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April 20, 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 Reply 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

REPLY BRIEF

OF

ENERGY MICHIGAN, INC.

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REPLY BRIEF OF ENERGY MICHIGAN, INC.

I. INTRODUCTION AND SUMMARY OF POSITION

Energy Michigan has consistently taken the position that an individual, mandatory LCR requirement, however allocated, is inconsistent with the language of Act 341, Section 6w. Instead, a zonal, 4-year forward LCR is called for in the statute, and as the demonstrations just completed in U-18441 have shown, a zonal LCR is perfectly adequate to address any reliability concerns.

Energy Michigan supports Staff's conclusion that, assuming no changes in the ten percent electric choice cap, "imposing anything other than a modest four-year forward LCR applicable to all LSEs is wholly unnecessary to protect reliability, even in MISO LRZ 7." Staff Initial Brief, p. 17. Energy Michigan further agrees with Staff that, "[i]f the Commission interprets the statute [i.e., Act 341, Section 6w] as purely intending to maintain system reliability, an individual LCR is not necessary at this time." *Id.* p. 12. However, Staff goes on to say, "If the Legislature intended to make sure that all LSEs contribute to long-term resource adequacy, then an incremental approach like that proposed by Staff is reasonable. The Statute can be fairly read to encompass both purposes." Energy Michigan disagrees with Staff that the statute can be fairly read to show a clear intent by the Legislature to impose on all LSEs an allocated share (incremental or otherwise) of the zonal LCR. Staff cites language from Commission orders suggesting contributions from all LSEs, but does not show where in the statute such authority resides. Nevertheless, the source of authority for such a Commission action must lie outside of the Commission's own orders: "this Court strictly construes the statutes which confer power on the PSC. As this Court explained in *Union Carbide*, [. . .] 'The power and authority to be exercised by boards or commissions must be conferred by clear and

unmistakable language, since a doubtful power does not exist.'" *Consumers Power Co v Mich Pub Serv Comm*, 460 Mich 148, 155; 596 NW2d 126 (1999) (citations omitted). Therefore, Energy Michigan believes that to be consistent with the statutory language of Act 341 and with MISO and federal reliability requirements, the Commission should establish a method for a four-year forward zonal LCR requirement. In fact, Energy Michigan believes that the Commission has effectively already done so with the proceeding in U-18197[1] and the Commission and Staff have demonstrated the efficacy of this methodology in the four-year forward demonstrations that were recently made in Case No. U-18441.

II. ARGUMENT

A. Consumers' Claims of Necessity for an Individual LCR are Unfounded

Consumers claims in its Initial Brief that, "[t]here would be no need or reason to determine the PRMR and LCR for electric providers in Michigan if those requirements were to have no effect on the sufficiency of electric provider resource adequacy demonstrations pursuant to Act 341." Consumer Initial Brief, p. 6. But this is a false dichotomy. The choices are not just an allocated share of the LCR applied to each LSE, or else requirements that "have no effect on the sufficiency of electric provider resource adequacy demonstrations pursuant to Act 341." *Id.* Act 341 requires a four-year forward assurance of resource adequacy in the state. It does not require that a new or allocated LCR be mandated for each LSE. In its October 11 Order in U-18444, the Commission expressed an interest in "considering other proposals that would result in meeting long-term reliability goals in an equitable, cost-effective manner under Michigan's hybrid market structure." October 11 Order, p. 2. Energy Michigan believes that the

[1] Energy Michigan substantially supports the process established in U-18197, although we have objected to the new requirements in that proceeding being implemented by means of a Commission order rather than through a rulemaking process.

Commission has already found a method for satisfying the requirements of PA 341 and meeting long-term reliability goals. The method for ensuring four-year forward resource adequacy that the Commission and Commission Staff implemented this year, and which is reported on in the Staff's Supplemental Report and Recommendations, filed March 14, 2018 in Case No. U-18441, was successful and need not be replaced with a method that allocates the LCR among LSEs. Therefore, Consumers' insistence that an individual LCR is necessary to satisfy At 341 can be disregarded.

B. An Individual, Mandatory LCR is Not Consistent With Act 341 and MISO Requirements

Consumers seeks to characterize the LCR as being an LSE-specific requirement in Act 341, but fails to provide any statutory support for such a view. Consumers' Initial Brief opens with a discussion of what a Local Clearing Requirement ("LCR") is. However, the utility begins with a mischaracterization of the LCR before providing the actual statutory definition. Consumers claims that an LCR "is a requirement that an electric provider obtain a specified amount of its generation capacity from resources located close to the load to be served." This characterization of the meaning of an LCR plainly is provider-specific and applies a "specified amount" of local generation capacity to "an electric provider." Consumers provides no statutory support whatsoever for this characterization of the LCR. When Consumers then turns to the definition of LCR in the statute, it reads very differently and is directly at odds with Consumers' characterization. Thus, the definition of LCR that is provided in Act 341 of 2016 says:

> "Local clearing requirement" means the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8).

MCL 460.6w(12)(d).

In contrast to Consumers' characterization, the statute defines an LCR as an "amount of capacity resources required to be in the local resource zone in which the electric providers' demand is served," not an amount required to be met by an individual electric provider. That is, it is a zonal requirement and not an individual requirement. This is emphasized by the statement that it is necessary "to ensure reliability in that zone" – not for that provider. The statutory definition then notes that the LCR is "determined by [MISO] for the local resource zone in which the electric provider's demand is served" – again indicating that it is a zonal and not individual requirement. Thus, the statutory definition plainly and explicitly identifies the "local" as the "local resource zone," and emphasizes its zonal quality by using the term "zone" three times in the one-sentence definition. Nothing in the definition supports the characterization of the LCR as a requirement of a "specified amount" on "an electric provider." As Energy Michigan has pointed out repeatedly in both this venue and at the Court of Appeals, there is no support in the statute for a mandatory, individual LCR applied to LSEs. Act 341 explicitly calls for an LCR on the MISO model – a zonal requirement that must be met by all LSEs in the aggregate. Consumers' characterization of the LCR is, therefore, entirely unsupported by the statute.

Nor can it be argued that an aggregate, zonal LCR necessitates the creation of a system to allocate that LCR to individual LSEs. First of all, nothing in the statute supports this position, as Energy Michigan has shown, and the Commission is a creature of statute and may not act without specific statutory authority. *Taylor v Michigan Public Utilities Commission*, 217 Mich 400; 186 NW 485 (1922); *Union Carbide Corp v Michigan PSC*, 431 Mich 135; 428 NW2d 322 (1988). Therefore, when the Legislature fails to address a concern in the statute with a specific provision, the Commission may not insert a provision simply because it believes it would have

been wise of the Legislature to do so to affect the statute's purpose. *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 142; 662 NW2d 758 (2003). Secondly, MISO applies just such a zonal LCR without having to allocate the LCR to individual LSEs, outside of the narrow context of the FRAP (as discussed in Energy Michigan's Initial Brief, pp. 4-5). Third, the Commission this year was able to successfully complete a review of the resource adequacy of Zone 7 without having to apply an LSE-specific LCR, and was able to do so on a four-year forward basis. See Case No. U-18441, Staff Supplemental Report and Recommendations, March 14, 2018. Therefore, it is plain that an individual allocation is not necessary to ensure that a zonal LCR is satisfied. Staff also agrees with this position: "assuming the ten percent cap on electric retail choice stays in place, and the natural incentive for the incumbent utilities to own local resources continues, imposing anything other than a modest four-year forward LCR applicable to all LSEs is wholly unnecessary to protect reliability, even in MISO LRZ 7." Staff Initial Brief, p. 17.

Despite the complete absence of statutory support for an individual LCR,[2] Consumers claims that, "[t]he Commission has correctly noted that an implementation of an LCR on individual electric providers would be consistent with and would appropriately complement, federal reliability regulations." Consumers Initial Brief, p. 7 (emphasis added). However, in the lengthy quote from the Commission' September 15 Order that follows in Consumers' Initial Brief, the Commission notes that "[e]ach year, MISO also establishes the local clearing requirement (LCR), which represents the minimum amount of generation that must be physically located within the local resource zone (Zone) in order to meet reliability criteria." *Id.*, citing March 15, 2018 Order in Case No. U-18197, p. 6. The Commission goes on in that quote to say

[2] With this too, Staff agrees, "the statute is silent on the allocation of LCR." Staff Initial Brief, p. 37.

that, "MISO incorporated the LCR into its resource adequacy construct at the direction of FERC in order to account for these constraints and better ensure reliability of the electric grid." *Id*., citing *Midwest Indep Transmission System Operator, Inc.,* 139 FERC ¶ 61,199, p. 41 (2012); 153 FERC ¶ 61,229, pp. 23-24 (2015). Finally, the Commission notes that, "The LCR applies to the entire Zone." *Id*., citing March 15 Oorder, p. 7. Thus, the entire discussion cited by Consumers addresses a zonal requirement, and not one applied to "individual electric providers."

The only discussion of a "proportional share" of the LCR being applied to an individual LSE in that portion of the Commission's September 15 Order arises in the discussion of a FRAP: "If an electric provider uses a FRAP in lieu of participating in the auction, the FRAP must demonstrate that the electric provider's proportional share of the Zone's LCR is met using resources located in that local Zone or otherwise count toward that Zone's LCR under MISO's tariff." *Id*, p. 9 (emphasis added). Thus, the Commission is merely representing the state of affairs under the MISO tariff, where the LCR is a zonal requirement that is only applied to individual LSEs on an allocated basis if they voluntarily elect to have it so by submitting a FRAP. In contrast, the mandatory allocated LCR that is advocated for by Consumers would not "be consistent with" and would not "appropriately complement, federal reliability regulations," contrary to Consumers' assertions.

C. Consumers' Proposed Load Ratio Share Approach is Inconsistent with Act 341 and Federal Requirements

Consumers argues that "[r]equiring all electric providers to meet their load-ratio shares of the Zone's LCR would be consistent with Act 341." Consumers Initial Brief, p. 11. First, Consumers argues for a load ratio share approach because it claims that, "the previously proposed MISO Competitive Retail Solution ('CRS') tariff's PSCM would have required electric providers to: (i) demonstrate forward capacity resources sufficient to meet the electric provider's

load ratio share of PRMR and LCR." Consumers Initial Brief, p. 12 (emphasis in original). From this, Consumers argues that, "[t]he same requirements should apply to the SRM, which was clearly intended to be the state substitute for the PSCM in the event FERC did not approve the PSCM." *Id.*

Even if we assume the truth and accuracy of Consumers' assertions about the equivalence of its proposal and MISO's CRS tariff proposal, there is a major concern with attempting to implement this approach at the state level that Consumers does not address. In a portion of the Commission's September 15 Order cited by Consumers, the Commission noted that, "FERC rejected the CRS proposal in February 2017, citing concerns with the market design." March 15, 2018 Order, p. p, citing *Midcontinent Independent System Operator, Inc.*, 158 FERC ¶ 61,128 (2017). Thus, Consumers is proposing that the Commission implement a design that the FERC has already evaluated and rejected as inconsistent with appropriate market design. Consumers has offered nothing to show that the design it is proposing has been modified in ways that would make it consistent with federal reliability requirements, as required under Act 341. MCL 460.6w(8)(c). Therefore, Consumers' load-ratio share approach should be rejected as inconsistent with federal requirements and the requirements of Act 341.

Consumers makes a second argument in favor of its load-ratio share approach, namely that "the SRM is designed to be analogous to a FRAP, not the PRA or self-scheduling options at MISO" and therefore, Consumers argues that the Commission should view the enactment of Section 6w when MISO's PRA was already in place as Legislative endorsement of the view that the PRA, which lacks a load ratio allocation, is inadequate. Consumers Initial Brief, p. 12. Without any explicit legislative endorsement of an allocated LCR, this is stretching statutory interpretation to the breaking point. A more reasonable interpretation is that the Legislature

wanted the Commission to supplement the existing PRA with a four-year forward capacity resource demonstration process, which would be implemented in a manner consistent with MISO's prompt-year requirements. Viewed in this light, there is no legislative endorsement of a load ratio share approach and the language of Act 341 need not be supplemented by speculation about legislative intent.

Consumers also objects to Michigan electric customers benefitting from the ability to import capacity and energy into the state. Because the utility does not want to see customers relying on supposedly "risky out-of-state imported capacity" rather than paying the utility for higher priced in-state capacity, Consumers says capacity must be "appropriately sourced in Michigan." Consumers Initial Brief, p. 13. Consumers offers no evidence and cites no supporting testimony for the proposition that imported capacity is inherently more "risky" than in-state capacity. MISO's own system of capacity allocation, which treats all deliverable capacity within MISO as equivalent, belies Consumers' aspersions on out-of-state resources. 2 Tr 91 ("MISO uses all resources to serve all loads"). Nevertheless, one can understand the financial motivations that would cause the utility to take such a position, particularly given its overwhelming control of the capacity resource market in its service territory.

Staff have presented a number of concerns over Consumers' and DTE's pro-rata and load-ratio share allocation methodologies, based on their market power, and the deleterious effects such proposals would have on competitive markets and electric consumer costs. Staff Initial Brief, pp. 32-33. In response to these and other concerns that a load-ratio share approach would allow the incumbent utilities the opportunity to exert undue market power over Michigan's capacity resources, Consumers asserts that it would be "fundamentally unfair" to recognize the market power DTE and Consumers exercise in Zone 7 by their combined ownership of most of

the zone's resources. Consumers Initial Brief, pp. 12-13. Consumers never explains how or why it is "unfair" for the Commission to recognize the risk that overwhelming market power poses to competition and reasonable customer costs. Consumers' vague complaints should therefore be set aside.

Finally, after arguing that out-of-state resources are "risky" and somehow not "appropriate," Consumers complains that AESs may be able to make more use of these resources than the utility going forward, and if that's the case, then it suggest three arguments against this. First, Consumers says it would be contrary to Act 341. However, Act 341 has nothing to say about allocating the capacity import limit, any more than it does about allocating the LCR. Second, Consumers argues that it "would create unfair discrimination in the obligations of different electric providers, resulting in unfair cost-shifting among Michigan electric customers." Initial Brief, p., 14. Consumers' argument presumes that purchasing capacity resources from out of state will be less expensive than relying on the utility's own in-state resources. The problem with Consumers logic is that it is the utilities' own choice whether to build and operate their own resources and rely on them, or to purchase more inexpensive resources from out of state. If the utilities choose to rely on their own expensive resources rather than taking advantage of the CIL to save their customers money, then that is hardly "unfair cost-shifting." Customers who choose to purchase from a provider who is willing to purchase less expensive resources and use the available capacity import capability should not be punished because they have made advantageous economic decisions. There is no "unfair discrimination" in allowing a customer to choose their supplier and the suppliers to choose their capacity supply, as long as MISO's resource adequacy requirements are maintained. Consumers' final, and unsupported, argument is that allowing customers to make use of the available CIL is somehow going to "jeopardize the

reliability of the electric grid in Michigan." *Id.* Once more, Consumers' assertions are unsupported by any testimony or citation to evidence on the record. They should therefore be disregarded.

D. Phased-In Approaches Advocated by Consumers and Others Would be Unfair

Consumers touts the "simplicity" of the phased-in approach. Consumers Initial Brief, p. 15. But this simplicity is purchased at the cost of ignoring important factors such as market power and availability of local capacity resources. Consumers cites the testimony of its own witness, Mr. Ronk, who says that "there is sufficient existing in-state capacity available for the AESs to manage a 50% LCR requirement right now." Consumers Initial Brief, p. 15, citing 2 TR 146-147. Other evidence on the record suggests differently. For instance, Mr. Dauphinais testified that Consumers' phased-in approach would "impose unnecessary costs on other suppliers and enhance the ability of large suppliers to exploit their market power over smaller suppliers." 2 Tr 60. See also concerns about excessive oversupply and market power expressed by Staff witness Catherine E. Cole at 2 Tr 354-356, 358.

Consumers complains about Staff being "extremely reticent" to endorse Consumers' approach to implementing an LCR, which would "require all electric providers to equally contribute to the Zones' resource adequacy requirements" rather than a zonal LCR which all electric providers contribute to meeting in the aggregate. Consumers asserts that "reticence is contrary to Section 6w of Act 341." Once again, Consumers' claims are made without support, for they cite no specific provisions of Section 6w which would be violated by a zonal, rather than individual LCR requirement.

Consumers spends considerable space taking Staff witness Cole to task for observing that the economics of the regulatory system provide incentives for utilities to build and own their own capacity. Consumers appears to be responding to the following testimony of Ms. Cole:

> The investor-owned utilities in Michigan have traditionally owned or secured resources located within the Zone to meet the vast majority, if not all, of their respective requirements. The rate-regulated utilities in Michigan have the opportunity to earn a return of and on resources that they own, and in the past, have had little incentive to plan to purchase or import significant amounts of capacity. Staff does not have any evidence to present to suggest this will change in the near future.

2 Tr 357. In essence, then, Consumers is objecting to Staff's observations of the economic incentives, informed by past utility behavior, and using that informed knowledge to project likely utility behavior in the future. Not only is this not objectionable, it is Staff's duty to provide this kind of testimony. In its Initial Brief, Consumers provides no counter-argument other than the position that Act 341 does not differentiate among electric providers. This is, of course, not entirely true, as the Act contains provisions specific to co-ops, to municipal utilities, to regulated utilities and to AESs. Nevertheless, even if it were true that the provisions of Act 341, or even of Section 6w, applied equally to all of those load serving entities, then Consumers does not point to any specific provisions in the Act that would prohibit making such distinctions, nor to any that require all to be treated the same. Thus, once again, we have only Consumers' bald assertions unsupported by legal authority. In any event, it would be derelict of the Commission and its Staff to ignore the very significant difference between regulated utilities with a guaranteed monopoly over 90% of the market and guaranteed rates of return and AESs who take upon their owners and investors the risks of changes in fuel costs, capacity costs, and the like.[3]

[3] See also, Staff's discussion of these differences at pp. 14-15 of their Initial Brief.

As to Consumers' claims that customers of AESs are being subsidized by bundled customers (Consumers Initial Brief, p. 24), Ms. Cole has succinctly dealt with that canard:

> The utilities may claim that their resources are indirectly serving ROA load, however, for several years, the utilities' resource plan filings at the MPSC explicitly subtract ROA load, and any excess supply cushion previously held by the utilities has been shrinking. With the ROA load explicitly subtracted, and without any excess supply cushion, it is difficult to find that the utilities' resources are indirectly serving ROA load.

2 Tr 361. Energy Michigan has repeatedly addressed the "subsidization" argument in other dockets and the utilities have universally failed to rebut demonstrations that no such subsidy exists. Therefore, Consumers' attempts to again raise this long discredited argument should be ignored.

E. The Commission Should Reject DTE's Proposed "ECIL" Concept

DTE's "ECIL" proposal, as provided in its testimony and Initial Brief, is inconsistent with the requirements of PA 341. Section 6w of PA 341 requires that the Commission implement its requirements in a manner consistent with what MISO requires. MCL 460.6w(8)(c) ("the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements"); see also, 460.6w(12)(h), 460.6w(12)(d), and 460.6w(6). DTE admits that its ECIL concept was developed by the utility itself and does not derive from MISO's resource adequacy framework, "ECIL is not a term defined by MISO," although it argues that it is "completely in line with MISO's process." DTE Initial Brief, FN 11. Nevertheless, DTE maintains that the ECIL is something different from the MISO's resource adequacy requirements, as the utility's witness, Ms. Dimitry, "testified that relying on MISO procedures to prevent an over-reliance on imports would not be prudent." DTE Initial Brief, FN 10.

Further confusing DTE's ECIL proposal is the apparent contradiction with DTE's testimony in other cases, as noted by Mr. Zakem in his Rebuttal Testimony, where he citied Ms. Wojtowicz's testimony in Case No. U-18419:

In Case No. U-18419, DTE Electric stated:

> "The resources that clear in the MISO PRA and are shown as imports/exports from LRZs are simply the result of an economic solution of all offers in the PRA to meet the PRMR of all LRZs. There is no connection between the PRA results and what LSEs may actually be using on a planning horizon basis to meet their resource adequacy requirements."

Mr. Zakem Rebuttal Testimony, 2 Tr 96, citing Rebuttal Testimony of Ms. Wojtowicz in Case No. U-18419, 7 Tr 2251, lines 1-5 (emphasis added).

It seems, then, that DTE's quarrel is with MISO's resource adequacy measures, and this is not an issue that the Commission can resolve. The Commission is required to set its requirements "consistent with federal reliability requirements," not to contest them. MCL 360.6w(8)(c). If DTE wants those federal requirements changed, they should take that issue to MISO or FERC, as the more appropriate venues.

Despite the absence of "ECIL" in the MISO tariff and despite the contradiction with DTE's previous testimony, DTE invents the term "ECIL" here as a device to restrict the use of import capacity usable by Zone 7, which restriction would result in an exercise of market power by DTE and so would raise capacity costs for all customers in Zone 7. The "ECIL" concept has not been defined or used by MISO for good reason. The Commission cannot invent concepts and rules that are not consistent with the MISO tariff.

The concept of ECIL exists apart from CIL only as a result of an error in the way MISO determines CIL. As Mr. Zakem explained in his Rebuttal Testimony, the PRMR is a statistical result, while the CIL is a result of load flow analysis. 2 Tr 96. The fact that MISO has combined

the two quantities without adjustment results in an error in the way the LCR is determined. 2 Tr 81-82. Mr. Zakem shows a 1,584 MW error in LCR. 2 Tr 81. DTE states that the ECIL is 1,974 MW. See, Exhibit A-1, page 1 of 3, line 3. Adding these together gives 3,558 MW, close to the Staff's cited CIL of 3,785. See Exhibit S-3, page 13. This shows that the concept of ECIL — again not defined by MISO — is merely being backed into and reflects the MISO error in determining LCR. See Mr. Zakem's Rebuttal Testimony, 2 Tr 95. Further, because of the way that DTE defines "ECIL" it is possible that the ECIL ends up negative, a nonsensical outcome. See Mr. Zakem Rebuttal Testimony, *id*.

F. Updated MISO Data Further Support Staff's Cautionary Words Regarding Implementing Costly New Reliability Requirements

In their Initial Brief, Staff cite a MISO preliminary report as follows: "The latest 2018/19 MISO PRA preliminary data shows MISO LRZ 7 already has confirmed UCAP exceeding its LCR by more than 400 ZRCs . . . . " Staff Initial Brief, p. 21 (emphasis added). This preliminary report was compiled prior to the most recent PRA. The actual PRA results were far above even the preliminary estimated excess. MISO's report "2018/2019 Planning Resource Auction Results" shows that Zone 7 UCAP exceeds its LCR by 1,408 ZRCs, well above the 400 ZRC estimate.[4] Energy Michigan notes that MISO estimated resources have generally been on the conservative side, with actual resources turning out to be significantly greater than estimated. These more recent MISO data merely underline Energy Michigan's agreement with the Staff's assessment that in considering the implementation of additional forward reliability requirements for individual LSEs, the Commission should consider the fairness and

[4] https://cdn.misoenergy.org/2018-19%20PRA%20Results173180.pdf. Document accessed on 4-20-2018.

reasonableness of any additional costs that those additional reliability requirements will place on Michigan customers.

Energy Michigan agrees with Staff's conclusion that,

> If the status quo continues, the remaining LSEs [i.e., the non-regulated LSEs] should have the option to purchase capacity from wherever they choose, so long as the zone continues to meet the reliability requirements. To impose any other requirement on the remaining LSEs could be deemed inequitable, and certainly could lead to increased costs for ROA customers.

Staff Initial Brief, p. 36. Energy Michigan thus respectfully suggests that the Commission proceed cautiously and in clear accordance with explicit authorizing language in Act 341 when it implements the locational requirements for Michigan's zones so as to avoid inadvertent negative effects on the electric market in the State.

G. Staff's Proposal to Address Load Changes Should be Adopted, with Energy Michigan's Proposed Additional Option

Energy Michigan generally supports Staff's proposal to address load changes. However, on page 57 of their Initial Brief, Staff states:

> Energy Michigan witness Zakem disagrees with Staff's proposal to litigate these changes in show-cause proceedings and instead offers a recommendation to "offer the losing LSE and the gaining LSE the option to settle with each other at the ACP [auction clearing price]." [Emphasis added.]

This is a mischaracterization of Energy Michigan's proposal. First, Mr. Zakem did not oppose the Staff's recommended show-cause proceeding, in fact he stated " . . . a show-cause proceeding would remedy the transfer quantity . . . ." 2 Tr 74. However, he did point out the drawbacks of a show-cause contested case, *i.e.*, " . . . a contested case can be complex and take a while." *Id.* Rather than disagreeing with Staff's proposal, Energy Michigan proposed an additional option to add to it, not in replacement for the show-cause proceeding but to help address the drawback Energy Michigan highlighted. This option would allow parties to settle at a visible price, the

Auction Clearing Price, without litigation. Mr. Zakem listed the advantages of the additional option:

> 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 capacity remains the same.

2 Tr 75. Thus, Energy Michigan's recommendation retains the Staff's show-cause proposal: "If the LSEs do not agree, then the show-cause contested case becomes the default process." *Id.* Energy Michigan believes that the Commission should provide as many workable possibilities as possible for LSEs to deal with the difficult and financially risky situation of customer transfers.

III. CONCLUSION

For the reasons set forth in its Direct and Rebuttal Testimony and Initial Brief, Energy Michigan believes that the Commission should implement a zonal, four-year forward LCR and not implement an individual LCR on LSEs. Nevertheless, if the Commission determines to implement a mandatory, individual LCR on LSEs, then Energy Michigan believes that Staff's incremental proposal, with the modifications suggested by Energy Michigan, is the most reasonable approach to such a requirement.

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

April 20, 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 INGHAM)

Kimberly Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Assistant at Varnum LLP and that on the 20th day of April, 2018, she served a copy of Energy Michigan, Inc.'s Reply Brief upon those individuals listed on the attached Service List via email at their last known addresses.

Kimberly Champagne

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