to the zone into which they offer, for the purpose of determining existing resources within the zone in the calculation of incremental need.

3. The current process implemented by Staff for LSEs to show how they will meet Michigan's forward locational requirement has proven sufficient and should be affirmed.

The Staff have now gone through the first capacity demonstration process for all LSEs in Michigan. The process, though not without some kinks and controversy, has worked reasonably smoothly and enabled the Staff to satisfy the requirements of the statute. On March 6, 2018 and March 14, 2018 Staff filed Reports in Case No. U-18441 on the initial capacity demonstration process with some recommendations for next year. Energy Michigan endorses the Staff's review of that process and their recommendations and commends them to the Commission.

F. If the Commission implements an individual LCR, it should also put into place procedures to address potential market power issues.

Any time one LSE controls more local capacity than is needed to meet its individual LCR obligation, market power becomes a serious issue – offering an opportunity for large utilities to competitively disadvantage alternative suppliers and thus the electric choice program. The Commission should implement procedures to prevent the exercise of market power if it imposes an individual mandatory local clearing requirement. Doing so is consistent with PA 341's maintenance of the ten percent electric choice market in Michigan. Energy Michigan sees two ways to mitigate market power under an individual LCR methodology.

The first way to mitigate market power is to eliminate the false scarcity of local resources when an LSE controls more than its share of responsibility for local resources. The quantity of mitigation, therefore, is the quantity by which an LSE controls more than its required share of local resources. Suppose an LSE’s required share of local resources is 950 MW but it owns 1,000

MW. In this situation, the zone includes 1,000 MW, but the LSE needs only 950, so logically the difference of 50 MW should be counted toward the sum of individual LCRs for the entire zone. However, this will not happen since no other LSE will be able to acquire the 50 MW unless the owning LSE sells the extra 50 it owns within the zone and replaces it by 50 MW from outside the zone.

To eliminate such creation of false scarcity of local resources, Energy Michigan recommends that if an LSE owns more than its required share of local resources, no matter what methodology is used to determine the required share, then the LSE's excess should be subtracted pro rata from the required shares of other LSEs. This solution produces two advantages: (1) it prevents market power from being used by one LSE to disadvantage others, and (2) it will avoid the situation where excess generation is built within the state to meet the individual LCRs.

The second way to mitigate market power is to bypass the bottleneck created by sole ownership of excess local resources. This is the basis of Energy Michigan's recommendation for an additional payment option as explained by Mr. Zakem in his Direct Testimony:

> **Q. Do you recommend an additional method?**
> A. Yes. I recommend that an LSE be allowed to meet its share of the incremental need by paying money to those parties who are actually building new capacity, in a way that avoids the exercise of market power and the potential of overbuilding. This option would be in addition to the three methods described above.
>
> **Q. Please explain.**
> A. Under the Staff's proposal, the determination that there is an "incremental need" in a specified year means that more capacity will be needed in that year to meet MISO's LCR for the zone. Zone 7 presently meets MISO's LCR. Staff maintains – and I agree – that as long as rate-regulated utilities continue to replace retiring generation, Zone 7 will continue to meet MISO's LCR.[2] Therefore the issue of a workable methodology for a forward locational requirement reduces to an issue of fair apportionment of cost. One solution is to give each LSE the opportunity to pay a fair share of the cost of building

[2] Direct testimony of Ms. Cole, [2 Tr 357 line 14 to 358 line 16].

new capacity within Zone 7 to meet the incremental need, while avoiding being exposed to market power of sellers and avoiding an outcome of overbuilding.

Q. What is your recommendation?

A. I recommend that an LSE be allowed to meet its forward locational requirement – that is, its share of the incremental need – as determined by the Staff method, by the paying the MISO Cost of New Entry, which MISO determines each year for each zone. The Cost of New Entry represents the value of pure capacity.

Q. Who would the money go to?

A. The money would be split pro-rata by MW by those entities that fill the incremental need.

Q. Would all LSEs be required to make such a payment?

A. No. Paying the Cost of New Energy would be a fourth method of satisfying the forward locational requirement. An LSE could still use any of the other three methods.

Q. What are the benefits of this fourth method?

A. There are a number of benefits:

- The zone continues to meet the zonal LCR.
- The most efficient and economic builders provide the new generation.
- LSEs are not subject to market power by those who hold excess local capacity.
- The prospect of overbuilding in the zone is eliminated.
- LSEs are not prevented from choosing any other method to meet local capacity obligations.

Q. Does this method have any drawbacks?

A. The money paid by an LSE would have to be collected, and the shares that are apportioned out to those entities that build resources to fill the incremental need would have to be determined. The Staff has recommended a contested case every two years to update the incremental need, and consequently how much new capacity is being built since the previous case will be part of determining the new incremental need. Each case can include a determination of which builders of new capacity will get what share of the payments from LSEs.

2 Tr 84-86.

In return for payment of the Cost of New Entry for a specific number of MW to the entity that is building new generation, an LSE would receive a commensurate share of the ZRC MW of the new generation, which the LSE could offer to MISO to satisfy its MISO capacity

requirement. If the Commission continues to assess a capacity charge directly on a retail customer, as opposed to an LSE, then the retail customer could have the option to pay the Cost of New Entry to the entity building new generation and to receive a share of ZRCs to count against its load. The customer's LSE could then act as the customer's agent by means of contractual agreement between them.

III. CONCLUSION

Energy Michigan generally supports Staff's method for deriving a forward LCR for Michigan's MISO zones. However, Energy Michigan does not believe that a mandatory individual LCR is consistent with the requirements of PA 341, nor is it practically necessary, and so we oppose the implementation of an individual, as opposed to a zonal, LCR requirement. Nevertheless, if the Commission determines to implement a mandatory individual LCR, then Energy Michigan believes that the most reasonable method is the incremental approach advocated by Staff, with the modifications set forth herein.

Respectfully submitted,
Varnum, LLP
Attorneys for Energy Michigan, Inc.

March 27, 2018

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*****

In the matter, on the Commission's own motion, to open a contested case proceeding for determining the process and requirements for a forward locational requirement under MCL 460.6w.	))))))	**Case No. U-18444**

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Deliah A. Fowler says that she is an employee of VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP and on March 27, 2018, she caused to be served a copy of the Initial Brief of Energy Michigan, Inc., and Proof of Service upon those individuals listed on the attached Service List via email at their last known addresses.

I declare that the statements above are true to the best of my information, knowledge, and belief.

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