

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	)	Case No. U-18444
requirement under MCL 460.6w for the following	)	
named parties:	)	
	)	
<b>ALPENA POWER COMPANY, et al.</b>	)	
_____	)	

At the June 28, 2018 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Rachael A. Eubanks, Commissioner

**OPINION AND ORDER**

**I. HISTORY OF PROCEEDINGS**

On September 15, 2017, in Case No. U-18197, the Commission issued an order (September 15 order) that established the format and requirements for electric providers in Michigan to demonstrate to the Commission that they have sufficient electric capacity arrangements pursuant to Section 6w<sup>1</sup> of 2016 PA 341 (Act 341). The Commission also concluded in the September 15 order that a “a full record, which more deeply explores issues related to establishment of a forward locational requirement and which is developed through a contested case process, is necessary to establish an appropriate allocation of the forward

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<sup>1</sup> MCL 460.6w is referred to throughout this order as “Section 6w.”

locational requirement.” September 15 order, p. 40. Accordingly, the Commission expressed an intent to open a new docket “for the purpose of making a determination on the methodology to set a forward locational requirement for the 2022/2023 planning year and subsequent planning years, and to examine the methodology for determining the [planning reserve margin requirement (PRMR)] starting with the 2022/2023 planning year as well.” *Id.*

On October 11, 2017, the Commission issued an initial order in this docket, opening the docket, directing the Commission Staff (Staff) to file testimony by November 15, 2017, addressing a list of issues identified in the order, setting the deadline for timely petitions to intervene, requesting technical assistance from Midcontinent Independent System Operator, Inc. (MISO), and setting the date for prehearing (October 11 order). On November 21, 2017, the Commission issued an amendatory order in this docket (November 21 order) that opened a contested case proceeding for determining the process and requirements for a forward locational requirement under MCL 460.6w, naming as a party each “electric provider” in Michigan as defined in Section 6w(12)(c) of Act 341. The Commission further determined that it would forego the issuance of a Proposal for Decision and read the record in this proceeding in order to issue a final Commission order in time to provide load-serving entities (LSEs) with sufficient notice of the forward locational requirement methodology and process well in advance of their respective capacity demonstration deadlines mandated in Section 6w of Act 341. November 21 order, p. 5. In addition, the Commission set forth a list of questions that it had ordered the Staff to address, and noted that the Staff timely submitted its proposal, testimony, and exhibits in response to these questions. *Id.*, p. 4.

On November 15, 2017, the Staff filed its initial direct testimony in this matter responding to the issues identified in the Commission's October 11 and November 21 orders. The Staff then submitted its revised testimony on November 21, 2017.

On November 30, 2017, the Staff filed a motion for a protective order.

On December 12, 2017, Administrative Law Judge Dennis W. Mack (ALJ) held a prehearing conference that set the schedule for the filing of direct and rebuttal testimony, motions, initial and reply briefs, and cross-examination. In addition, the ALJ granted intervenor status to the following parties: Constellation New Energy, Inc. (CNE), DTE Electric Company (DTE Electric), Energy Michigan, Inc. (Energy Michigan), Michigan Chemistry Council, Verso Corporation, Michigan Electric & Gas Association (MEGA), Cloverland Electric Co-operative, First Energy Solutions, Consumers Energy Company (Consumers), Association of Businesses Advocating Tariff Equity (ABATE), Upper Peninsula Power Company, Northern States Power Company (NSP-W), Upper Michigan Energy Resources Corporation, Wisconsin Electric Power Company, Michigan Electric Cooperative Association (MECA), Michigan Municipal Electric Association, Indiana Michigan Power Company (I&M), Wolverine Power Supply Cooperative, Inc. (Wolverine), Direct Energy Services, LLC, Direct Energy Business LLC, and Calpine Energy Solutions, LLC. In light of the Commission's October 11 and November 21 orders opting to read the record, the ALJ established a schedule that would allow the Commission to issue a final order on time. On December 12, 2017, the ALJ also granted the Staff's motion and issued a protective order.

On December 12, 2017, Wolverine and the Staff filed a stipulation and agreement that Wolverine was improvidently named as a party to the proceeding, is not an electric supplier, and, subject to any objections by any parties to the case, will be dismissed. No party objected to the

dismissal, and, on December 20, 2017, the ALJ entered a ruling dismissing Wolverine from the proceeding.

On January 23, 2018, I&M, CNE, ABATE, Energy Michigan, DTE Electric, and Consumers filed direct testimony. On February 16, 2018, CNE, the Staff, Energy Michigan, DTE Electric, ABATE, and Consumers filed rebuttal testimony. The Staff filed its revised rebuttal testimony on February 20, 2018. On February 20, 2018, DTE Electric filed a motion requesting leave to file surrebuttal testimony to address the merits of the Staff's alternative proposal regarding the reallocation process and to clarify the company's position regarding the import allowance reallocation process.

An evidentiary hearing was held on February 28, 2018. At the hearing, testimony and exhibits were bound into the record, cross-examination took place, and the ALJ granted DTE Electric's motion requesting leave to file surrebuttal testimony.

CNE, Energy Michigan, MEGA, the Staff, DTE Electric, NSP-W, ABATE, and Consumers filed initial briefs on March 27, 2018. Timely reply briefs were filed by CNE, Energy Michigan, the Staff, DTE Electric, Consumers, and MECA on April 20, 2018. The Commission has read the record, which consists of 398 pages of transcript and 40 exhibits admitted into the record.

## **II. POSITIONS OF THE PARTIES**

### **A. Direct and Rebuttal Testimony**

#### **1. Staff**

Catherine E. Cole, Manager of the Resource Adequacy and Retail Choice Section in the Commission's Financial Analysis and Audit Division, provided testimony on the incremental approach described in the Staff's August 1, 2017 report in Case No. U-18197, and outlined the Staff's proposal for a forward locational requirement for LSEs located in MISO Local Resource

Zones (LRZ or zone) 2 and 7, which cover Michigan's upper and lower peninsulas, respectively. In her overview of the incremental approach, Ms. Cole explained that an incremental capacity approach in setting forward locational requirements includes determining a future incremental capacity need in a zone and then allocating that incremental need to LSEs within the zone as forward locational requirements. 2 Tr 336. According to Ms. Cole, the first step is to project the local clearing requirement (LCR) for each MISO zone in Michigan for a selected future year. The second step involves determining expected changes in the existing planning resources in each zone between a starting date, here the effective date of Act 341, and the selected future year. The third step is to determine the incremental need in the selected future year by calculating the difference between the projected LCR in the zone and the projected amount of existing resources in the zone. *Id.* The fourth step is to allocate the incremental need to LSEs in the zone as forward locational capacity obligations. The fifth and final step is to reevaluate the incremental need and forward locational capacity obligations so as to repeat the process on a regular basis. *Id.*, p. 337. The Staff explained that the forward locational requirement set would establish a minimum or a "floor" which, once established, would be unlikely to go down. *Id.* The Staff recommended that, every two years, the forward locational requirements be reevaluated in a contested case. *Id.*, p. 338.

Applying the above-referenced incremental approach, the Staff recommends that the forward locational requirement for zone 2 (a portion of which covers Michigan's Upper Peninsula) be set at 0% for both planning years 2022/2023 and 2023/2024. 2 Tr 337, 339. The Staff further recommends that the forward locational requirement for zone 7 (the lower peninsula) be set at 3.3% for planning year 2022/2023 and at 6.6% for planning year 2023/2024. 2 Tr 337. The Staff also recommends that planned MISO planning resource auction (PRA) purchases continue

to be limited to 5% of each LSE's PRMR to account for balancing and avoid over-procurement. 2 Tr 337-338. The Staff further recommends that, every two years, the Commission initiate a new contested case to reevaluate and reassess the forward locational capacity obligations. *Id.*, p. 338.

The reason the Staff recommends a forward locational requirement applicable to individual LSEs in the Michigan portion of zone 2 of zero for these planning years is because it determined that MISO zone 2 will not fall short of its projected LCR in 2023/2024. 2 Tr 341. However, if the Commission sets a forward locational requirement greater than zero for any LSEs in the Michigan portion of zone 2 in the future, the Staff recommends that the Commission direct the utilities to file data in advance regarding specific unit retirements to be included in the calculation of the zonal incremental need. 2 Tr 343. The Staff also recommends the filing of this data for any LSEs in zone 7 as well. *Id.* Additionally, if the Commission rejects the Staff's recommendation of a zero forward locational requirement for any LSEs in zone 2, the Staff further recommends that the Commission consider a phase-in approach or another alternative other than the incremental capacity approach, given the difficulty in obtaining detailed information necessary to determine incremental need for that zone. *Id.*

Moving on to LSEs located in zone 7, the Staff referenced its proposal for a forward locational requirement outlined in the Staff's revised Exhibit S-3. 2 Tr 344. However, should the Commission not accept the Staff's proposal set forth in revised Exhibit S-3, the Staff explained it would be unreasonable for the Commission to set a forward locational requirement for planning years 2022/2023 and 2023/2024 higher than 47.5%.<sup>2</sup> 2 Tr 352-353. Ms. Cole

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<sup>2</sup> The Staff calculated this percentage by dividing the amount of potentially available MISO zone 7 resources by the zone 7 retail open access (ROA) peak load.

requested that any such percentage ceiling be reevaluated in each subsequent case, and that the Commission consider requiring a market power study in the near future. *Id.*

Ms. Cole explained that the Staff's analysis set forth in its revised Exhibit S-3 as revised assumes that Consumers' medium four units (Karn 1, Karn 2, Campbell 1, and Campbell 2) will not be retired early and will remain in service beyond planning year 2023/2024. 2 Tr 344. In addition, the Staff recommended that future planned retirements be incorporated into the forward locational requirements for LSEs in zone 7 through an evaluation in a contested case proceeding on the Commission's own motion of the zonal incremental capacity needs, including changes in planned retirements, every 24 months. 2 Tr 346. During these contested case reevaluations, the Staff recommended that the Commission direct each Michigan LSE to file information regarding updated planned retirements in the docket, and to provide MISO with permission for the release of its peak load contribution (PLC) data in writing. *Id.*, p. 348.

Regarding changes in LSE load levels, the Staff's proposed methodology uses the peak demand projection for each applicable zone included in the MISO Loss of Load Expectation Study Report (LOLE Study), which utilizes projected load levels that each LSE submits to MISO. Therefore, Ms. Cole explained that changes in LSE load levels would be captured and incorporated into forward locational requirements every two years during the reevaluation stage. *Id.* Ms. Cole also discussed the measurable impacts that changing LSE load levels may have for a particular LSE, and recommended that, if an alternative electric supplier (AES), whose capacity demonstration is based on its prompt year PLC, does not include resources to cover the entire capacity obligation, the Commission should open a show-cause contested case to show cause why the AES's customers should not be assessed the state reliability mechanism (SRM) charge. 2 Tr 349.

Next, Ms. Cole discussed the Staff's recommendation for the use of PRA purchases for capacity demonstrations in the 2022/2023 planning year and beyond. The Staff recommended that the Commission continue to require that no more than 5% of an LSE's forward capacity obligations are planned to be met with MISO PRA purchases. 2 Tr 351. Ms. Cole further testified that this restriction on planning does not prohibit an LSE from using the PRA in the prompt year to purchase needed additional capacity to meet prompt year MISO requirements. *Id.*

The Staff recommended that the Commission grant exceptions to the zonal location of resources in meeting its the Commission's forward locational requirements where long-term contracts for a period of at least 20 years in duration were entered into before MISO's implementation of LRZs on June 1, 2013. 2 Tr 351-352. Further, the Staff recommended that the Commission grant an additional exception if MISO allows the resource to count toward meeting the LSE's prompt year LCR in a fixed resource adequacy plan (FRAP), provided that the LSE submits evidence of the resource's qualification by MISO to meet a prompt year LCR requirement for the LSE's zone as part of its demonstration. *Id.*, p. 352. These exceptions, according to the Staff, should be evaluated as part of a contested case. *Id.* Should MISO change its eligibility criteria over time, the Staff proposed that resources MISO allows to count toward meeting its prompt year requirements also be deemed to meet the Commission's requirements, provided that the LSE demonstrate evidence of changed circumstances at MISO and evidence supporting MISO's qualification of the resource. *Id.*

In addition, Ms. Cole testified that utilities located in Michigan have a financial incentive to own and operate facilities within their respective zone that will exist going forward. 2 Tr 357. According to Ms. Cole, this incentive makes it unnecessary for the Commission to set a forward locational requirement as high as a pro rata load ratio share of the LCR to individual LSEs to



ensure that zone 7 will continue to meet its LCR. 2 Tr 358. She touted the incremental approach as taking into account this current trend, reflecting changes from the status quo, and addressing concerns about retail open access (ROA) contribution by requiring that load to contribute to incremental need. *Id.* She explained that once all current and currently planned utility assets have been retired, each LSE's forward locational requirement will be 100% of its pro rata share of the LCR, but that the incremental approach achieves this end without exposing the zone to the risk of expensive oversupply, and also minimizes the risk of incumbent utility exercise of market power. *Id.* Further, as long as utilities replace expected retirements and expiring contracts with resources from within the zone, the Staff expects that zone 7 will continue to meet its LCR going forward without an overly burdensome, large forward locational requirement. 2 Tr 359. And, unforeseen changes can be captured in future forward locational requirements set every two years in a contested case. Ms. Cole discussed what should happen in the event that the Michigan Legislature lifts the 10% cap on electric choice, suggesting it is likely the Staff would recommend higher levels of forward locational requirements for all LSEs and suggesting that the Commission open a contested case as soon as practical and before the two-year mark for reevaluating forward locational requirements. 2 Tr 359-360.

Ms. Cole also explained the Staff's rationale for supporting a pro rata allocation of the incremental need. 2 Tr 360. The Staff concludes that a utility's retirement of units creating an incremental need in the zone should be remedied in large part by the utility's bundled customers. *Id.* It is also appropriate to include ROA load in the allocation of the incremental need going forward and all customers in the zone should contribute toward future incremental needs. 2 Tr 361. Ms. Cole proposed an alternative should the Commission elect to set an incremental need farther into the future than planning year 2023/2024, which would include retirements through

2030. *Id.* And, should the Commission elect not to phase in the 2023/2024 forward locational requirement, Ms. Cole suggested the Commission set forward locational requirements at 6.6% for both 2022/2023 and 2023/2024 planning years for LSEs in zone 7. 2 Tr 362.

Roger Doherty, an Engineer in the Resource Adequacy and Retail Choice Section of the Commission's Financial Analysis and Audit Division, described how an LSE that chooses to meet MISO resource adequacy requirements through a FRAP must show that it has sufficient resources from within the zone to meet its load ratio share of the LCR. 2 Tr 254. Because MISO only sets an LCR for the prompt year, the Staff recommended using the most recent MISO LOLE Study to estimate the LCR for future years and recommended basing locational requirements off that estimate. *Id.*, p. 255. Mr. Doherty went into the specifics of how this can be accomplished. *Id.* Mr. Doherty further explained that the LCR is determined by subtracting the zonal capacity import limit (CIL) from the local reliability requirements (LRR). *Id.* In using this method to calculate the LCR, the Staff proposed that the CIL be held constant. Exhibit S-5 contains the projected LCR values for zones 2 and 7. *Id.*

Next, Mr. Doherty explained how the incremental capacity need is determined by taking the current resources that include both generation and demand response in each zone, according to the filings in Case No. U-18197, and removing any double-counted units, behind-the-meter generation, zonal resource credit (ZRC) purchases, and reported retirements. 2 Tr 255. Once the total projected resources in the zone are determined, they are subtracted from the forward zonal LCR estimated from the MISO LOLE Study to arrive at the incremental need, as referenced in Exhibit S-6. 2 Tr 255-256. Mr. Doherty testified that the Staff recommends recalculating these values every two years. 2 Tr 256.

As far as the starting date for the time period under consideration in determining the initial incremental capacity need, Mr. Doherty indicated that the date Act 341 became effective, April 20, 2017, would be the starting date, with an ending date of June 30, 2024. 2 Tr 258. Before comparing the resource totals for that zone to the zonal LCR, planned retirements in that zone before or during the 2023/2024 planning year should be removed from the resource total. *Id.* Resources that include generation and demand response that are in place, or far enough along in the planning process to be included in LSE responses filed in Case No. U-18197 in April of 2017, are included in the zone resources total, and all other potential future resources are not counted in the zone resource total for purposes of calculating the incremental need. 2 Tr 259. However, new resources within the zone that are included in LSE capacity demonstrations count toward an LSE's forward locational requirement even if they were not included in calculating the incremental need. *Id.*

Mr. Doherty next testified that a plant that is planned to be retired would not be added to the zone's resource total to calculate the incremental capacity need and would be treated similar to new resources. 2 Tr 260. Mr. Doherty acknowledged that this treatment may provide an opportunity for facility owners to "game the system," resulting in a higher level of incremental need. *Id.* To minimize this potential, retirement issues and corresponding changes to the incremental capacity need should be addressed in the contested case to establish incremental need every two years. 2 Tr 261. If the Commission determines that the unit was not retired as expected, and little or no investment was required, the unit can be calculated in incremental need during the reassessment, reducing the incremental need from that point until the unit is scheduled for retirement again. *Id.* Likewise, a forward locational requirement allocated based on a pro

rata share of the incremental need by all LSEs in the zone would reduce the incentive for gaming retirement dates. *Id.*

Mr. Doherty testified to why the Staff recommends using the peak load specified by MISO in its LOLE Study for the incremental need analysis and explained that the Staff is unaware of a better source that could be used for the total peak load projected for each MISO zone. 2 Tr 262. Mr. Doherty further testified that the Staff recommends the incremental capacity need be established through the 2023/2024 planning year, and that the Commission reassess the incremental capacity need every two years in a contested case established for that purpose. *Id.* Once the incremental capacity need is determined, it should be allocated to all individual LSEs according to their load ratio share, which will be accomplished by converting the need into a percentage of the respective zone's peak demand. *Id.* Each LSE will then multiply this percentage by its prompt-year PLC to determine the number of ZRCs it must have from in-zone resources. *Id.* Using the Staff's methodology, the forward locational requirement for LSEs in zone 7 for the 2022/2023 planning year would be 3.3% of the LSE's PLC, which can be met by demonstrating owned or contracted resources from resources within the zone. 2 Tr 263. For planning year 2023/2024, the forward locational requirement increases to 6.6% of the LSE's PLC. *Id.* Mr. Doherty confirmed that, for zone 2, the forward locational requirement for both planning years 2022/2023 and 2023/2024 would be zero. *Id.*

For utilities that must file capacity demonstrations in December, prior to MISO setting the PLCs, the Staff recommended these utilities use the most up-to-date PLC information available to them at the time of their demonstration. 2 Tr 264. The Staff's recommendation regarding what resources should count toward meeting Michigan's forward locational requirement for planning years 2022/2023 and 2023/2024 is included in revised Exhibit S-3. 2 Tr 265. Both

new and existing resources would count toward meeting the forward locational requirement. *Id.* The Staff further recommended allowing all resources that MISO counts toward meeting the zone's prompt-year LCR, to count toward meeting Michigan's forward locational requirement, provided that the demonstrating LSE provide evidence that a resource would likely count toward meeting the LCR for MISO in the future. *Id.*

On rebuttal, Ms. Cole responds to the assertions of David F. Ronk, Jr., Executive Director of Transactions and Wholesale Settlements in Consumers' Energy Supply Operations Department, regarding the Staff's proposed incremental approach, as well as the assertions of DTE Electric witnesses Irene Dimitry, Vice President of Business Planning & Development for DTE Energy Corporate Services, LLC, a subsidiary of DTE Energy, and Angela P. Wojtowicz, DTE Electric's Director of the Generation Optimization Department, regarding DTE Electric's proposed effective capacity import limit (ECIL) approach. Beginning with Mr. Ronk's direct testimony that additional capacity available in zone 7 not used to satisfy the LCR is available to satisfy the PRMR or to be sold in a bilateral sale or a sale in the PRA, Ms. Cole explained that, while this is an accurate statement, any amount of additional local capacity that exceeds the LCR, when combined with the available ECIL, leads to higher levels of local resources than would be necessary to meet reliability standards. 2 Tr 366. Additional local capacity exceeding the zone's LCR leads to levels of planning reserves that could exceed the PRMR when unutilized available import capacity is considered. 2 Tr 366-367. Ms. Cole further agreed with Mr. Ronk that maintaining any reserve of capacity resources results in physical oversupply of capacity. 2 Tr 367. She further explained that meeting the LCR and PRMR while importing up to the full amount of ECIL already includes enough reserves to meet reliability requirements, and exceeding the LCR is unnecessary to meet current reliability requirements. *Id.* Ms. Cole

testified that the Staff opposes the use of June 3, 2000, as the date where determinations regarding potential incremental capacity needs begin. *Id.* Ms. Cole testified that the Staff also rejects Consumers' proposal to use the start date aligning with the enactment of 2008 PA 295 that placed a 10% cap on choice. *Id.* Instead, Ms. Cole stood by the Staff's recommended start date of April 20, 2017, the effective date of Act 341. *Id.*

Next Ms. Cole outlined the problems with DTE Electric's ECIL approach. DTE Electric's proposal presents problems for suppliers, who may continually have difficulty planning due to uncertainty stemming from variance in the allowable amount of imports from year to year, particularly given the minimal time DTE Electric proposes for the reallocation of unused allowable imports. 2 Tr 369. This approach also leaves utilities in control of the amount of ECIL that may or may not be available to be reallocated to other suppliers. 2 Tr 369-370. In addition, holding enough ECIL to cover planned open supply positions is overly conservative and unnecessary considering recent data for zone 7. 2 Tr 370. Ms. Cole criticized this approach because of the variability inherent in changing MISO LOLE requirements and the variability in planned utility imports. 2 Tr 370-371. She explained that this proposal, if adopted, will not provide consistency or certainty in requirements for non-utility LSEs. 2 Tr 371. She further argued that the timing associated with DTE Electric's reallocation process is unreasonably short. *Id.* If the Commission adopts DTE Electric's ECIL approach, Ms. Cole recommended an alternate timeline whereby all LSEs would be required to provide a five-year forward capacity plan during their capacity demonstrations which would be used to establish revised allocation of ECIL for all LSEs for the following fourth-year demonstration. 2 Tr 372. The Staff, in its March memo, would report revised allocations of ECIL to be effective for the four-year forward capacity demonstration being made in either December or February of the following year. *Id.*

The process would then repeat. *Id.* Likewise, if the Commission adopts this approach, Ms. Cole recommended that the Commission reject the proposal to require LSEs to hold back sufficient ECIL to cover planned open supply positions because it is overly conservative and unnecessary considering recent data for zone 7. 2 Tr 373. Ms. Cole stated that this proposal also ignores the reality that additional in-zone resources over and above the amounts demonstrated by Michigan LSEs in capacity demonstrations may exist and be available or developed between the capacity demonstrations and the prompt year. 2 Tr 374. Likewise, Ms. Cole suggested that the same market power concerns exist with this ECIL approach and would be amplified if the incumbent utilities utilized high levels of imports in their demonstrations, particularly if any existing utility-owned generation was held back. 2 Tr 375.

On rebuttal, Mr. Doherty disagreed with Mr. Ronk's assessment that the Staff's approach would allocate any shortage to all LSEs, and pointed out that the Staff's projected incremental need is not a forecast of an imminent zonal shortage of locational resources. He explained that the Staff is not forecasting that zone 7 will be short its LCR in planning years 2022 or 2023. 2 Tr 269. Mr. Doherty agreed with the testimony of ABATE's witness James R. Dauphinais, a public utility regulation consultant and Managing Principal of Brubaker & Associates, Inc., an energy, economic, and regulatory consulting firm, regarding the LCR being the LRR less the CIL and any non-pseudo tied exports. 2 Tr 270. If the Commission adopts the Staff's methodology, Mr. Doherty explained that the biennial review should consider the possibility that non-pseudo tied exports will be something other than zero in the future. 2 Tr 271.

Mr. Doherty disagreed with Mr. Ronk's assertion that the Staff's proposed incremental approach is not an equitable solution. 2 Tr 271. Mr. Doherty testified that Mr. Ronk's recommendation, where only LSEs who do not meet their LCR would be required to cover any

shortfall in LCR, would create a situation where some AESs might have no readily available options for meeting their LCR target. 2 Tr 272. Because none of the AESs currently own resources in the zone, they would need to build new generation resources that could lead to a costly overabundance of in-zone resources, and this might not even be economically feasible based on only four-year forward contracts. *Id.* In lieu of owning a resource, Mr. Doherty explained that an AES could purchase capacity from a party who already owns a resource in the zone, but pointed out that there are not enough resources available in the zone currently outside of utility control. *Id.* Consumers' proposal to use any excess locational resources demonstrated by sufficient suppliers to reduce the total zonal deficiency and lower the individual locational obligations of the deficient suppliers addresses this concern in part. But, it creates other issues. It would encourage utilities to reduce their resources to the minimum amount required to meet their individual LCR and could lead the utilities to manipulate their resources through retirements, or other means, in ways they would not otherwise do simply to increase requirements on other LSEs. 2 Tr 273. This may also create increased incentives to game the system through "planned" retirements that are not actually retired, or through other methods, such as underreporting resources. *Id.* To alleviate these concerns, when determining the zonal deficit for allocating requirements among suppliers, the zone's locational resources should be a comprehensive list of all resources projected to be in the MISO market four years forward. *Id.* It should include all resources in the MISO market from zone 7, regardless of whether those resources are captured in the capacity demonstration process. 2 Tr 273-274. It should also include all new resources approved by the Commission to be in service by the year in question. 2 Tr 274.



Mr. Doherty testified that Consumers' approach makes the incentives for manipulation of resources more significant because the gaming would have a large effect on AESs. 2 Tr 275. And, Mr. Doherty expressed a concern that Consumers' approach will result in significant over procurement of resources within the zone. *Id.* Mr. Doherty recommended a solution of establishing capacity obligations based on the previous year's demonstration, which would be used to analyze the zone's resources compared to its needs, and to set a forward locational requirement for the following demonstration for each LSE. 2 Tr 275- 276. If the Commission were to approve this approach, the Staff would recommend establishing a process first, then having all LSEs file an initial future demonstration. 2 Tr 276. An LCR target would be used to set the initial locational requirement for the following year. *Id.*

Mr. Doherty discussed why there might be other MISO resources not included in the capacity demonstration filings. 2 Tr 276-278. Such resources might include independent power producer owned generation not under contract by any of the demonstrating LSEs, or where an LSE underreports its resources. 2 Tr 278. The Staff recommended, as part of the demonstration process, to crosscheck the demonstration filings with its list of generation units within the zone. 2 Tr 279. The Staff would then include the results of its findings with the demonstration resources to set requirements for the following year as shown in Exhibit S-22. *Id.* Even with the changes the Staff would make to Consumers' approach, Mr. Doherty still favored the Staff's approach because of his concerns about the manipulation of resources. *Id.* The Staff is also concerned with the rate of Consumers' phase-in approach. 2 Tr 280. Mr. Doherty also recommends a periodic review of any phase-in approach the Commission adopts in a contested case proceeding to assess whether changes to levels or methodology are necessary. 2 Tr 281.

Mr. Doherty also identified some benefits to the phase-in approach Consumers recommended. 2 Tr 280. Although the Staff still supports the incremental approach, the Staff would not object to a phase-in approach that starts the requirement at 10% for planning year 2022 and increases 10% annually for three years to 40% in planning year 2025. 2 Tr 281. The Staff recommends a new contested case be held three years from now to reevaluate phase-in rates and determine future requirements for planning years 2026 and beyond. *Id.*

Regarding the testimony of Alexander J. Zakem, an independent consultant testifying on behalf of Energy Michigan, about the Staff's removal of behind-the-meter generation resources from the projected resource total, Mr. Doherty stated that, after consulting with a subset of Michigan LSEs, the Staff now believes that these resources are included in the MISO resource adequacy construct as load modifying resources and are used to serve load that is part of the MISO PRMR. 2 Tr 282. Making this change, the incremental need is reduced to 1.5% in planning year 2022, and 3.0% in planning year 2023, as shown in the Staff's Exhibit S-24, reflecting updated incremental capacity need. 2 Tr 283. He noted other exhibits that have been updated as a result, such as Exhibit S-25, regarding the proposed capacity demonstration process. *Id.* This updated exhibit also clarifies that if the PLC data for a given LSE already includes the Planning Reserve Margin Unforced Capacity (PRM UCAP) percentage, the Staff does not intend to apply the PRM UCAP percentage a second time. *Id.*

## 2. DTE Electric Company

DTE Electric submitted the testimony of Ms. Dimitry, who testified that the first step in defining locational requirements must be to determine the aggregate amount of planned electricity imports that can be counted on across all electric suppliers' resource plans while still maintaining high levels of reliability in Michigan. 2 Tr 200. Once the maximum amount of

imports that can flow into a resource zone on a peak load day for a given planning year without harming reliability is determined, then the remaining electricity needed to serve that peak load must be generated within the resource zone. *Id.* She explained that over-reliance on imports could threaten electric reliability in Michigan. 2 Tr 201. Ms. Dimitry further stated that the Commission has the authority and responsibility to ensure resource adequacy in Michigan, which includes determining whether an electric provider has an adequate resource plan to serve its customers. *Id.* She argues that assessing the adequacy of resource plans should include a determination of whether a supplier has met its PRMR and its forward locational requirements. *Id.*

Ms. Dimitry does not feel it is prudent for the Commission to rely on MISO procedures to prevent an over-reliance on imports. *Id.* Because MISO's price signal mechanism does not actually prevent an over-reliance on imports or ensure the development of needed local generating resources, Ms. Dimitry asserted it is not an effective means for ensuring long-term reliability and resource adequacy for Michigan. 2 Tr 202. Ms. Dimitry indicated that DTE Electric favors the Commission, after consulting with MISO, annually determining the maximum aggregate level of electricity imports that can be included across all electric supplier resource plans under the SRM in meeting the peak load requirements for a given planning year. 2 Tr 202-203. To do this, the Commission would determine the ECIL, or how much capacity can be imported while maintaining sufficient local generation to ensure reliability. 2 Tr 203. According to DTE Electric, Michigan needs to ensure the state's electric suppliers do not, in aggregate, have peak day resource plans that rely on electricity imports in an amount that exceeds ECIL. 2 Tr 204. As part of an electric supplier's capacity demonstration, the Commission should establish limits on the amount of capacity that each electric supplier can plan to import, so that the

collective amount of planned imports does not exceed the forecasted ECIL for that planning year. *Id.*

Next, the Commission should indirectly allocate transmission import capacity by awarding import allowances that define limits on the amount that each supplier can plan to import as part of its SRM capacity demonstration. 2 Tr 204-205. DTE Electric finds it equitable to undertake an initial allocation as if ECIL was to be allocated across all electric suppliers within a zone in a pro rata manner based on forecasted peak demand of the customers they serve. *Id.* DTE Electric further proposed that the Commission require all suppliers to release any unneeded awarded import allowances and establish an equitable process for reallocating the unused import awards to other suppliers. 2 Tr 207. In calculating how many excess import allowances to release, a supplier should retain import allowances to cover its “open supply position,” which is the “up to 5%” of the supplier’s expected customer demand plus reserve margins that may be purchased in the prompt year PRA or secured through other short-term capacity options. 2 Tr 208. DTE Electric proposed that, should the Commission decide not to require electric suppliers to cover open supply positions with import allowances, then it should require them to demonstrate owned or contracted resources to cover 100% of their expected peak customer demand plus required reserve margins, instead of 95%. 2 Tr 209. The utility also recommended that a reallocation of excess import allowance be done in a disciplined way with strong regulatory oversight to prevent gaming and provided an example of how allowances could be allocated and reallocated. To encourage efficient utilization of import allowances, DTE Electric further recommended allowing suppliers to transfer import allowances through bilateral transactions outside of the formal allocation and reallocation processes that the Commission administers. 2 Tr 208. The

utility also recommended that suppliers submit resource plans that demonstrate they can meet peak load and reserve margin requirements. 2 Tr 203.

Regarding whether the capacity demonstration schedule in Section 6w will accommodate the reallocation of import allowances, DTE Electric reasoned that it would. 2 Tr 209. This gives the Commission time to reallocate excess import allowances before the AESs and municipal and co-op utilities make their capacity demonstrations in February of the following year. *Id.* If the Commission deems the time between December and February insufficient, then DTE Electric proposed that it would support requiring suppliers to provide notification 30 to 60 days before their capacity demonstration deadline regarding the intent to release excess import allowances and the amount expected to be released. 2 Tr 210.

Ms. Wojtowicz explained that ECIL is the difference between the PRMR and the LCR, and that the amount of imported capacity that is cleared to meet the PRMR does not exceed ECIL. 2 Tr 224. She stated that although ECIL is not a MISO term, it is the direct result of MISO's reliability processes within the PRA and results from MISO's application of the PRMR and LCR constraints in the auction clearing process. 2 Tr 224-225. She further testified that DTE Electric's approach would not conflict with MISO's application of the PRA. 2 Tr 226.

Ms. Dimitry responded to Ms. Cole's rebuttal regarding a recommended timeline for determining forward locational requirements by arguing this introduces a timing risk due to the gap between when an LSE releases excess import allowances for a given planning year and when an LSE demonstrates capacity for that same planning year. 2 Tr 214. This timing risk could significantly harm an LSE that gives up import allowances, and then unexpectedly experiences a reduction in local planning resources (and then needs the import allowances given away) before the demonstration for that planning year. *Id.* Instead, Ms. Dimitry proposed allowing each LSE

the voluntary option to make its capacity demonstration for compliance purposes for a given planning year at the same time that it provides the 5<sup>th</sup> year data that will be utilized to reallocate excess import allowances. *Id.* This gives the LSE the choice to eliminate the gap in timing between when that LSE releases excess import allowances for a given planning year and when that LSE demonstrates capacity for that same planning year. 2 Tr 214-215. And, she recommended that the same rules and procedures defined for a capacity demonstration four years out, should apply to a voluntary capacity demonstration submitted one year earlier. 2 Tr 215. DTE Electric could support such a change to its proposed methodology to require each LSE to provide five years of data if each LSE has the option to also make its formal capacity demonstration five years out. *Id.* Ms. Dimitry also disagreed with Ms. Cole's criticism of DTE Electric's ECIL approach that it leaves the utilities in control of the amount of ECIL that may or may not be available to be reallocated to other suppliers. 2 Tr 216.

On rebuttal, Ms. Wojtowicz reiterated that the Staff's approach will not ensure reliability as it results in an insufficient amount of incremental local resources to meet zonal needs. 2 Tr 229. Additionally, Ms. Wojtowicz asserted that the Staff's approach double-counts existing resources and does not remedy any forecasted zonal shortfall to local requirements. 2 Tr 230. Further, she identified the Staff's alleged failure to ensure state reliability as a fatal flaw in its approach. 2 Tr 231. Ms. Wojtowicz testified that applying the Staff's incremental approach to planning year 2023/2024 results in a failure to require the necessary incremental resources because each electric supplier has enough existing local resources to meet the Staff's local requirement demonstration. 2 Tr 231. She testified that DTE Electric's approach would meet the Commission's long-term reliability goals because the approach results in adequate resources to meet zonal reliability requirements. 2 Tr 232-234.

Ms. Wojtowicz identified other advantages to the company's approach, noting that, by avoiding issues regarding the accounting of planned generation fleet changes and basing forward local resource requirements on actual demonstrations and reallocations, DTE Electric eliminates the requirement to set a historical point in time to determine resource reductions and additions and eliminates the need for biennial contested cases to set forward locational requirement percentages. 2 Tr 234-235. Ms. Wojtowicz argued that incremental local need should be assigned to electric suppliers based on the amount they contribute to that need. 2 Tr 236. Ms. Wojtowicz also identified a calculation error that should be corrected. 2 Tr 238. Ms. Wojtowicz recommended that the Commission not adopt the Staff's approach, but, in the event that it does, she recommended that the Commission prohibit existing resources from meeting incremental needs, assign incremental resource requirements to electric suppliers based on their contribution to the zonal shortfall to the LCR, and adjust the "Projected Incremental Need of Peak Demand" factor calculation to align with the MISO coincident peak demand, thus ensuring the correct amount of incremental local resources are assigned. 2 Tr 239.

### 3. Consumers Energy Company

Mr. Ronk next considered the Staff's proposal and explained that allocation of the LCR responsibility based on load-ratio share provides an equitable means of meeting the overall LCR. 2 Tr 133. Requiring each AES and utility to meet its load-ratio share of LCR and PRMR ensures the overall LCR is met. 2 Tr 133-134. In the absence of such a requirement, there would be no way to ensure enough capacity is located in Michigan. 2 Tr 134.

The Staff's incremental capacity approach is inequitable because it requires suppliers who have already proven sufficient capacity to supply more by contributing, on a load-ratio share basis, to any incremental shortfall. 2 Tr 135. In contrast, Consumers' alternative incremental

proposal would allocate any shortage in LCR to those who were, in fact, short. *Id.* Under the Staff's approach, the suppliers who are short and are not obligated to contribute their pro rata share of the incremental LCR have little motivation to secure the required capacity for future planning periods. *Id.* In this way the Staff's proposal discourages reliability. 2 Tr 136.

Other concerns the company has with the Staff's approach include the length of time it would take any supplier to reach 100% of its full load-ratio responsibility. *Id.* Further, Mr. Ronk criticizes the Staff's approach as inequitable and contrary to Section 6w, which treats electric suppliers equally with respect to resource adequacy requirements, because some LSEs would be obligated to continue bearing greater than their load-ratio share of the zone's LCR, allowing their competitors to benefit from the LSE's prior investments. 2 Tr 137. Additionally, the longer the timeframe an incremental approach takes, the longer bundled customers must pay to ensure the zone has sufficient local capacity to serve all energy customers. *Id.*

As far as its effect on retail customers, Mr. Ronk testified that bundled customers would continue to subsidize the provision of LCR benefitting ROA customers and their AESs. *Id.* In response to the Staff's argument that an incremental approach to LCR is necessary given the amount of generation available in zone 7 for AESs to procure in order to contribute to an LCR, Mr. Ronk testified that an incremental approach does not cause utilities to invest in long-term local generation and does not provide a market for independent power producers to invest long term. 2 Tr 138. Whereas the incremental approach provides no long-term solution to the locational requirement issue, Consumers' phase-in approach would address the locational requirement on a long-term basis because parties can anticipate capacity requirements sufficiently in advance to make longer-term investments. *Id.*



Mr. Ronk continued that, based on a 2017 MISO resource adequacy survey, zone 7 could be at risk of failing to meet its LCR by 2022. 2 Tr 139. To address this risk, he opined that the Commission needs to provide clear direction as to each party's responsibility for addressing the locational reliability issue between now and 2022, and thereafter. *Id.* Mr. Ronk explained that LSEs that are "long" on capacity compared to their load-ratio share of an LCR will likely make investments to provide local capacity on a temporary basis, which may not minimize long-term revenue requirements for the combined needs of all LSEs in the zone. *Id.* And, not allowing electric providers to meet a load-ratio share of LCR until at least 2022 negatively affects all Michigan energy customers via diminished reliability and higher prices for unanticipated or unpredicted energy costs. *Id.*

When the MISO LCR in zone 7 is not met, the auction clearing price (ACP) in the MISO PRA will be automatically set at the cost of new entry (CONE), a price that represents the revenue requirements of a simple cycle combustion turbine that is generally around \$260/megawatt (MW) per day. Were such an event to occur, every LSE in zone 7 who buys any capacity through the PRA will have to pay that high ACP, regardless of whether they would have met their own load-ratio share of LCR. 2 Tr 140. Even more significantly, this failure will result in zone 7 not having enough capacity to meet North American Electric Reliability Commission's 1-day-in-10-year LOLE reliability standard and all LSEs will face an unacceptably high risk of interrupting firm load. *Id.* Mr. Ronk testified that this risk would apply equally to all LSEs providing service in the zone, even those who secured sufficient local capacity to meet their own load-ratio share of LCR. *Id.*

Mr. Ronk testified that Consumers estimates its bundled customers are paying up to \$174 million annually to subsidize local capacity for ROA load and referenced Consumers' Exhibit C

as providing an estimate of the cost associated with phasing-in the LCR over time. 2 Tr 140. Mr. Ronk explained that a load-ratio share of the LCR for all LSEs when fully implemented would eliminate this subsidization. *Id.* Not requiring all LSEs to equitably contribute to zone 7's LCR based on the rationale that incumbent utilities currently have sufficient capacity for the zone to meet LCR unreasonably incites electric providers to rely on out-of-state generation rather than investing in Michigan generation. 2 Tr 141. Further, Mr. Ronk pointed out that Section 6w requires the Commission to establish LCR as part of all electric providers' resource adequacy demonstrations and does not distinguish between AESs and electric utilities (except for certain leeway given to municipal and cooperative utilities) regarding the obligation to demonstrate resource adequacy, including LCR. 2 Tr 141-142. Consumers' approach minimizes or eliminates the risk of "over-building" of electric capacity and is equitable to all electric providers and their customers, encouraging them to act in a responsible and economically reasonable manner. 2 Tr 142.

Mr. Ronk next addressed the argument that implementing an LCR for individual electric providers is unnecessary because the specter of paying CONE should the zone fail to meet LCR provides a sufficient economic incentive to ensure reliability. No zone has had its ACP clear at or near CONE since zones were first developed and so this economic incentive has not yet been tested in practice. 2 Tr 142. If this were to occur in zone 7, CONE will apply to all LSEs in the zone, not just those who failed to secure enough local capacity. *Id.* In this way, all LSEs would be exposed to the risks created by the actions of a few. *Id.* Further, Mr. Ronk continued that if the ACP does not clear at CONE, and the costs are too great for an AES to bear, the AES could conceivably exit the Michigan retail choice market, leaving utilities, as the providers of last resort to take on additional unplanned customers, and facing the risk of having to pay CONE for

the needed capacity. 2 Tr 143. Therefore, Mr. Ronk opined that utilities and utility customers would face a disproportionate risk. *Id.* And, Mr. Ronk emphasized that the potential financial penalty of paying CNE is insufficient to ensure that actual generation resources exist in the zone. *Id.* If the zone does not meet LCR and supply from adjacent zones is insufficient to serve all demand, then any shortage in supply will be addressed with firm service interruptions in the form of rolling blackouts. *Id.* Because customers of LSEs that have adequate capacity to satisfy the LCR and customers from those LSEs that do not are served from the same circuits, Mr. Ronk pointed out that a rolling blackout will likely affect both types of customers. 2 Tr 143-144.

Next Mr. Ronk identified the risks in calculating the incremental shortfall associated with LCR every two years as the Staff suggested. As the Staff acknowledged, Mr. Ronk notes that too much time between assessments might result in outdated data or requirements. 2 Tr 144. Instead, Consumers proposed an annual assessment that would allow LSEs to provide information on anticipated capacity changes and/or variables that the Staff would need to determine incremental shortfalls. *Id.* According to Mr. Ronk, an annual assessment would also provide LSEs with better data to rely on for long-term planning of resources that could impact reliability. *Id.* Further, instead of a contested case proceeding, the Staff could compile and publish a report accounting for retirements and demand and providing the incremental shortfall applicable for each four-year-forward period. *Id.*

Recognizing that the Commission ruled out any LCR for individual electric providers at least through planning year 2021, Consumers proposed implementation of a load-ratio share of the LCR as soon as possible, including planning year 2022. 2 Tr 145. Based on the information CNE provided in Case No. U-18197, Mr. Ronk maintained there should be sufficient capacity currently available in zone 7 for AESs to meet 47% of their PRMR with local resources in

planning year 2019. 2 Tr 146. Assuming zone 7's LCR is approximately 95% of its PRMR, that amount of local resources could address 50% of the AESs' load-ratio share of LCR. *Id.*

Consumers recommended an 11-year phase-in timeframe starting at 50% of electric providers' load-ratio share of LCR beginning in planning year 2022 and increasing in increments of 5% per year over a period of 11 years, reaching 100% contribution in planning year 2031, as illustrated in Consumers' Exhibit C-3. 2 Tr 146. Mr. Ronk identified many benefits to this approach including: the fact that the phase-in will be close to the Staff's recommended overall 47.5% PRMR cap for planning year 2022, the fact that placing specific requirements on each LSE will allow them to plan to attain the required amount of local capacity resources over a known period of time, and that the most equitable allocation of the LCR is reached in a timeframe that allows costs to be allocated to the appropriate retail customers without causing rate shock. 2 Tr 146-147. Mr. Ronk also discussed the risk or downsides to this phase-in approach, which include the fact that LSEs will still have to cover 50% of an AES's load-ratio share. 2 Tr 147. When compared with the Staff's incremental approach, Mr. Ronk touted the 11-year phase-in approach as having an achievable time period instead of the delayed time period of the incremental approach. *Id.*

Regarding the Staff's concern about having an oversupply of capacity, Mr. Ronk testified it is not a valid one, considering that any additional amount of capacity in zone 7 that is not used to satisfy the LCR is available to satisfy the PRMR or to be sold in a bilateral sale or a sale in the PRA. 2 Tr 148. Regarding the timeframe for the phase-in approach, Mr. Ronk proposed, as an alternative to the 11-year phase-in, a four-year phase-in. *Id.* This would result in a 25% forward locational requirement for all LSEs beginning planning year 2022, with a 100% requirement starting in planning year 2025, as illustrated in Consumers' Exhibit C-3. *Id.* The benefits of this

more aggressive phase-in schedule would be a reasonable timeframe for a shared burden of cost and load between all LSEs, that suppliers would have plants that are balancing retirement and continued operation with a practical plan to account for that capacity, and that it would result in an urgent impetus to invest in Michigan's capacity. 2 Tr 149.

Mr. Ronk briefly discussed additional options for consideration. An alternative version of the incremental approach could be one where, when a capacity shortfall occurred, the shortfall would be divided only among those suppliers who fall short of their load-ratio share of the LCR. 2 Tr 149-150. Although this would not be 100% equitable for those who provide more than their share of LCR, it allows those who are short to cover at least a portion of their missing capacity. 2 Tr 150. It also provides those who fall short an incentive to secure local resources. Also, as an alternative to using asset portfolios with a start date of April 17, 2017, Mr. Ronk explained that, for the incremental approach, the Commission could determine that capacity that exists in the zone on May 31, 2022, is the base amount and that any capacity that begins service after that date is incremental for purposes of allocating the LCR to the various LSEs operating within the zone. *Id.* Consumers proposed a date of June 3, 2000, the date the Customer Choice and Electricity Reliability Act was signed into law in 141 PA 2000, as the starting date that would provide a clear line of accurate and realistic analysis. *Id.* As an alternative date for consideration, Consumers proposed October 6, 2008, which is the date that 286 PA 2008 established the 10% cap on ROA service. 2 Tr 151.

Mr. Ronk further requested that the Commission count investment in existing generation and the resulting continued availability of 3,900 MWs as incremental capacity in the zone, which should be allocated among all participating LSEs to determine both incremental capacity and the electric providers' LCR. 2 Tr 152. In addition, Mr. Ronk argued the Commission should count

as incremental capacity in the zone the resulting benefits of Consumers' investments in energy efficiency and demand response programs. 2 Tr 153. Mr. Ronk opined that AESs supply approximately 10% of the market and therefore should be required to cover 10% of the LCR. *Id.*

Consumers proposed that the Commission determine the four-year forward incremental capacity each year as part of its assessment of resource adequacy needs, based on the values contained in the LOLE Study issued each November 1<sup>st</sup>. 2 Tr 154. Initially, Consumers proposed that the incremental capacity need be determined by taking current base resources, less any planned and announced retirements of base resources proposed to occur prior to the start of the four-year forward planning year and subtracting that amount from the projected LCR for the four-year forward planning year. 2 Tr 154-155. It explained that the base resources are those that began commercial operation on or before June 2, 2000. 2 Tr 155. Consumers concurred with the Staff that planned and announced retirements occurring before the start of the four-year forward planning year be considered in a way that increases the amount of incremental resources required for that four-year forward planning year. 2 Tr 156. New resources, including generation and demand response, that are in place or far enough along in the planning process to be included in LSE responses filed in April of 2017 in Case No. U-18197 are included in the zone resources total. All other potential future resources do not count in the zone resource total for purposes of calculating the incremental need. *Id.*

Consumers concurs with the Staff's recommendation that new resources included in LSE capacity demonstrations located within the zone would count toward the individual LSE's forward locational requirement if they meet capacity demonstration requirements, regardless of whether those resources were included to calculate the incremental need. *Id.* Mr. Ronk further testified that recent or planned capacity additions have no bearing on the determination of

incremental resource needs of the zone. *Id.* Consumers agreed with the Staff's proposal on the treatment of plants whose useful life may be extended, in that such resources would be treated similar to new resources and would not be added to the zone's resource total when calculating incremental capacity need. 2 Tr 157. Mr. Ronk notes that, for plants in commercial operation on or before June 2, 2000, any increase in the facility's UCAP rating resulting from significant investment should be regarded as new or incremental resources. *Id.* Regarding the load projection to be used in the analysis, Consumers recommended it be based on the four-year forward projection or interpolation from the most-recently-issued LOLE Study issued before the December and February LSE capacity demonstrations. *Id.*

If the Commission adopts the incremental capacity approach, Consumers recommended that the need be allocated to each LSE based on each LSE's deficiency in satisfying the LCR. 2 Tr 158. Regarding reassessment of changes in load levels for each LSE over time, Mr. Ronk testified that Consumers advocated for an annual process that assesses forward demand and establishes a reasonable fourth-year forecast before December 1<sup>st</sup> of each year, so that changes that occur between the time a fourth-year forward demand is established and when actual demand occurs should not cause any change in the SRM capacity assessment. 2 Tr 158.

Mr. Ronk explained, that, for each year the amount of incremental capacity required to satisfy the LCR in the four-year forward planning year is determined, it is multiplied by the phase-in percentage, and the resulting amount is allocated to each LSE on a load-ratio basis indicating the amount of ZRCs resulting from local resources that each LSE is required to demonstrate is being owned or under contract for the planning year. *Id.* Instead of the Staff's biennial review, Consumers proposed an annual review to determine the incremental need for the planning year before the December and February capacity demonstrations. *Id.*

In response to the question of what resources the Commission should count toward meeting Michigan's forward locational requirement, Mr. Ronk explained that resources that satisfy MISO's LCR should count toward meeting each LSE's LCR obligation, and that both existing and new resources can be used by individual LSEs to address their specific obligations. 2 Tr 160. Consumers agreed with the Staff that, at the time of the capacity demonstration, the Commission should allow any resource that MISO currently allows to count toward meeting the LCR to be acceptable in meeting Michigan's forward locational requirement. 2 Tr 161. The company also supported a relatively small amount of contracted capacity secured by a power purchase agreement (PPA) for a term of not less than 20 years and executed prior to June 1, 2013, to be considered as a local resource until the PPA expires or is amended. 2 Tr 161. And, if MISO changes its criteria regarding the LCR and resources that satisfy it, Consumers proposed that the Commission adopt the changed criteria in its next series of SRM capacity demonstrations. *Id.* To show that it will meet Michigan's forward locational requirement, Consumers recommended that the LSE provide evidence or guarantees that show the resource is located in the zone, or, if not located in the zone, it satisfies MISO's requirements for satisfying the LCR, and that shows that the resource is owned by, or under contract to, the LSE for use by the LSE in the planning year. 2 Tr 161-162. Finally, Mr. Ronk testified his understanding that Staff's position regarding the percentage of non-auction purchases applicable for planning year 2022 was that both AESs and utilities may assume they can meet up to 5% of their planned capacity obligations through the PRA. 2 Tr 162.

On rebuttal, Mr. Ronk disagreed with Mr. Dauphinais' recommendation that both planned resources and planned retirements not be counted as incremental capacity. 2 Tr 165. Mr. Ronk reiterated his direct testimony that a phase-in forward locational requirement could avoid the



incentive to retire generation assets that exists with the Staff's approach by requiring that all LSEs meet 100% of their respective load-ratio share of the zonal LCR in a more expeditious manner. *Id.* Mr. Ronk further explained that failing to count planned capacity as incremental capacity provides an unrealistic picture of the need for incremental capacity. 2 Tr 167.

Mr. Ronk also disagreed with Mr. Zakem's analysis that describes several financial methods for an LSE to meet its forward locational requirement. According to Mr. Ronk, no new bilateral settlement mechanism is required because the current MISO capacity settlement process already provides a mechanism for LSEs, who may have acquired more capacity than they ultimately need, to be paid the ACP and for LSEs with not enough capacity to be charged the ACP. 2 Tr 167-168. He explained that LSEs currently have several avenues to acquire and dispose of capacity during the period between their four-year forward demonstration and the planning year, including the PRA process and settlement, annual bilateral contracts, and sponsoring a capacity auction. 2 Tr 168. Mr. Ronk disagreed with Mr. Zakem that the transfer of capacity under the SRM should be at the ACP, explaining that the Commission conducted a separate contested case to determine the SRM charge to apply to retail customers when the incumbent utility provides them capacity service when their AES has been found deficient in its ability to serve them. *Id.* Thus, there is no need for an additional transfer of capacity price under the SRM. *Id.*

Mr. Ronk also disagreed with Mr. Zakem that replacement of capacity due to generation asset retirement by the utilities will be on a one-for-one MW basis, as it may be prudent for the incumbent utility to buy or build smaller amounts of capacity depending on customer load, resources, and other factors, and it may be that one or more capacity additions located in areas outside of zone 7 provide economic benefits. 2 Tr 168-169. Thus, contrary to Mr. Zakem's assertion, rate-regulated utilities continue to carry the burden of meeting the LCR for both their

own load-ratio share and the load-ratio share of other LSEs. 2 Tr 169. It is also possible that in the near future, zone 7 will face a capacity shortfall, and the forward locational requirement, with its clear obligations for each LSE, will contribute to continued reliability in the zone. *Id.*

Mr. Ronk clarified that Mr. Zakem is incorrect in asserting that incumbent utilities have proposed to purchase capacity in the PRA over the 5% they recommend other LSEs be allowed to purchase. 2 Tr 169. He noted that, for planning years 2022 and thereafter, incumbent utilities are planning to limit the amount of capacity planned to be acquired through the PRA to no more than 5% in their respective capacity demonstrations. *Id.* He further explained that any capacity assigned to the incumbent utilities as a result of the SRM, and for which an SRM capacity charge is applied, will be addressed with capacity without reliance on exceeding the 5% PRA standards. 2 Tr 169-170. Mr. Ronk emphasized that the PRA does not help the utility meet its pro rata share of the LCR. 2 Tr 170.

Mr. Ronk disagreed with Mr. Zakem's proposal that an LSE be allowed to meet its forward locational requirement by paying the MISO CONE determined for each zone. 2 Tr 172. Mr. Ronk explained that this proposal attempts to renegotiate the SRM charge and should be rejected. *Id.* According to Mr. Ronk, it also does nothing to assure reliability or prevent overbuilding. *Id.* Further, in disagreeing with the testimony of CNE's witness Frank Huntowski, Director at The NorthBridge Group, an economic and strategic consulting firm serving the electric and natural gas industries, regarding AESs incurring higher costs were a high forward locational requirement to be imposed, Mr. Ronk testified that the cost associated to contributing to the zone's reliability should be borne by all customers within a zone and that any costs passed to AES customers is a function of their appropriately sharing the burden of ensuring a reliable electric grid for the state. 2 Tr 174. Regarding CNE's, Energy Michigan's, and ABATE's

concerns about the potential for oversupply, Mr. Ronk explained that, with appropriate resource planning, oversupplying the zone should not become an issue. 2 Tr 173. He also disagreed with Mr. Zakem's testimony that there is an error in the calculation of the LCR at the MISO level that would lead to an excessive LCR. 2 Tr 174. Further, he explained that any potential miscalculation in this equation is a matter for MISO and the Federal Energy Regulatory Commission (FERC), not this case concerned with assigning the resulting LCR. 2 Tr 175.

Regarding DTE Electric's ECIL approach, Mr. Ronk identified the following issues to be addressed, including the time-constrained reallocation process for matching firm capacity requirements to ECIL allocations, the prevention of commitments to multi-year supply arrangements that would result from an annual reallocation process, the need to define the price mechanism at which the reallocated ECIL would be assigned to an LSE, and possibility that the approach may never achieve the goal of addressing a forward locational requirement on a load-ratio basis. 2 Tr 176. Nevertheless, Mr. Ronk testified that, though DTE Electric's ECIL proposal is not as beneficial as a phase-in approach, it is more effective than the Staff's incremental approach. *Id.*

#### 4. Association of Businesses Advocating Tariff Equity

ABATE presented the direct testimony of Mr. Dauphinais. Mr. Dauphinais testified that ABATE opposes a state-created and imposed LCR, as well as any attempt to restrict the ability of an AES to utilize MISO's wholesale market for meeting capacity obligations. 2 Tr 38. Mr. Dauphinais disagreed with the way the Staff calculates the future year LCR values, explaining that the LCR value for a zone is not simply the LRR less the CIL value for the zone. 2 Tr 39. Rather, he claimed it is the LRR value for the zone less both the CIL value and any non-pseudo tied exports from that zone to capacity markets external to MISO (such as PJM

Interconnection, L.L.C. (PJM)). *Id.* He therefore recommended that the methodology to determine forecasted LCR values accommodate forecasted non-pseudo-tied exports. *Id.*

Further, Mr. Dauphinais disagreed with the Staff's proposal not to include any planning resource additions beyond those identified in the April 2017 filing in Case No. U-18197 because it does not provide a true indication of the incremental need for local capacity for the zone. 2 Tr 41. The true local incremental capacity need for the zone is the amount of local capacity required to meet the LCR for the zone above and beyond the local capacity that is already planned for that zone. He cautioned that the Staff's proposal could lead to an inefficient, costly, and unnecessary over supply of local capacity. *Id.* Thus, he recommended that the Staff's proposal be modified so that both identified planned retirements of local capacity and identified planned additions of local capacity be included in the determination of the incremental capacity need. 2 Tr 43. He further recommended that the Commission reject the Staff's proposal to treat investment for continued operation as a capacity retirement for the same reasons he opposed the Staff's proposed exclusion of planned capacity additions. Such investments do not create an incremental need for capacity but simply continue operation of existing capacity. *Id.*

On rebuttal, Mr. Dauphinais reiterated ABATE's opposition to a locational capacity requirement for electric suppliers and urged the Commission, if it does impose such a requirement, to adopt the Staff's incremental approach as modified by his direct testimony. 2 Tr 54. Specifically, Mr. Dauphinais favored modifying the Staff's approach to include all planned resource additions in determining the incremental local capacity need, to avoid treating existing resources requiring investment for continued operation as retired capacity in determining the incremental local capacity need, and to consider future exports from zones 2 and 7 to markets outside of MISO when determining the forecasted LCR values for future planning years.

Finally, Mr. Dauphinais proposed modifying the Staff's approach so that it allocates the incremental local capacity need to suppliers based on the degree a supplier's existing and planned local capacity falls short of the supplier's load ratio share of the LCR. 2 Tr 54.

In rejecting Consumers' phase-in approach, Mr. Dauphinais testified it is unreasonable because it ignores economic efficiency and aggravates market power issues. 2 Tr 56. He explained that suppliers in competition with each other have no obligation to sell capacity in excess of their load-ratio share of the LCR, nor do they have an obligation to sell it at a reasonable price. 2 Tr 57. As a result, requiring all suppliers to acquire local capacity to meet their full load-ratio share of the LCR for the zone would lead to underutilization of the import capability of the zone and would increase the ability of large suppliers with market power over capacity in that zone to exploit that market power. *Id.* He disagreed with Consumers' criticisms of the Staff's approach, asserting that the Staff's approach, as modified by his testimony, would be the most equitable and cost-effective method available. *Id.* Mr. Dauphinais agreed with Consumers that the Staff's approach should be modified so that the incremental local capacity need to suppliers is allocated based on the shortfall of each supplier's existing and planned local capacity from their load-ratio share of the LCR. 2 Tr 58. Mr. Dauphinais further argued that the Commission should accord no weight to Consumers' argument that focuses on the amount of time Consumers claims it would take for the Staff's approach to ultimately require each electric supplier to be subject to a local requirement equal to a full load-ratio share of the LCR for the zone where the load is located. 2 Tr 59. The reason that Mr. Dauphinais sees Consumers' phase-in approach as highly problematic is because it is based on the premise that ultimately all electric suppliers should be subject to a locational capacity requirement equal to a full load-ratio share of the LCR for their load's zone, regardless of whether suppliers, in aggregate, already

have sufficient local capacity to meet the LCR for the zone. 2 Tr 59. This can lead to exploitation of market power by large suppliers over smaller suppliers and would impose unnecessary costs on other suppliers. *Id.*

Turning to DTE Electric's approach, Mr. Dauphinais testified it puts the Commission in the position of allocating transmission capacity between retail electric suppliers, and this conflicts with the FERC's statements in Order No. 888, F.E.R.C. STATS & REGS. ¶ 31,036 (1996), that it alone has exclusive jurisdiction over unbundled retail transmission in interstate commerce by public utilities. 2 Tr 61-62. Further, this approach is plagued by the same economic efficiency and market power issues as Consumers' proposal. 2 Tr 63. Mr. Dauphinais continued that DTE Electric's attempts to address economic efficiency and market power problems associated with its approach are insufficient. 2 Tr 64. DTE Electric's import capability reallocation piece of its proposal allows large suppliers to prevent smaller suppliers from using this excess import capability, as larger suppliers would have a year-to-year first call on that import capability up until 60 days before the capacity demonstrations by those suppliers. 2 Tr 64-65. And, Mr. Dauphinais pointed out that direct competition between suppliers means that it is not in the supplier's interest to transfer excess import capability at a reasonable price. 2 Tr 65.

##### 5. Energy Michigan, Inc.

Mr. Zakem testified that he agrees with the Staff that a forward locational requirement for capacity should be based on incremental need, or the new capacity that has to be installed to maintain the zone 7 LCR. 2 Tr 71. Mr. Zakem next outlined several aspects of the Staff's analysis that are consistent with his testimony in previous dockets and with Energy Michigan's previous proposals and briefs. 2 Tr 71-72. The Commission should consider a scenario where an LSE does not meet its share of the forward locational requirement, and its non-performance

exceeds the 5% PRA allowance that the Staff proposed. 2 Tr 72. That LSE will pay the local utility an SRM charge and the local utility that may not have extra capacity will be allowed to go to the PRA, a remedy foreclosed to the LSE in meeting its capacity obligation in the first place. 2 Tr 72-73. Mr. Zakem reviewed an LSE's options to satisfy its forward locational requirement and identified the drawbacks of each in light of Section 6w's objective to ensure that all energy providers contribute to the state's long-term electric capacity needs. 2 Tr 82-83. Mr. Zakem testified that the problem with paying an SRM charge is that it does nothing to contribute to the state's long-term electric capacity needs. 2 Tr 83. Owning local generation may work for some LSEs that are vertically integrated and both own generation and sell retail electricity; however, AESs are retail suppliers but often not owners of substantial generation. *Id.* Mr. Zakem stated that AESs are therefore less likely to build new generation to meet incremental need, compared to local utilities. *Id.* He further pointed out that AESs may have a local capacity obligation of a few tens of MWs, and therefore, expecting new resources to be built in very small quantities may not be the most economic and efficient way to add new capacity in Michigan. *Id.* Mr. Zakem further argued that contracting to purchase local ZRCs, works for all types of LSEs in theory, but in practice it must overcome the potential market power of LSEs who own more local resources than their obligation and can also result in overbuilding capacity. 2 Tr 83-84. He further asserted that it may result in zone 7 meeting the MISO LCR, and still result in individual LSEs within the zone not meeting the local capacity obligation specified by the Commission.

Therefore, Mr. Zakem recommended an additional method, allowing an LSE 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. 2 Tr 84. Mr. Zakem recommended allowing an LSE to meet its forward locational requirement,

i.e., its share of the incremental need – as determined by the Staff method, by paying the MISO CONE which MISO determines each year for each zone. 2 Tr 85. The money would be split pro rata by MW by those entities that fill the incremental need. *Id.* Not all LSEs would be required to make such a payment. Paying CONE would be an additional method of satisfying the forward locational requirement. However, an LSE could still use any of the other methods such as paying the SRM charge, owning local generation, or contracting to purchase local ZRCs. The benefits of this method are that 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, and LSEs are not prevented from choosing any other method to meet local capacity obligations. 2 Tr 85-86. Mr. Zakem also identified the drawbacks that this method has, including the fact that the money the LSE pays will 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. 2 Tr 86. Mr. Zakem recommended that the Staff's proposed biennial review include a determination of which builders of new capacity will get what share of the payments from LSEs. *Id.*

Mr. Zakem further testified that the Staff's proposed biennial reassessment of the transfer of customers from one LSE to another does not address the fundamental underlying financial risk difficulty. 2 Tr 73. He explained financial risk exists for an LSE if the number of customers decreases and the LSE is left with a contract for capacity but no retail sale, resulting in the option of either selling the forward contract immediately, or holding it to offer it into the MISO auction in the fourth year. *Id.* Conversely, if the number of customers increases, the LSE does not bear a commensurate share of the locational capacity requirement until after the next reassessment case. *Id.* To remedy this discrepancy, the Staff proposed a show cause contested case



proceeding. 2 Tr 74. The problem with a show cause contested case, Mr. Zakem continued, is that it is a complex and lengthy process, leaving the issue of timing between the transfer of a customer and the revision to capacity obligations remaining. *Id.* Instead, Mr. Zakem proposed the losing LSE and the gaining LSE have the option to settle with each other at the ACP, so that the gaining LSE would pay the losing LSE the ACP times the PLC of the load switch, which would continue until the end of the next biennial reassessment case. 2 Tr 75. If the LSEs settle under this option, Mr. Zakem continued, there would be no need for a contested show cause case, both LSEs would be treated fairly financially, both can assess the value of serving or losing a customer without an unknown outcome of a contested case, and total local capacity remains the same. *Id.* If the LSEs do not agree to settle it this way, the show cause contested case becomes the default process. *Id.*

Mr. Zakem also testified that, because under MISO rules, studies, and auction processes, behind-the-meter generation is included as a planning resource and a ZRC, he recommended that it should not be subtracted from resources in determining the incremental need in zone 7. *Id.* He stated that his recommendation would be consistent with MISO's tariff. Next, due to the fact that MISO's formula for calculating the MISO LCR contains an obvious error, Mr. Zakem recommends that the Commission remove excess capacity from the LCR value when calculating the incremental need to correct for this error, and, in the longer term, file with the FERC for a correction to the MISO LCR calculation. 2 Tr 82.

On rebuttal, Mr. Zakem testified that, DTE Electric's ECIL approach, if adopted, will require the Commission to figure out what to do if the ECIL becomes a negative number. 2 Tr 95. He further testified that combining unlike terms in DTE Electric's definition as a basis for establishing a forward locational requirement means that the Commission should have evidence

that the combination is a meaningful application rather than an arithmetic association with the numbers in the PRA. 2 Tr 97. And, Mr. Zakem noted that a proposal based on a definition that does not appear in a MISO Tariff, such as DTE Electric's ECIL, creates the potential for inconsistency and conflict with MISO rules and federal tariffs. *Id.*

6. Constellation NewEnergy, Inc.

CNE presented the testimony of Mr. Huntowski. Mr. Huntowski testified that a forward locational requirement for LSEs is not necessarily essential for ensuring reliability in Michigan because incumbent utilities have enough capacity to satisfy the LCR of not only the utility load but also the AES load, and, although in-zone resources will be retired, utility resource plans suggest incumbent utilities plan to replace in-zone retirements with existing and/or new in-zone resources. 2 Tr 102. Mr. Huntowski further explained that, even if AESs were not subject to a forward locational requirement, they would still have an incentive to purchase capacity from in-zone resources because they will reduce their capacity price risk that way. 2 Tr 103.

Mr. Huntowski argued that a high forward locational requirement will force AESs to purchase capacity from utilities as utilities own or purchase almost all in-zone capacity. 2 Tr 104. This would result in significant additional costs to AES customers with little or no incremental reliability benefits. *Id.*

Now that the Commission has determined that a forward locational requirement is required for LSEs, Mr. Huntowski indicated that he finds an incremental approach where the locational requirement is based on incremental local needs to be both reasonable and appropriate. *Id.* The Staff's approach presents a methodology that, according to Mr. Huntowski, should be straightforward and relatively easy to replicate on an on-going basis in future proceedings in an objective and transparent manner based on readily available information. 2 Tr 105.

Mr. Huntowski identified many benefits of the incremental approach including: it is replicable from one review to the next, incorporating changes in load, transmission capabilities, and available resources on an on-going basis; ensures that the LCR consistent with MISO analyses will be met on an annual basis with locational capacity, while minimizing the likelihood that zonal resources will be over-procured, thus saving Michigan consumers from additional unnecessary costs; and recognizes the process will start with a significant amount of local capacity being held by the incumbent utilities. 2 Tr 106.

Mr. Huntowski agrees with the Staff's calculation methodology to forecast the LCR into the future given the information and data that is available. *Id.* Utilizing the forecasts of peak load and the LRR, along with a static estimate of the CIL found in the most recent LOLE Study, provides a transparent, unbiased, and replicable process for determining the LCR in the future on an ongoing basis. 2 Tr 106-107. This method is also consistent with MISO's recommendations in Case No. U-18197. 2 Tr 107. Mr. Huntowski also finds the Staff's proposed starting date for consideration of incremental capacity needs versus the forecasted LCR of April 20, 2017, the effective date of Act 341, to be a reasonable starting date as it aligns with the demonstration filings that were filed as part of the proceeding in Case No. U-18197. *Id.* He also agreed with the Staff that using the 2021/2022 planning year forecast as a baseline is reasonable. *Id.* He further asserted that all local capacity resources included in the U-18197 capacity demonstrations should be included in the existing baseline capacity calculation for planning year 2021/2022. 2 Tr 108.

Regarding the Staff's calculation of baseline capacity for planning year 2021/2022, Mr. Huntowski testified it appears low when compared to a difference calculated utilizing the 2017/2018 PRA adjusted for changes between 2017/2018 and 2021/2022. *Id.* Thus, he

recommended that the Staff perform this PRA reconciliation utilizing all of the confidential submissions in Case No. U-18197, and that the Staff then refine the 2021/2022 baseline numbers if the calculation produces a different result than the Staff's original calculation. 2 Tr 109. He further cautioned that, if the baseline gap between total resources and LCR is understated, the incremental locational requirement will be set at too high a level. *Id.*

Mr. Huntowski recommended that the incremental locational requirement be allowed to both decrease and increase in future years, testifying that an increase in any one year should not represent a minimum or floor going forward, as future changes in zonal load or transmission capabilities will reduce the need for incremental locational capacity given the objective calculation proposed. 2 Tr 110. He disagreed with the Staff's interpolation between the current 0% requirement and the 6.6% requirement in the 2023/2024 planning year to arrive at a forward locational requirement for planning year 2022/2023. *Id.* Rather, he suggested that the incremental locational requirement for 2022/2023 should be based directly on the LCR forecast for this period and any retirements scheduled to occur during the period, recommending that the incremental locational capacity need should be calculated directly for each period based on the data available for each year. 2 Tr 110-111.

Next Mr. Huntowski testified that only planned retirements that are "highly likely to occur during the specific periods for which the incremental locational need is being calculated" should be included in determining the incremental locational need. 2 Tr 111. Mr. Huntowski further requested that the Commission specify conditions related to whether a unit should be "deemed" to be retired in the calculation of the incremental locational capacity need. *Id.* These might include inclusion in a capacity plan demonstration, base case integrated resource plan (IRP), or a formal notice to regulators. 2 Tr 111-112. Further, if a retirement decision made by the utilities

is withdrawn or called into question, that change should be included in the next locational requirement calculation to avoid the imposition of an LCR that is higher than what is needed. *Id.*

Regarding the Staff's ceiling incremental locational need figure of 47.5% as an alternative LCR calculation methodology, Mr. Huntowski testified that this 47.5% figure is not relevant in this proceeding. 2 Tr 112. Mr. Huntowski testified there should be no locational capacity requirement floor, as this would unnecessarily introduce inflexibility. 2 Tr 113. Rather, the process to calculate the locational requirement should incorporate reductions in load, increases in the transmission capability into the zone, and the reversal of planned retirements, all of which would reduce incremental locational needs. *Id.* Finally, Mr. Huntowski suggested that, as the locational requirement increases over time, the incremental approach will need to be evaluated to determine whether it is producing the desired result. *Id.*

On rebuttal, Mr. Huntowski testified that Consumers' approach of setting the locational requirement at a high initial level and increasing that level over time, regardless of supply conditions, will significantly increase costs to AES customers by forcing AESs to buy capacity from utilities. 2 Tr 117. He also opposed Consumers' approach because it would provide little or no incremental reliability benefits. 2 Tr 118. DTE Electric's approach also has the potential to result in an unnecessarily high forward locational requirement for AESs as it will be based on utility decisions and an unspecified allocation methodology the Commission will develop. *Id.* He favored the Staff's incremental approach instead, as adjusted by the recommendations he made in his direct testimony. 2 Tr 117-118. Mr. Huntowski disagreed with Consumers' proposed changes to the Staff's approach, arguing that moving the start date for the existing portfolio back in time, increasing retirements based on historical decisions, and excluding certain

planned resources from the incremental calculation will all inappropriately increase the forward locational requirement. 2 Tr 119.

Mr. Huntowski next discussed DTE Electric's proposal to release import allowances that exceed their planned imports plus open supply positions. Under this approach, Mr. Huntowski testified that AESs would get fewer allowances and their locational requirement would increase when utilities retire a plant. 2 Tr 120. He pointed out that the AES locational requirement would be driven by the nature and timing of utility contracting decisions. *Id.* This means that a utility could force a high AES locational requirement by making contracting decisions that allow it to retain import allowances. *Id.* Mr. Huntowski also testified that the AES locational requirement under this approach is sensitive to both excess releases and reallocation methodology and could vary dramatically by year. 2 Tr 121. Mr. Huntowski responded to DTE Electric's assertion that there may be insufficient local resources in zone 7 under the incremental approach by pointing out that there is projected to be 456 MW of excess local resources in zone 7 in the 2023/2024 planning year. *Id.*

#### 7. Northern States Power Company

Kari Chilcott Clark, the Senior Manager of Market Operations for Xcel Energy Services Inc., testified that NSP-W does not believe a forward locational requirement is needed for zone 1, which encompasses the entire NSP-W footprint, including the small portion of load (19-26 MW peak monthly demands) that is served in Michigan's Upper Peninsula. 2 Tr 186. This load accounts for approximately 2.0% of NSP-W's load and 0.33% of the load served by the integrated NSP-W system. *Id.* She states that there are no LSEs other than NSP-W in zone 1 in the state of Michigan. *Id.* Therefore, NSP-W recommends the Commission exclude zone 1 from its process of establishing forward locational requirements. *Id.* In the alternative, the

Commission should establish a forward locational requirement of zero for zone 1 that is not subject to regularly recurring re-evaluation. *Id.* Ms. Clark testified that she estimated the Michigan load that NSP-W serves is less than 0.12% of the load served in the state of Michigan. 2 Tr 187.

Ms. Clark further explained that all of the distribution load in Michigan served by NSP-W is provided through substations fed from the Wisconsin Transmission system. *Id.* None of the transmission facilities NSP-W owns or operates in Michigan serves a regional power transfer function and NSP-W has no interconnections with other utilities in Michigan. *Id.* Because NSP-W is located wholly within MISO's zone 1, the Michigan load that NSP-W serves is provided solely through zone 1, with no connection to zones 2 or 7 which are located in Michigan. *Id.* Ms. Clark acknowledged that the Staff only analyzed and calculated forward locational requirements for zones 2 and 7, recommending that the forward locational requirement for LSEs in zone 2 be set at zero for the planning years 2022/2023 and 2023/2024 based on the forecasted capacity margin. *Id.* Ms. Clark explained that, if the Commission does not establish a forward locational requirement for zone 1, NSP-W will demonstrate its Michigan load will be adequately served through the submission of a copy of its Upper Midwest IRP to the Commission in February 2019. 2 Tr 188. Based on its most recent Upper Midwest IRP, which spanned the period of 2016-2030, the company's forecast capacity position projects a system surplus of capacity throughout the first eight years of the plan with existing and approved resources. 2 Tr 189. The Michigan load within the NSP-W footprint is included in the load forecasts used to determine the NSP-W system capacity position in the Upper Midwest IRP. *Id.* Ms. Clark further testified that, incorporating the reserve margin for all of zone 1 adds even more capacity than projected in the NSP-W system's IRP. 2 Tr 190. Finally, Ms. Clark testified that

the company believes the forward locational requirement for zone 1 should be set to zero, and no re-evaluation should be scheduled unless and until the Commission determines, in its review of the company's IRP, that the company is not procuring adequate resources to meet the forecast load and MISO reserve margin for zone 1. *Id.*

8. Indiana Michigan Power Company

Kent D. Feliks, Manager RTO Policy for MISO for American Electric Power Service Corporation, testified on behalf of I&M. Mr. Feliks explained that PJM has a mandatory three-year forward capacity market for LSEs in its service territory. 2 Tr 181. LSEs in that territory meet their capacity obligations either through participating in PJM's Reliability Pricing Model (RPM) capacity auctions or through PJM's Fixed Resource Requirement (FRR) option in which the entity supplies its own capacity resources. *Id.* LSEs that elect FRR are required to notify PJM in March prior to the three-year forward RPM Base Residual Auction (BRA) and then provide their FRR plans the following month, in April. *Id.* I&M, along with other subsidiaries of American Electric Power (AEP), collectively participates as a PJM FRR entity. *Id.*

Mr. Feliks testified that because there are two Regional Transmission Organizations (RTO)/Independent System Operators (ISO) that operate in Michigan, MISO and PJM, Michigan should continue to allow for different capacity adequacy methodologies to accommodate the different FERC-approved methods established by each RTO/ISO. 2 Tr 182. He agreed there should be a locational requirement for resources used to satisfy capacity obligations but testified that it should be limited to resources that are deliverable to the load served. *Id.* He agreed with Mr. Doherty's testimony regarding the capacity requirements for LSEs in PJM as it is consistent with his testimony. *Id.*



## B. Cross-Examination

### 1. Staff

Mr. Doherty agreed that, if an electric provider failed to meet the LCR as part of its resource adequacy filing, the incumbent utility would have to meet that unmet requirement, which would be part of the utility's capacity service to that AES's customers. 2 Tr 293. Mr. Doherty further agreed that, as part of that capacity service, the associated SRM capacity charge would apply. 2 Tr 294. Mr. Doherty clarified that the MISO LCR is not a four-years forward requirement but a requirement for the prompt year. *Id.* For the forward locational requirement, Mr. Doherty is referring to projecting or meeting the assumed or calculated locational requirement that will exist four years forward. 2 Tr 295. He testified that the purpose of a forward locational requirement would be to have a projection of what the locational requirement will be in the zone when that four years forward becomes the prompt year, and to increase the likelihood that those resources in the zone exist. *Id.* He agreed that having enough resources within the zone to meet the LCR affects the reliability of the electric grid. 2 Tr 295. Likewise, he agreed that having enough resources in the zone to meet its locational requirement both improves and is necessary for the reliability of the electric grid. 2 Tr 296. And, he agreed that if the zone's LCR is not met, it may negatively impact the reliability of the electric grid. *Id.*

He admitted that he had no concrete example of a utility planning to retire a generation resource and then later not actually retiring it even though little to no investment was required. 2 Tr 300. He explained that there would have been no incentive to do this in the past, and implementing an LCR could create one, so that this could happen in the future. 2 Tr 300. With respect to his rebuttal testimony about the "over-procurement of in-zone resources," Mr. Doherty explained that this means more resources in the zone than would be needed to meet the zone's

LCR. 2 Tr 304. He admitted he has not performed a study of an LSE's ability to obtain economically-feasible generation resources with four-year forward contracts for retail electric service. 2 Tr 306. Based on conversations Mr. Doherty has had with AESs, he believes it is difficult to get customers to agree to contracts longer than four years, or even four years. *Id.* He also admitted that he has not done a study of what is required to get financing to construct a generating unit in Michigan. 2 Tr 307.

With respect to his rebuttal testimony that utilities have an incentive to reduce their resources to the minimum amount required to meet their individual LCR, as any excess generation will be used to offset the requirements of other LSEs, he has no concrete examples of a utility manipulating its generation resources. *Id.* However, Mr. Doherty testified that there has been no reason for such manipulation in the past and these requirements may create such a reason or incentive. *Id.* Mr. Doherty further observed that a utility might still own and operate a resource, and yet it is not part of their demonstration because they choose not to include it, explaining that the Staff is concerned with utilities failing to include some generation resource the Staff is unaware of. 2 Tr 310-311. He agreed that if the utility was getting cost recovery for an owned generating unit or for a purchase power contract, the Staff would be aware of it. 2 Tr 311-312. Mr. Doherty stated that Consumers' alterations to the Staff's incremental approach would have a large effect on a small number of LSEs giving utilities an incentive to manipulate retirements or resources. 2 Tr 313-314.

Next, Mr. Doherty testified that, to project a zone's shortfall, an LCR should include all resources in the zone, not just those included in the capacity demonstration filings. 2 Tr 315. Mr. Doherty admitted that he knows of no instance where an LSE underreports its resources; however, he referred to the Staff's Exhibit S-27 where Consumers and DTE Electric answered

yes to a question asked during discovery about whether an LSE should be allowed to report only those resources necessary to meet the requirements rather than report all their resources. 2 Tr 316, 318. He testified that Exhibit S-25 lays out the requirements the Staff would like to see for planned new resources and what should be in place to count or not count. 2 Tr 318-319.

Ms. Cole testified during cross-examination that the potentially unnecessary costs she referenced in her testimony refer to costs related to in-zone resources that exceed what an LSE would need to meet its LCR. 2 Tr 378. To calculate those unnecessary costs, Ms. Cole admitted you would need to know how much the imports would cost in relation to the generation in the zone, and further admitted that the Staff has not performed that analysis. *Id.* She agreed these are potential costs that would only be true costs if the costs of the in-zone capacity exceeded the cost of the imports. 2 Tr 378-379. Ms. Cole admitted she has not performed an analysis of an AES's ability to secure financing for new electric generation resources. 2 Tr 379. However, she explained the basis for her testimony in this regard as resulting from a series of stakeholder meetings held last summer with AESs, their customers, and other LSEs. *Id.*

Ms. Cole agreed that the incentives she outlined that exist for rate-regulated utilities to invest in generation located in Michigan existed before the state legislature passed Act 341. *Id.* She testified that she has no data upon which to base an opinion about when 100% of the pro rata share of the LCR would be achieved, but suggested it will take a long time, even decades. She admitted it may even take longer than 30 years. 2 Tr 382-383.

Ms. Cole testified that up until now, AESs have not had the same incentives to build and own in-zone generation that rate-regulated utilities have had, and that, if the cap on customer choice were lifted, more customers would migrate to the choice market, and there may be a need to have a higher forward locational requirement to ensure the zone continues to meet its LCR.

2 Tr 384. She agreed that Act 341 makes the incumbent utilities the provider of last resort. 2 Tr 384-385. She also agreed that if the Commission approves an LCR, that would presumably be part of the resource adequacy requirements. 2 Tr 385.

Ms. Cole testified that a utility should consider, when deciding whether to retire a generating unit, the amount of generation that would be left in the zone, as reducing the amount of generation that will impact reliability for all customers, including utility customers and ROA customers. 2 Tr 389. She further testified that if the zone is short, there would be a reliability problem regardless of whether a utility meets its load ratio share of the LCR. 2 Tr 389-390. She testified she is unsure whether the Commission could require a utility to continue operating a generating unit in order to ensure the LCR for the zone remains satisfied. 2 Tr 390. Ms. Cole testified that, at this time, the incumbent utility does not have an obligation to plan to provide capacity to serve ROA load in its service territory unless the Commission directs it to. 2 Tr 390-391. That direction would come as part of the resource adequacy filings, such as those pending in Case No. U-18441. 2 Tr 391.

On redirect, Ms. Cole testified that aside from the information she received from AESs, their customers, and other LSEs during stakeholder meetings, during her 12 years at the Commission, she has had various discussions with LSEs including utilities about the kind of commitment that it takes in order to finance long-term investments in electric generation. 2 Tr 394. During the drafting of the 21<sup>st</sup> Century Energy Plan, when the 10% cap on choice was discussed, one of the reasons advocated for the cap was so there would be a finite number of customers on choice so that the utilities would have a guaranteed amount of load in order to be able to have future sales projections sufficient to support financing long-term investments in generation. 2 Tr 394-395. This was something Ms. Cole considered when testifying about the difficulty AESs may face in

securing financing. She also relied on her administrative knowledge, and practical common sense that a four-year forward contract with a customer may not be sufficient evidence for a financing institution to be able to grant financing for a sizable investment for a long period of repayment. 2 Tr 395. However, on recross-examination, Ms. Cole also admitted that AESs are not prohibited from entering into contracts with customers that are longer than four years. 2 Tr 395.

C. Initial and Reply Briefs

1. Constellation NewEnergy, Inc.

CNE begins by arguing that the Commission should not implement a local capacity requirement for individual electric providers because such a requirement is both unnecessary for ensuring reliability and inconsistent with Section 6w of Act 341. CNE further asserts that permitting the use of out-of-state capacity deemed deliverable to Michigan does not add reliability risk to the regional grid, and instead addresses market power issues and conforms to federal wholesale power regulations.

CNE argues that the Commission's conclusion in its June 15, 2017 order in Case No. U-18197 (June 15 order) that Section 6w(8) of Act 341 requires the Commission to adopt an LCR is misplaced as Section 6w(8) does not require a Michigan-specific LCR. According to CNE, the reference to the LCR in Section 6w(8) is a reference to the MISO LCR. CNE points out that Section 6w(12) defines the LCR as "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)." CNE's initial brief, p. 5. According to CNE's reading of the statute, if MISO declines or

otherwise fails to establish an LCR by October 1, then the Commission must set any required LCR consistent with federal reliability requirements. Thus, according to CNE, the Commission is not authorized to set an LCR unless MISO declines to do so by October 1 of the applicable year. CNE further argues that if the Commission sets any required LCR, it must do so consistent with federal requirements. Further, CNE points out that the Commission has not addressed the language in Section 6w(6) that any resource MISO permits to meet a supplier's capacity obligation must also be acceptable in Michigan. And, because the MISO Tariff does not restrict LSEs from utilizing out-of-state capacity resources when participating in the MISO capacity auction, the statute requires that suppliers be permitted to use out-of-state capacity deliverable to the relevant zone to demonstrate compliance with Michigan's capacity obligations, consistent with the MISO Tariff. CNE maintains that the Commission cannot establish a Michigan-specific LCR on individual suppliers that is more restrictive than what MISO requires. *Id.*, p. 6.

Relying on the testimony of Mr. Huntowski, CNE stresses that, even if the Commission could establish an LCR, it should not do so because, historically, utility capacity purchased from in-zone resources has been enough to satisfy the LCR for the utility load and the AES load. Mr. Huntowski indicated that utility resource plans suggest utilities will continue to replace in-zone retirements with existing and/or new in-zone resources. CNE further asserts that, even without a Michigan-specific LCR, LSEs have an incentive to procure local resources because AESs will reduce capacity price risk by purchasing from in-zone resources. Finally, CNE asserts that a high LCR mandate will not improve reliability but will increase costs. *Id.*, p. 7.

If the Commission does impose an LCR, CNE recommends it adopt the Staff's incremental approach for determining any forward locational requirement. CNE contends that the Staff's

proposed calculation methodology that bases the forecast of the zonal LCR requirement on the LOLE Study is an appropriate means to forecast the LCR into the future. CNE's initial brief, p. 9. CNE also agrees with the Staff that its proposed April 20, 2017 starting date is reasonable. *Id.*, p. 10. CNE also finds the Staff's proposal to use planning year 2021/2022 as the baseline forecast year to be reasonable. CNE argues that only planned retirements that are highly likely to occur during the specific periods for which the incremental locational need is being calculated should be included to determine incremental need. Conversely, retirements that are uncertain or are expected to occur in the future should be considered in future proceedings. In addition, CNE agrees that all local capacity resources included in the capacity demonstrations submitted to the Commission in Case No. U-18197 should be included in the existing baseline capacity calculation for planning year 2021/2022. *Id.*, p. 11. CNE requests that the Staff verify its calculation of baseline capacity for planning year 2021/2022 relative to the LCR level because that calculation appears low. *Id.*, p. 12. Given the potential for manipulation of the LCR calculation, CNE urges the Commission to establish criteria for whether a unit should be deemed to be retired in the calculation of the incremental locational capacity need. *Id.*, p. 13. Such criteria should include whether that resource was included in a capacity plan demonstration, base case IRP, renewable energy plan, power supply cost recovery plan, or whether formal notice to regulators has been made to retire a plant. Further, if a utility's retirement decision is withdrawn or called into question, the change should be included in the next locational requirement calculation to avoid the imposition of an LCR that is higher than what is needed.

CNE proposes that the incremental LCR should be assessed on an annual basis and allowed to both decrease and increase in future years. *Id.* It urges the Commission not to adopt an LCR floor as it would unnecessarily introduce inflexibility. *Id.*, p. 14. CNE also cautions the

Commission against adopting a ceiling. *Id.* CNE asserts that utility resource plans suggest utilities will purchase much of the available capacity over the next several years, so the potential maximum is lower in 2023/2024. Finally, CNE argues that the incremental capacity need for the 2022/2023 planning year should not be an interpolation. Rather, the LCR should be calculated for each individual year in the four-year forecast. *Id.*, p. 15.

In its reply, CNE repeats many of the same arguments made in its initial brief, but also explains why the Commission should reject the load-ratio share approaches presented by Consumers and DTE Electric in this proceeding. CNE urges the Commission to reject Consumers' phase-in load ratio share approach because it results in increased costs to AES customers with little or no incremental reliability benefits. CNE's reply brief, p. 4. CNE contrasts this approach with the Staff's recommended incremental approach and observes that adopting an incremental approach will allow time for more non-utility in-zone supply to become available. *Id.*

Likewise, CNE urges the Commission to reject DTE Electric's alternative methodology, arguing this proposal results in an LCR on AESs that is highly sensitive and dependent on utility decision-making. *Id.* It explains that a utility could force a high AES locational requirement by making contracting decisions that allow it to retain import allowances. *Id.*, p. 5. CNE asserts that, in this way, utilities could force AESs to buy capacity from the utilities. Because this proposal could lead to gaming of the LCR by utilities, would be dependent on utility decisions, and could result in an LCR mandate that varies dramatically from year to year, CNE urges the Commission to reject DTE Electric's proposal. *Id.*, p. 6.



## 2. Energy Michigan, Inc.

Energy Michigan first addresses an error in MISO's calculation of the LCR, encourages the Commission to work with MISO to address the issue, and further asserts that if MISO fails to act in a timely manner, the State should file with the FERC to seek a correction to the MISO LCR calculation. Energy Michigan supports the Staff's proposal for an incremental need approach with certain modifications. First, if there are LSEs who are unable to meet their forward capacity obligation and customers are paying the SRM to the utility, the Commission should require the utility to own or contract for capacity resources that are available and qualify to meet the capacity need pursuant to Section 6w(6). If the utility fails to meet this standard, the SRM payment should go toward purchasing new forward capacity resources, either by means of new contracts or new construction.

Energy Michigan further argues that an individual, mandatory LCR for LSEs in Michigan is both unlawful under the requirements of Act 341, and unnecessary to fully implement a four-year forward resource adequacy review. However, a four-year forward zonal LCR that is modeled on MISO's prompt-year zonal LCR would assure resource adequacy in Michigan, consistent with Act 341's requirements. Energy Michigan asserts that a mandatory individual LCR would not improve zonal reliability. Rather, reliability in MISO is sufficiently accomplished by a zone meeting its LCR in total. Even when an LSE chooses to opt out of the PRA through a FRAP, the ZRCs submitted in a FRAP are not dedicated to serve the LSE that submitted the FRAP. Rather, MISO uses all resources to serve all loads. Energy Michigan's initial brief, pp. 4-5, citing 2 Tr 91. Energy Michigan asserts that MISO put in place rules to prevent the FRAP process from being gamed, and that, emulating a FRAP outside of the context

of MISO's tariffs and market, risks opening up Michigan's LSEs to gamesmanship by those with significant market power. *Id.*, p. 5.

Energy Michigan further argues that imposing a mandatory individual LCR obligation on LSEs within a zone has the potential to result in total resources for the zone that are greater than the total MISO requires for the zone to meet the same MISO reliability standard. The practical result is overbuilding which can cost Michigan citizens hundreds of millions of dollars. Energy Michigan's initial brief, p. 5. Energy Michigan therefore urges the Commission to weigh the potential costs of a mandatory individual LCR against the reliability benefits that accrue (of which Energy Michigan asserts there are none) and to determine that the costs outweigh the benefits. *Id.*, pp. 5-6.

Energy Michigan asserts that the market power Consumers and DTE Electric possess through the control of in-zone resources can be used to create anti-competitive conditions that will drive AESs out of business and eliminate electric choice. *Id.*, p. 6. Energy Michigan asserts that this result is contrary to Act 341's requirements which preserve a 10% choice market. In addition, this result will increase costs to Michigan's electric customers. *Id.*

However, should the Commission choose to implement a mandatory individual LCR requirement for Michigan's LSEs, Energy Michigan supports the Staff's incremental approach as it addresses the issues of excessive costs and market power more effectively than other alternatives presented. Energy Michigan's initial brief, p. 6. Energy Michigan also presents an additional option that addresses load changes and that could improve administrative efficiency and reduce the need for show-cause hearings. In accounting for changes in load levels among LSEs, in addition to the Staff's recommended show-cause contested case, Energy Michigan proposes giving LSEs the option to settle capacity obligations at the MISO public market

clearing price, or ACP, when customers transfer from one LSE to another as set forth in Mr. Zakem's testimony at 2 Tr 74-75. *Id.*, pp. 7-8. Energy Michigan proposes that an existing plant should only be removed from existing resources after there is a public announcement of the retirement, and MISO has determined that the plant will not be a System Support Resource. *Id.*, p. 9. Further, Energy Michigan recommends that a new resource should be included in available resources only after either construction has started, or, in the case of a demand response resource, the resource has been accepted as a Planning Resource and assigned a value by MISO. *Id.*, p. 10.

Next, Energy Michigan recommends that the Commission allow the same resources to qualify toward meeting an LCR obligation that MISO accepts for purposes of meeting MISO's LCR. *Id.* In addition, if MISO implements procedures for external resources to be able to submit offers into the annual MISO auction, Energy Michigan recommends that they be counted as existing resources internal to the zone to calculate the incremental need. *Id.*, pp. 10-11. Energy Michigan endorses the Staff's review of the capacity demonstration process in Case No. U-18441 and the Staff's recommendations in that docket. *Id.*, p. 11.

Energy Michigan recommends that the Commission put into place procedures to prevent the exercise of market power if it imposes an individual mandatory LCR. If an LSE owns more than its required share of local resources, then the excess should be subtracted pro rata from the required shares of other LSEs. Energy Michigan's initial brief, p. 12. Energy Michigan also endorses the recommendation of Mr. Zakem that an LSE be allowed to meet its share of the incremental need by paying a pro rata share of the cost of building new capacity within zone 7, i.e., the MISO CONE, to meet incremental need to those parties who are actually building new capacity. *Id.*, pp. 12-13. Energy Michigan recommends that the Staff's proposed biennial review also include a determination of which builders of new capacity will get what share of the

payments from the LSEs. In return for this payment, each LSE would receive a commensurate share of the ZRC MWs of the new generation, which the LSE could offer to MISO to satisfy its MISO capacity requirement. *Id.*, p. 13. If the Commission continues to assess a capacity charge directly on a retail customer, as opposed to an LSE, the retail customer could have the option to pay CONE to the entity building new generation, and to receive a share of ZRCs to count against its load. *Id.*, p. 14. The customer's LSE could then act as the customer's agent by means of a contractual agreement between them. *Id.*

In its reply, Energy Michigan disagrees with the Staff that Act 341 can be interpreted to show a clear intent by the Legislature to impose an allocated share of the zonal LCR on all LSEs. Rather, to be consistent with Act 341 and with MISO and federal reliability requirements, the Commission should establish a method for a four-year forward zonal LCR requirement instead. Energy Michigan's reply brief, p. 1. Energy Michigan also remarks that Consumers mischaracterizes the Commission's available options in this proceeding by creating a false dichotomy between an individual LCR imposed on each LSE, and requirements that have no effect on the sufficiency of electric provider resource adequacy demonstrations under Act 341. *Id.*, p. 2. The Commission has already found a method for satisfying Act 341's requirements and meeting long-term reliability goals that, as reported in Case No. U-18441, was successful and need not be replaced. *Id.*, p. 3.

Energy Michigan criticizes Consumers for its attempt to characterize the LCR as being an LSE-specific requirement in Act 341 without providing any statutory support for this view. *Id.* To the contrary, Energy Michigan states that the statute defines LCR in a way that indicates it is a zonal requirement and not an individual requirement. Energy Michigan's reply brief, p. 4. Further, because Energy Michigan maintains that the statute does not expressly authorize the

Commission to impose an individual LCR applicable to all LSEs, the Commission may not insert a provision into the statute because it believes it would have been wise for the Legislature to do so to effectuate the statute's purpose. *Id.*, pp. 4-5. It also points out that MISO applies a zonal LCR without having to allocate the LCR to individual LSEs outside the narrow context of the FRAP. *Id.*, p. 5. And, it notes the Commission was able to successfully review the resource adequacy of zone 7 on a four-year forward basis without applying an LSE-specific LCR. Energy Michigan agrees with the Staff that, "assuming the ten percent cap on electric retail choice stays in place, and the natural incentive for incumbent utilities to own local resources continues, imposing anything other than a modest four-year forward LCR applicable to all LSEs is . . . unnecessary to protect reliability, even in [zone 7]." *Id.*, p. 5, quoting the Staff's initial brief, p. 17.

Energy Michigan disagrees with Consumers that the mandatory LCR that Consumers advocates for would be consistent with and would appropriately complement federal reliability regulations, criticizing Consumers for proposing that the Commission implement a design (the MISO CRS tariff proposal) that the FERC already evaluated and rejected as being inconsistent with appropriate market design. Energy Michigan's reply brief, p. 7. Energy Michigan disagrees with Consumers that the SRM is designed to be analogous to a FRAP and asserts that the Legislature wanted the Commission to supplement the existing PRA with a four-year forward capacity resource demonstration process implemented in a manner consistent with MISO's prompt-year requirements. Energy Michigan's reply brief, p. 8. Also, Energy Michigan argues that Consumers offers no evidence supporting the proposition that imported capacity is inherently more "risky" than in-state capacity and further points out that MISO's own equivalent treatment of all deliverable capacity belies Consumers' characterization of out-of-state resources

as being more risky. *Id.* Energy Michigan also points out that 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. *Id.*, p. 9. In addition, responding to Consumers' claim that an AES's use of out-of-state resources is contrary to Act 341, Energy Michigan explains that Act 341 is silent about allocating the CIL. *Id.* Countering Consumers' claims about "unfair discrimination" in the obligations of different electric providers, Energy Michigan explains 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. *Id.* And, Energy Michigan maintains there is no evidence that supports Consumers' assertion that allowing customers to make use of the available CIL will jeopardize the reliability of the electric grid in Michigan. Energy Michigan's reply brief, pp. 9-10. Energy Michigan also defends the Staff's observations of the economic incentives utilities have to build and own their own capacity and suggests significant differences exist between regulated utilities, with a guaranteed monopoly over 90% of the market and guaranteed rates of return, and AESs. *Id.*, p. 11. Energy Michigan disputes Consumers' claims that its bundled customers are subsidizing the customers of AESs, citing testimony by Ms. Cole to the contrary. *Id.*, p. 12.

Energy Michigan also urges the Commission to reject DTE Electric's ECIL approach as it is not consistent with federal reliability requirements as required by MCL 460.6w(8)(c). Energy Michigan cautions the Commission that the ECIL reflects a MISO error in determining the LCR and that it could end up being a negative number, or a nonsensical outcome because of the way DTE Electric defines it. Energy Michigan's reply brief, pp. 13-14. Energy Michigan agrees with the Staff that the Commission should consider the fairness and reasonableness of any additional costs that those reliability requirements will impose on customers. *Id.*, pp. 14-15.

### 3. Michigan Electric and Gas Association

MEGA argues that the forward locational requirement in zone 1 should be set to zero and no re-evaluation should be scheduled at this time. MEGA's initial brief, p. 1. For the remainder of the Upper Peninsula that is a part of zone 2, the forward locational requirement should also be set to zero, and if additional capacity becomes necessary in zone 2, the future LCR and forward locational requirement should be reconsidered. *Id.*, p. 2. MEGA recommends that any forward locational requirement established for zone 7 should not apply outside of the MISO lower Michigan footprint. *Id.* MEGA argues that the Commission should not implement an LCR for LSEs operating in MISO zones 1 and 2 and in the PJM area of Southwest Lower Michigan. *Id.*, p. 11. It points out that the purpose of this case is to establish a methodology relating to the MISO LCR and that the Commission did not intend to address the PJM area. *Id.*, p. 2. Alternatively, for the areas of the Upper Peninsula, MEGA recommends that the Commission exempt the providers located in zones 1 and 2 from the LCR methodology developed in this case for zone 7, with a possible review in zone 2 if the capacity situation changes. *Id.*

With respect to the different proposals presented in this case for the methodology for allocating LCR shares among providers in MISO zone 7, MEGA supports a determination that fairly assigns the burden of supporting the LCR among providers, eliminates discriminatory subsidies of local capacity among providers, and avoids assigning any additional capacity costs caused by an LCR shortfall in zone 7 to providers that have satisfied their allocation of the LCR for the zone and therefore did not contribute to the shortfall. *Id.*, p. 11. Its only member electric provider in zone 7 is Alpena Power Company, and MEGA suggests that the load-ratio share approach would be effective for this provider. *Id.*

MEGA responds that incremental capacity need can be determined and updated based on the annual capacity demonstration filings under the SRM pursuant to MCL 460.6w(8). *Id.* It further contends that these determinations may be reconciled with provider IRPs reviewed and approved under MCL 460.6t. *Id.* In addition, other reference sources could include periodic MISO studies and reports. MEGA asserts that capacity assessments should cover the period of the annual demonstration filings by the providers, from the prompt year to the fourth planning year out. MEGA's initial brief, p. 12. Regarding plant retirements, MEGA agrees with ABATE that only plant retirements "highly likely" to occur during a specific period under the incremental need analysis should be considered. *Id.* MEGA agrees with Consumers that planned capacity should be considered as incremental capacity in the need analysis. *Id.* In answering the question of whether incremental capacity need should only be established four years into the future or longer, MEGA responds that the SRM determinations should cover the period of four years for determining resource adequacy and triggering any remedial action such as application of the SRM capacity charge. MEGA's initial brief, p. 13.

MEGA agrees with the rebuttal testimony of witnesses Mr. Dauphinais and Ms. Wojtowicz that any incremental need should be allocated to LSEs serving the zone that have failed to provide their allocated share of the LCR. *Id.* MEGA emphasizes that the same methodology to determine incremental capacity need should not be applied in zones 1 and 2. *Id.* Resource adequacy in zones 1 and 2 should be analyzed by periodic review of the appropriate IRPs for the LSEs along with the SRM resource adequacy annual filings. *Id.*, p. 14. In the absence of a forward locational requirement, the IRP process and annual capacity filings will provide an adequate basis to evaluate the percentage of non-auction purchases applicable for planning years 2022 and beyond in areas other than zone 7. *Id.* MEGA states that the record is insufficient to



identify specific instances of market power or to develop a procedure for addressing it. *Id.*, pp. 14-15.

#### 4. The Commission Staff

The Staff proposes the forward locational requirement methodology set forth in Staff Exhibit S-25. Staff's initial brief, p. 23. Set forth on pages 38 through 39 of the Staff's initial brief, the Staff's proposal includes the following steps: projecting the LCR for each zone for a selected future year, determining expected changes in existing planning resources in each zone between a starting date (April 20, 2017, which is the effective date of Act 341) and the selected future year, determining the incremental need in the selected future year by calculating the difference between the projected LCR in the zone and the projected amount of existing resources in the zone, allocating the incremental need to LSEs in the zone as forward locational capacity obligations, and reevaluating the incremental need and forward locational capacity obligations in a contested case proceeding every two years.

The Staff recommends using the most recent LOLE Study to estimate the LCR for future years and to base the locational requirements off of that estimate. *Id.*, p. 47. This is accomplished by using the forward year peak demand and LRR UCAP per-unit of zonal peak demand values to determine a forward LRR value for each zone. *Id.*, p. 39. If the peak demand and LRR percentages are not provided in the LOLE Study, the Staff recommends they be determined by interpolation/extrapolation. *Id.*, p. 38. The LCR is then determined by subtracting the CIL from the LRR. *Id.*, p. 39. The Staff proposes that the CIL be held constant for this methodology, and states this methodology aligns with MISO comments provided on August 15, 2017 in Case No. U-18197. *Id.*, p. 39.

To determine the initial incremental capacity need, the current resources in the zone (including both generation and demand response) are identified according to the filings in Case No. U-18197, and any double-counted units, behind-the-meter generation, ZRC purchases, and retirements are removed. Staff's initial brief, p. 47. This results in the total projected resources in the zone, which are then subtracted from the forward zonal LCR that is estimated from the LOLE Study, to arrive at the incremental need as shown in Staff Exhibit S-24. *Id.* The Staff proposed a 1.5% forward locational requirement for individual LSEs in zone 7 for planning year 2022/2023 and a forward locational requirement of 3% for individual LSEs in zone 7 for planning year 2023/2024.<sup>4</sup> *Id.*, pp. 24, 58. More specifically, each LSE in the zone will need the equivalent of 1.5%, or 3%, depending on the planning year, of its peak demand as the amount of ZRCs to come from local zone 7 resources. The Staff argues that its approach minimizes the risk of incumbent utility exercise of market power, while also gradually increasing ROA load contribution to long-term resource adequacy. *Id.*, p. 37.

The Staff proposes setting annual requirements in a contested case in two-year blocks and then reevaluating them every other year. For the initial requirements, this means assessing the planned resources, as filed in Case No. U-18197 in April 2017 with minor adjustments as shown in Exhibit S-24, compared to the projected LCR in planning year 2023 to set an individual LCR requirement for planning years 2022 and 2023. Staff's initial brief, pp. 47-48. The process will repeat in two years, by comparing the Case No. U-18197 resources to the projected requirements derived from the most recent LOLE Study, to set the requirements for planning years 2024 and

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<sup>4</sup> On page 59 of its initial brief, the Staff notes that it did not calculate an incremental capacity need specifically for planning year 2022/2023 and instead arrived at the 1.5% by attributing half of the 2023/2024 planning year incremental capacity need of 3% to planning year 2022/2023.

2025. *Id.*, p. 48. This biennial reevaluation and reassessment process will capture periodic changes in load levels using the MISO peak demand projection in determining the incremental need. *Id.*, p. 56. In this same contested case, the Commission should review the percentage of non-auction purchases in planning years 2022 and beyond.<sup>5</sup> *Id.*, p. 75. The Staff proposes that changes in load levels for an LSE that affect its forward capacity demonstration be litigated in a show-cause case. Staff's initial brief, p. 57. The Staff disagrees with Energy Michigan's proposal that the Commission should set up a process that allows LSEs to settle capacity transfers that may occur due to load switching. The Staff argues that, although Energy Michigan's proposal could mitigate potential market power issues, this is not the proper forum to relitigate alternative options to the Commission-approved SRM capacity charges. Staff's initial brief, p. 77.

The Staff further explains that the start date for the period under consideration is April 20, 2017, the effective date of Act 341. Staff's initial brief, p. 48. The Staff proposes an ending date of June 30, 2024. The Staff agrees with ABATE that in calculating the LCR it should subtract non-pseudo-tied exports. *Id.*, p. 23. Its revised formula will capture this change for zone 7. The Staff notes that CNE agrees with the Staff's proposal of basing the LCR forecast on the LOLE Study, as it provides a transparent, unbiased, and replicable process for determining the LCR out into the future on an on-going basis.

The Staff recommends that owned generation, demand response, capacity contracts, and forward ZRC contracts should count toward meeting Michigan's forward locational requirement

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<sup>5</sup> The Staff recommends 5% allowable planned PRA purchases and 95% of planned non-auction resources as supported by Staff Exhibit S-9. The Staff notes that Consumers agrees with this recommendation. If the LSE submitted a FRAP to MISO, the Staff explains that the ratio of the LCR to the PRMR in the most recent PRA results would serve as a reasonable proxy for allowable forward non-auction resources. *See*, Staff's initial brief, p. 74.

provided those resources are in the zone. Staff's initial brief, p. 70. The Staff proposes allowing all resources that MISO would count toward meeting the zone's LCR to count toward meeting Michigan's forward locational requirement. *Id.*, p. 71. The Staff notes that Consumers agrees with this recommendation. Further, for a resource to count, the LSE must provide the zonal location of that resource or documentation from MISO that the resource counts toward MISO's zonal LCR. *Id.*, p. 72. As MISO's eligibility criteria for resources that count toward the LCR changes over time, the Staff urges the Commission to accept those changes unless it determines otherwise in a future contested case. *Id.* The Staff further asserts that both new and existing resources should count toward meeting the forward locational requirement. Staff's initial brief, pp. 70-73.

The Staff proposes that retirements of resources in the zone should be removed from the resource total for that zone before comparing the resource total to the zonal LCR. Staff's initial brief, p. 50. In addition, the Staff recommends that planned retirements only be removed from the resource total if the generation owner has either filed an Attachment Y at MISO or has made a public announcement of the planned retirement. *Id.* The Staff also suggests that resources included in the April 2017 filings in Case No. U-18197, including new resources included in those filings, be included in the zone's resource totals for determining the incremental need. *Id.* The Staff applies this same standard for planned capacity additions. *Id.* However, the Staff proposes that, for purposes of capacity demonstrations, all planned new capacity additions should be allowed to meet capacity requirements provided they are properly demonstrated for, as outlined in Staff Exhibit S-25. Staff's initial brief, p. 52. It also asks the Commission to adopt its recommendations included in the determination of the projected incremental need in Staff Exhibit S-24. *Id.*

The Staff proposes treating, for capacity purposes, investments in older peaking units that allow for continued operation in the same manner as planned new generation resources are treated. Staff's initial brief, p. 52. The Staff disagrees with ABATE's recommendations regarding the inclusion of all planned new capacity and the exclusion of assets requiring investment that would otherwise retire when determining the incremental need. Staff's initial brief, pp. 41, 53. The Staff defends its treatment of existing resources in its proposal against DTE Electric's witness testimony that it would not ensure reliability and would not remedy any forecasted zonal shortfall, pointing out that there is no projected shortfall for zone 7 and its proposal was not designed to remedy one. The Staff also defends its proposal against DTE Electric's criticism that its approach included an error of 70 MWs. The Staff counters that DTE Electric's testimony does not reflect the Staff's revisions in its rebuttal filing that correct its treatment of behind-the-meter generation as shown in Exhibit S-24.

The Staff disagrees with Energy Michigan's recommendation that the Commission correct for an error in MISO's formula for calculating the LCR by removing 300 MWs from the LCR calculation. The Staff also opposes Mr. Zakem's recommendation that the Commission file a complaint challenging MISO's tariff at the FERC. The Staff also notes that any resulting changes in MISO's FERC-approved tariff that would affect the calculation of the LCR would be captured during the Staff's proposed biennial contested-case proceeding to reevaluate capacity obligation requirements. Thus, the Staff recommends the Commission approve an LCR calculation of the LRR less the CIL and any non-pseudo-tied exports, based on the LOLE Study. This will incorporate Staff's proposal as included in Exhibit S-25 and ABATE's proposal to include non-pseudo-tied exports in the calculation of the forward LCR.

Because the Staff proposes that all LSEs contribute to the going forward projected incremental need calculated for the zone as described in Exhibit S-25, the Staff disagrees with Consumers' alternative incremental approach that would allocate any shortage in the four-year forward LCR only to those LSEs who were short or demonstrated with insufficient resources to meet their load-ratio shares of the zone's LCR. The Staff also criticizes this alternative approach because it uses excess locational resources demonstrated by sufficient suppliers to reduce the total zonal deficiency, lowering the individual obligations of deficient suppliers. According to the Staff, this creates an incentive for LSEs to manipulate their resources through retirements or other means. Staff's initial brief, pp. 44, 55. To remedy this potential manipulation of resources, the Staff urges the Commission to specify that the list of a zone's resources that is being compared to the projected LCR should include all existing in-zone resources expected to continue to be available in the MISO market to meet the prompt-year zonal LCR, regardless of whether a LSE included it in a capacity demonstration. The other concern that Staff has with this alternative approach is the fact that an LSE does not know its individual LCR capacity obligation before filing its capacity demonstration. The Staff believes this could lead to costly over-procurement of in-zone resources.

According to the Staff, setting an LCR for individual electric providers at levels near an LSE's pro rata load ratio share of the zone's LCR is unreasonable, unnecessary to ensure the zone will continue to meet reliability requirements, would likely add costs for Michigan customers, and is likewise not necessary to cure perceived inequities among LSEs in meeting the reliability requirements. *Id.*, pp. 12-14. The Staff stands by its position that an individual LCR is not necessary to secure reliability, provided that the 10% cap on electric choice continues and effective import capabilities remain at or better than the levels that exist today. *Id.*, p. 13. If the

Commission wishes to ensure that all energy providers contribute to the state's long-term electric capacity needs, the Staff considers its incremental approach to be reasonable. *Id.* Should the Commission choose to set an LCR for individual electric suppliers, the new requirements should be less than a pro rata load-ratio share of an LSE's LCR and should grow modestly until the underlying data can be reevaluated in another contested case. *Id.*, p. 14.

The Staff explains that, traditionally, regulated electric utilities have provided the resources necessary for zone 7 to meet its LCR because they had an incentive in the form of the opportunity to earn a return of and on the resources they own. The Staff notes this incentive will continue and nothing suggests regulated utilities will abandon the opportunity to recover such returns. AESs do not have the same incentives to own resources that regulated utilities do, as there is significantly more risk associated with owning resources. AESs do not earn a guaranteed rate of return on investment and they do not have a protected revenue source like the utilities do, such as a cap on the number of customers that can leave to switch to another supplier. Further, if regulated utilities continue to own and procure the vast majority of their resources from within the zone to serve their load, zone 7 will continue to meet its LCR. *Id.* The Staff expects the trend of incumbent utilities meeting their resource needs with owned local resources to continue. *Id.*, p. 15.

Countering Consumers' criticism that the Staff's proposal does not encourage but rather discourages reliability, the Staff argues that a lower forward locational requirement than the pro rata load-ratio share of the zone's LCR still results in each LSE having the same incentives to meet the Commission's requirement, and the same repercussions for not meeting it, as LSEs would have if the Commission set a higher requirement. *Id.*, p. 16. At the same time, the Staff continues, LSEs would still be required to meet all of MISO's resource adequacy retirements.

*Id.*, pp. 16-17. Assuming the 10% cap on electric choice remains in place, incumbent utilities will continue to have an incentive to own local resources. *Id.*, p. 17. The Staff maintains that, the suggestion that a high forward LCR requirement approaching a load-ratio share of the zone's LCR four years forward is necessary to ensure reliability requirements will continue to be met, is unwarranted. *Id.*, pp. 17-18. If the Legislature lifts or expands the choice cap, the Staff recommends the Commission open a new contested case to reevaluate forward locational requirements as soon as practical. *Id.*, p. 18.

Rejecting DTE Electric's accusations that the Staff's proposal is not equitable and could continue subsidization of capacity costs, the Staff disagrees. Staff's initial brief, p. 19. The Staff questions whether there is actually any subsidization of capacity costs because the incumbent utilities continue to supply the vast majority, if not all, of their resource needs from within the zone. *Id.* As utilities are not foregoing more advantageous options to ensure the zone meets LCR, no real inequity results. *Id.*, p. 20. The Staff asserts incumbent utilities are not in fact concerned about subsidizing ROA customers as much as they are interested in creating requirements that would require ROA load to purchase utility capacity. *Id.* Requiring each LSE to supply a full load-ratio share of the zone's LCR with local resources may have deleterious results, such as saddling customers with additional, potentially unnecessary costs. The Staff maintains that imposition of additional costs in the name of supplier equity should be undertaken in a manner that minimizes rate shock and tempers the requirements to ensure that costs for Michigan customers are not unnecessarily increased. *Id.*, p. 21. The Commission should also carefully weigh and balance the equity between suppliers, fairness to customers, and the reasonableness of the requirements when setting a forward locational requirement applicable to individual LSEs. *Id.*, p. 22. The Staff also points out that Act 341 does not require the



Commission to eventually set an LCR applicable to individual LSEs four years forward that is exactly the amount of their pro rata share of MISO's projected prompt-year LCR.

The Staff recommends several procedures to address market power issues. The Commission should direct that a market power study be undertaken in the near future that is focused on the four-year forward capacity market in zone 7. Staff's initial brief, pp. 75-76, 80. The Commission should set the forward locational requirements applicable to individual LSEs for planning years 2022/2023 and 2023/2024 at no higher than 47.5%. The Commission should adopt the Staff's proposal to include all existing in-zone resources currently in the MISO market in zone 7 in forward capacity calculations and projections unless a utility has filed an Attachment Y or made a public announcement of the planned retirement. And, the Commission should direct the Staff to recommend a show-cause case for any utility that the Staff suspects has exercised market power in its future forward capacity demonstration filings. *Id.*, p. 80.

The Staff would not object to a modified phase-in approach where the Commission would set an LCR applicable to individual LSEs in zone 7 starting at 10% for planning year 2022 and increasing by 10% per year until reaching 40% for planning year 2025. *Id.*, p. 35. The Staff recommends the Commission not use the same LCR methodology recommended in zone 7 to set any forward LCR requirements applicable to individual LSEs for zones 1 and 2, or PJM. *Id.*, p. 67. Alternatively, the Commission should set forward locational requirements applicable to individual LSEs in zones 1 and 2, and PJM equal to zero for planning years 2022 and beyond until reevaluated in a future case. *Id.* And, though the Staff did not address it, it supports NSP-W's recommendations for zone 1 of no forward LCR for the zone, or, alternatively, an LCR that is zero with no re-evaluation scheduled unless the zone falls short of procuring adequate resources to meet the forecast load and MISO reserve margin. *Id.*, pp. 69-70.

The Staff proposes an exception to allow certain specific out-of-zone resources to count toward meeting an entity's forward locational requirement. The Staff recommends that the Commission grant exceptions to the zonal location of resources in meeting Commission forward locational requirements if the resources have been contracted for a period of at least 20 years and the contracts were entered into prior to MISO's implementation of local resource zones on June 1, 2013. *Id.*, p. 82. Additionally, the Staff recommends another exception for the zonal location of the resource in meeting the Commission's forward locational requirements where MISO would allow the resource to count toward meeting the LSE's prompt year LCR in a FRAP. To qualify for the exception, the demonstrating LSE would be required to submit evidence of the resource's MISO qualification to meet a prompt-year LCR requirement for the LSE's zone as part of its demonstration.

The Staff distinguishes its incremental approach from the various utility pro rata load-ratio share approaches where a full pro rata share of the LCR or ECIL is allocated. As indicated earlier, the Staff opposes Consumers' pro rata load-ratio share approach because it is unnecessary to promote supplier equity and to ensure reliability in the zone, underutilizes import capability in zone 7, and increases the ability of large suppliers with market power over capacity in the zone to exploit that market power. It also leads to additional local resources above levels necessary to meet reliability requirements and leads to increased costs for ROA customers. A sharp increase in costs, or rate shock, for certain customers would, according to the Staff, be inequitable and unreasonable. Staff's initial brief, pp. 32-33.

Likewise, the Staff opposes DTE Electric's proposal advocating a load-ratio share of the ECIL. The Staff argues that it should be rejected because a full load-ratio share of ECIL is not necessary to maintain reliability and is not fair, just, reasonable, or equitable. Staff's initial brief,

p. 61. This method gives the utilities significant power. *Id.*, p. 62. AESs will not know how much ECIL will be allocated to them until right before their February capacity demonstrations. The Staff maintains that the time between the December 1 utility-filed demonstrations and the seventh-business-day-in-February capacity demonstrations is not enough time for the redistribution of ECIL to have a meaningful effect on most LSEs. *Id.* Given the competition for these resources, AESs will not likely be able to wait until the last minute to contract for four-years forward capacity. *Id.*, p. 63.

The Staff cites other problems with the ECIL approach as well, such as volatility in allowable levels of imports or external resources allowed for non-utility LSEs and the exercise of market power. *Id.* It also points out that the requirement to hold back enough ECIL to cover planned open supply positions up to 5% is conservative and unnecessary given recent data for zone 7. *Id.* The Staff takes issue with the recommendation that only capacity included in demonstration filings be counted in the amount of in-zone capacity available to meet the zone's LCR, because this means excess in-zone generation not used to demonstrate may be available to meet the zone's LCR but would not be available to cover any planned open supply position, such as the 5% planned PRA purchases. *Id.*, pp. 63-64. This also deviates from the MISO resource adequacy construct and would lead to overly-conservative, costly underutilization of the actual ECIL in the PRA. *Id.*, p. 64. Failing to include generation could also disadvantage an independent power producer and provide an incentive for utilities to exercise market power. *Id.* The Staff also asserts that planned external and PRA purchases do not necessarily lead to aggregate levels of imports into the zone if there is additional uncontracted local generation being offered into the PRA, such as when local generation is not included in capacity demonstrations. *Id.* And, the Staff points out that imports are not the only planning option

available four years forward because local resources could be developed within that timeframe and there is also energy efficiency, demand response, and new renewable energy systems. *Id.*, p. 66. Thus, the Staff maintains that the Commission should reject attempts to tie four-year forward demonstrated capacity to the amount of local resources available in the zone on a forward basis. It therefore urges the Commission to reject both Consumers' and DTE Electric's pro rata load-ratio share approaches. *Id.*, p. 33.

Regarding Energy Michigan's proposal of its own version of an incremental approach that ties incremental need to actual generation expansion in the zone, and its attempt to tie SRM capacity payments to actual new generation resources, the Staff is not opposed to pursuing this arrangement but argues it is unclear whether it would meet the statutory SRM requirements in Act 341, and would be better addressed in a future SRM proceeding. Staff's initial brief, p. 67.

Although the Staff prefers the phase-in approach that Consumers recommended over other pro rata load-ratio share approaches, it is concerned about the rate of the phase in. *Id.*, p. 34. The Staff quotes testimony that a locational requirement above 47% will result in a near-term requirement for AESs that is likely unachievable without leading to overbuilding in the zone or requiring AESs to procure resources from utilities at prices at or near the SRM capacity charge. With a more gradual rate of phase in, the Staff identifies certain benefits to this approach, such as: a more consistent locational requirement known in advance allowing LSEs ample time to plan to meet their respective requirements and no volatility in changing requirements that would likely occur in Consumer's revised incremental approach, DTE Electric's ECIL approach, or to a lesser extent, the Staff's proposed incremental approach. *Id.* Therefore, the Staff does not object to a phase-in approach with a lower rate of phase-in such as an LCR allocation up to 10% in planning year 2022, increasing by 10% per year, up to 40% in planning year 2025, and provided

that the Staff has an opportunity to reevaluate the requirements in another contested case before reaching 47% of load-ratio share allocation of the LCR to individual LSEs. *Id.*, p. 35.

In reply, the Staff explains that, contrary to ABATE's argument, it purposefully proposed excluding all planning resources not included in the Commission's review of in-state capacity in Case No. U-18197 as this review closely coincides with the effective date of Act 341. Staff's reply brief, p. 2. It further asserts that, following CNE's recommendation that it verify its calculation of baseline capacity for planning year 2021/2022 relative to the LCR level, the Staff addressed this discrepancy in its rebuttal testimony, reached out to the owners of all behind-the-meter generation included in the capacity demonstration filings in Case No. U-18197 to verify all units were properly accounted for, and added 763 MWs of behind-the-meter generation back into the equation resulting in the incremental capacity need of 3.0% in planning year 2023/2024. Staff Exhibit S-24 reflects these changes. *Id.*, pp. 2-3.

The Staff asserts that DTE Electric's load-ratio ECIL approach is inconsistent with MISO's current requirements. *Id.*, p. 5. The Staff reiterates that the forecasted ECIL is not a good indicator of actual available capacity because planned purchases do not necessarily lead to aggregate imports into the zone. *Id.* There may be additional uncontracted local generation being offered into the PRA. *Id.*, p. 6. Therefore, the Staff again urges the Commission to reject this approach. *Id.*, p. 7. Additionally, the Staff repeats its opposition to DTE Electric's recommendation that LSEs who plan to purchase 5% of their capacity obligations from the PRA demonstrate sufficient import allowances for that 5%. *Id.* This proposal is not consistent with federal reliability requirements, is overly conservative, and is unnecessary. *Id.*, pp. 8-9.

The Staff responds to DTE Electric's argument that the Staff's inclusion of an existing resource toward meeting incremental need double-counts the resource and does not remedy any

forecasted zonal shortfall, by repeating its argument that it does not forecast a zonal shortfall to remedy four years forward. *Id.*, p. 9. And, the Staff argues it must include existing resources because not doing so is inequitable and discriminatory against LSEs already contributing to local resource adequacy before Act 341. *Id.*, pp. 9-10. Further, requiring a utility that has sufficient existing in-zone resources to meet its share of the incremental need to build or procure additional in-zone resources would cause unnecessary over-procurement of in-zone resources at the expense of utility ratepayers. *Id.*, p. 10.

The Staff responds to Consumers' assertions that the SRM was designed to be analogous to the CRS's PSCM by disagreeing, explaining that Section 6w(8)(c) requires the Commission to establish an SRM consistent with *existing* federal adequacy requirements rather than proposed requirements the FERC rejected. *Id.*, pp. 10-11. The Staff also urges the Commission to consider the directive in Act 341 to implement an SRM that is cost-effective, reasonable, and prudent, pursuant to Section 6w(1) and that meets Michigan's particular needs. *Id.*, p. 13. It asks the Commission to set forward locational requirements as low as possible while meeting federal reliability requirements in the prompt year. Staff's reply brief, p. 12. It also recommends a process that remains flexible to respond to changing conditions in the market and changes in the generation fleet.

It further argues that Consumers' argument that the SRM is analogous with MISO's FRAP necessitating a full load ratio share of the zone's LCR applicable to individual LSEs is misguided, as they are not identical. A FRAP is voluntary, while Michigan's capacity demonstrations are mandatory. *Id.*, p. 14. Likewise, the Staff maintains Consumers is incorrect in asserting Act 341 requires AESs to bear a pro rata share of the LCR. *Id.*, p. 15. The Staff explains that nowhere in Act 341 does it state that the parameters for the SRM must be the same

for all different types of LSEs. *Id.*, p. 16. The Staff challenges Consumers’ assertion that if utilities are required to be long in capacity and then experience an oversupply of capacity in the market, the bundled customer will pay a premium via depressed spot market prices, causing the benefits of the oversupply to be enjoyed by those relying on the spot capacity market. *Id.*, p. 18. The Staff explains that Act 341 enacted four-year forward demonstrations of owned or contracted resources procured in a four-year forward bilateral market and that, on a four-year forward basis, there is no “spot market” currently available. *Id.* The Staff urges the Commission to adopt its approach.

#### 5. Association of Businesses Advocating Tariff Equity

ABATE urges the Commission to adopt its modified incremental approach for allocating the LCR among LSEs. ABATE’s initial brief, p. 2. ABATE defines the term “LCR” in Section 6w of Act 341 as it is defined in MCL 460.6w(12)(d). *Id.*, p. 4. ABATE further states that it does not oppose the Staff’s proposal to use the most recent LOLE Study to estimate the LCR for future years. *Id.*, p. 5. However, as stated in its comments in Case No. U-18197 and in its briefs in the case pending in Michigan Court of Appeals Docket No. 340600, ABATE does not read Act 341 as empowering the Commission to impose an LCR on individual AESs. *Id.* Further, because nothing in Act 341 authorizes the Commission to do so, Act 341 does not direct or require the Commission to impose the LCR on individual AESs. *Id.*, p. 6.

In addition, without waiving these legal arguments, ABATE further submits that good policy reasons exist as to why the Commission should reverse course and decline to impose the LCR on individual AESs. ABATE argues that there is no supply-based reliability problem in Michigan. *Id.* Rather, recent reports from utilities in Case No. U-18441 project capacity oversupply rather than a capacity resource shortfall in the state. *Id.* ABATE further points out that, to date, MISO

has never imposed its LCR on individual LSEs, and yet, no MISO zone has ever failed to meet its LCR in the aggregate. *Id.* ABATE further notes that discouraging the use of out-of-state capacity with firm dedicated transmission service into Michigan does not improve the reliability of the regional grid. *Id.* In addition, ABATE contends that imposing an LCR on all LSEs aggravates the market power imbalance between the regulated utilities and the AESs. *Id.*

According to ABATE, regulated utilities have no obligation to sell their excess local capacity to AESs, or to do so at reasonable prices. *Id.*, p. 7. This increases the ability of regulated utilities to exploit their market power over local capacity to the detriment of their competitors, and impairs an already limited electric choice market by making it more burdensome and expensive for AESs to participate and compete for ROA business. *Id.* Last, ABATE argues that imposition of an LCR on all LSEs, particularly on a full load-ratio share basis, will result in an underutilization of Michigan's capacity import capability and an overbuild of unnecessary capacity, increasing electricity prices for Michigan residents and businesses. *Id.*

ABATE criticizes Consumers' phase-in load-ratio share approach as based on the faulty and self-serving premise that all LSEs should be subject to an LCR that is equal to a full load-ratio share of the LCR for their load's zone regardless of whether suppliers, in aggregate, already have sufficient local capacity to meet the LCR for the zone. ABATE's initial brief, pp. 7-8.

According to ABATE's witness, this approach "ignores efficiency and aggravates market power issues." *Id.*, p. 8. Regarding DTE Electric's ECIL approach, ABATE contends that it puts the Commission in the position of deciding how an electric supplier can utilize the transmission system to import capacity into Michigan to meet its capacity demonstration, and that it conflicts with FERC's exclusive jurisdiction over "unbundled retail transmission in interstate commerce by public utilities." ABATE's initial brief, p. 9. Further, ABATE asserts that this approach



produces the same result as Consumers' full load-ratio share phase-in approach and therefore suffers from the same inefficiencies and market power issues. *Id.* ABATE also opposes this approach because it allows regulated utilities to prevent AESs from using excess import capacity until 60 days before the AESs' capacity demonstration deadline and does nothing to prevent utilities from withholding the excess import capacity until just before the deadline or from charging AESs exorbitant prices for this capacity. *Id.*

Instead of these utilities' recommended approaches, ABATE generally supports the Staff's incremental approach, but disagrees with the Staff regarding what resources should be counted when determining incremental need. *Id.*, pp. 9-10. ABATE also opposes the Staff's "floor-concept" where the incremental need set for each planning year never goes down until all LSEs max out at their full pro rata share of the overall LCR. *Id.*, p. 10. ABATE claims that the Staff reaches this end by subtracting planned resource retirements from the resource total but not adding to that total new resources, such as generation, demand response, and recent planned capacity additions that are planned for after April 20, 2017. *Id.* ABATE also chides the Staff for proposing that investments in existing planning resources made to continue their operation be treated as if those resources were planned to be retired and replaced with new resources. *Id.* According to ABATE, even though such a resource would continue in service and not be retired, the Staff treats the resource as retired in order to fabricate an artificial incremental capacity need. *Id.*

ABATE urges the Commission to reject the Staff's proposed treatment of new generation and operational investments as this treatment does not provide a true indication of the actual incremental need for local capacity and could "lead to an inefficient, costly, and unnecessary oversupply of local capacity." ABATE's initial brief, p. 11. Based on these perceived

shortcomings, ABATE recommends the following modifications to the Staff's incremental approach. First, ABATE proposes that all planned resource additions should be included when determining the incremental capacity need. *Id.* Second, ABATE proposes that existing resources that require investments for continued operation should not be treated as retired capacity when determining the incremental capacity need. *Id.* In addition, ABATE proposes that the Commission also consider new generation resources when determining how to set and allocate the LCR among LSEs. *Id.*, pp. 11-12. ABATE proposes that both existing and new resources be eligible to meet the LCR. *Id.*, p. 12.

Likewise, ABATE asserts that any resource eligible to meet MISO's LCR should be eligible to meet the Commission's LCR. *Id.* According to ABATE, it is not unreasonable to conclude that MISO's tariff is instructive as to what resources may be used to satisfy the Commission's LCR. *Id.* ABATE further explains that it is the version of the MISO tariff in place when Act 341 was enacted that would be controlling because that is the version that was incorporated by reference. *Id.*, pp. 12-13. However, ABATE advised the Commission to also consider an alternative approach to this issue and referenced *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 4; 658 NW2d 127 (2003). *Id.*, p. 14.<sup>6</sup>

ABATE asserts that its modified incremental approach prevents regulated utilities from abusing their disproportionate market power. *Id.*, p. 15. ABATE also mentions that the Commission could force regulated utilities to sell excess local capacity to other LSEs at certain prescribed or market prices. *Id.* Accordingly, ABATE urges the Commission to enter an order

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<sup>6</sup> In *Taylor*, the Court distinguished between statutes that delegate the authority to make standards to private parties, and those that refer to outside standards as the measuring device, determining that the situation presented in *Taylor* fell into the latter category. ABATE seems to suggest that the Court's holding in *Taylor* may permit the Commission to rely on the MISO tariff when creating its own standards about what resources qualify to meet the Commission's LCR.

either declining to impose an LCR on AESs or adopting ABATE's modified incremental approach for allocating the LCR among LSEs. *Id.*

In its reply, ABATE restates its position on many of the issues discussed in its initial brief. According to ABATE, imposing a de-facto embargo on out-of-state capacity resources when there is no actual or projected need for more local capacity, will result both in an underutilization of Michigan's capacity import capability and an expensive ratepayer-financed overbuild of local capacity resources. *Id.*, p. 2. This policy impairs Michigan's already limited electric choice market. *Id.* ABATE agrees with the Staff that it is not "just, reasonable, fair, or equitable to impose any requirement on individual LSEs that would unnecessarily increase costs to customers, or would lead to rate shock for any class or group of customers." *Id.*

Regarding the Staff's incremental approach, ABATE repeats that the exclusion of known and planned for generation resources when determining need for local capacity will lead to a manufactured or fake shortfall of capacity. *Id.* And, although Section 6w is silent on the method the Commission may employ when allocating the LCR among LSEs, ABATE argues that Section 6t, which requires utilities to plan for new generation resources in order to meet the LCR, is a good indication that new generation resources should be considered when determining how to allocate the LCR among LSEs. *Id.*, pp. 2-3. ABATE supports Energy Michigan's position that, for AES load paying the SRM capacity charge, the utility should have to meet the same standards that the AES was required to meet. *Id.*, p. 3.

ABATE next considered whether Act 341 expressly authorizes the Commission to set an individual LCR for all LSEs in zone 7. It argues that Act 341 must confer such power and authority through "clear and unmistakable language" and this power cannot be extended by inference. ABATE's reply brief, pp. 4-5, quoting *Union Carbide Corp v Pub Serv Comm*, 431

Mich 135, 151; 428 NW2d 322 (1988). ABATE adds that the Commission can only exercise implied authority necessary to the due and efficient exercise of the powers that the enabling statute grants to the Commission. *Id.*, p. 4. ABATE argues that it does not believe any of these tests have been met, and that the Staff's position, that an individual LCR is not necessary to secure reliability, bolsters this conclusion. *Id.*, p. 5. Agreeing with the Staff, it further asserts that the imposition of any LCR on AESs is unwarranted as it "is completely unnecessary to ensure that zone 7 will continue meeting its reliability requirements, would likely add costs for Michigan customers, and is not necessary to cure perceived inequities among LSEs meeting the reliability requirements." *Id.*, p. 5. ABATE agrees with the Staff that regulated utilities have an incentive to add local capacity because "they have an opportunity to earn a return of and on the resources they own" and that there has been no change in the paradigm that suggests these utilities would abandon this opportunity. *Id.*, pp. 5-6. ABATE does not oppose the opening of a new contested case if the Legislature lifts or significantly expands the choice cap. *Id.*, p. 6.

ABATE repeats its statutory arguments in opposition to an individual forward locational requirement in reply to Consumers' proposal and adds that express language authorizing an individual LCR was removed from a previous version of the legislation, thereby demonstrating a legislative intent not to impose the LCR on AESs. ABATE's reply brief, p. 6. ABATE further disagrees with any inference that Consumers makes that, because Act 341 imposes general capacity obligations on AESs, an LCR must also be imposed on AESs. ABATE also responds that the imposition of an LCR on individual AESs is not consistent with federal reliability regulations because the MISO tariff applies a zonal LCR rather than an individual one. *Id.*, pp. 6-7. ABATE states that Consumers' allegations that allowing AESs to use a disproportionate share of zone 7 import capacity is fundamentally unfair and that the Legislature intended to

address this inequity by requiring AESs to take responsibility for their own proportional share of Michigan's load is pure fiction not evidenced by the text of Act 341. *Id.*, p. 7.

ABATE claims that AESs' use of the state's CIL is a side effect of the incumbent utilities' practice of obtaining capacity from locally-owned resources. *Id.*, pp. 7-8. ABATE points out that the incumbent utilities have fair access to the transmission system used to import out-of-zone resources and no one has forced them to oversupply local capacity. *Id.*, p. 8. Rather, they build these resources because they receive a handsome return on equity to do so. *Id.* ABATE agrees with the Staff's assertions that incumbent utilities are not concerned about subsidizing AES customers, but are rather attempting to create requirements that would require AES load to purchase local utility monopolized capacity. *Id.*

ABATE opposes DTE Electric's capacity import allocation approach, agreeing with the Staff that it is just as unreasonable as allocating LCR on a pro rata basis as it is functionally the same suggestion. *Id.*, p. 9. ABATE points out that it and the Staff agree that a pro rata share methodology for the LCR or ECIL would have a deleterious effect on long-term resource adequacy as this would increase the price of local generation and remove any incentive for local generation to be competitive. *Id.*

ABATE repeats its continued support of the Staff's incremental approach as modified to count both planned capacity additions and extensions as part of the calculation of the incremental capacity need. *Id.*, pp. 11-12. ABATE restates its proposed modification that any LSE that has sufficient existing or planned local capacity will not, in the event of a projected local capacity shortfall, be assigned a portion of the incremental capacity need. *Id.*, p. 11. ABATE does not oppose the Staff's proposals regarding application of the forward locational methodology across different zones. *Id.*, p. 12. ABATE agrees with the Staff and Consumers that both existing and

new resources should be eligible to meet the LCR. *Id.* ABATE agrees with Energy Michigan that, regarding existing resources, a plant should be removed only after there is a public announcement of the retirement and MISO has determined the plant will not be a System Support Resource. *Id.* ABATE agrees with the Staff, Energy Michigan, and Consumers that any resource eligible to meet MISO's LCR should be eligible to meet the Commission's LCR, and argues that DTE Electric's contrary position conflicts with Section 6w(6) of Act 341. *Id.* ABATE does not oppose the Staff's proposal about what evidence an LSE must provide to show it will meet the LCR. *Id.*, p. 13. Finally, if the Commission imposes an LCR on AESs, the Commission should adopt robust procedures to prohibit regulated utilities from abusing their market power, such as for example, forcing regulated utilities to sell excess local capacity to other LSEs at certain prescribed or market prices, or the approaches put forward by the Staff and Energy Michigan in their initial briefs. *Id.*

#### 6. Consumers Energy Company

Consumers argues that all LSEs should be required to meet the LCR in order to contribute to reliability in the zone. This allows for adequate planning and appropriate sharing of the costs of reliability. Accordingly, Consumers recommends that the Commission adopt an 11-year phase-in approach that requires all LSEs to meet 50% of their load-ratio share of the LCR beginning in planning year 2022, and to increase in increments of 5% per year over a period of 11 years, reaching 100% contribution in planning year 2032. Consumers' initial brief, p. 14. According to Consumers, this provides an achievable timeframe by which all electric providers will equitably contribute to reliability in Michigan. *Id.*, p. 15. Alternatively, the utility proposes a four-year phase-in that would result in a 25% forward LCR for all LSEs beginning in planning year 2022,

with a 100% requirement starting in planning year 2025. *Id.* This alternative likewise provides a reasonable timeframe for implementing a shared burden of reliability for all LSEs. *Id.*

In response to the questions the Commission directed the parties to consider, Consumers states it agrees with the Staff's methodology for calculating the projected LCR four years into the future. Consumers' initial brief, p. 5. Consumers further contends that, consistent with the Michigan Legislature's directive in Act 341, the Commission should require all electric providers to equitably contribute to the LCR, as allowing certain electric providers to rely on the resources of other electric providers to demonstrate resource adequacy would be inconsistent with the requirements of Act 341. *Id.*, pp. 6-7. Consumers further asserts that the Commission, in its September 15 order, determined that it is legally authorized to implement an LCR on individual electric providers, and that doing so would be consistent with, and would appropriately complement, federal reliability regulations. *Id.*, pp. 7-11.

Consumers next argues that the methodology the Commission should apply if it implements an LCR for individual electric providers in zone 7 is its load-ratio share approach. *Id.*, p. 11. This ensures that each provider is required to meet its load-ratio share of the zone's overall LCR as established by MISO. *Id.* First Consumers explains that, because the SRM is the default option in the event that the FERC failed to approve a MISO prevailing state compensation mechanism (PSCM), the same requirements that apply to the PSCM should apply to the SRM, such as that the provider demonstrate forward capacity resources "sufficient to meet the electric provider's load-ratio share of the PRMR and LCR." Consumers' initial brief, p. 12. Similarly, Consumers asserts that, under MISO's rules, an LSE that submits a FRAP must meet its load-ratio share of the LCR. Consumers further argues that the SRM was designed to be analogous to a FRAP. Consumers argues that the position of other parties in the case that AESs should be

permitted to use a disproportionate share of zone 7's import capacity based on the proposition that they can continue to rely on incumbent utilities to ensure reliability of the zone is both inconsistent with Act 341 and fundamentally unfair to the incumbent utilities and their full-service customers. *Id.*, p. 13. According to Consumers, it results in the utilities effectively subsidizing AESs' out-of-state capacity imports, is contrary to Act 341, would unfairly discriminate in the obligations of different electric providers resulting in unfair cost-shifting among Michigan electric customers, and jeopardizes the reliability of Michigan's electric grid. *Id.*, p. 14.

Instead, Consumers advocates imposing a locational requirement for resource adequacy demonstrations on all electric providers, as this ensures that all providers, including AESs, procure resources appropriately sourced in Michigan, rather than allowing them to exclusively rely on risky out-of-state imported capacity. Consumers lists several benefits of its phase-in approach, including straight-forward simplicity, no need to consider forecasted retirements of plants or to establish a baseline year to determine incremental capacity need, and no need to determine how to treat investments in existing generation. Consumers' initial brief, p. 15. In addition, Consumers touts this approach as providing all stakeholders with certainty going forward and as promoting the long-term reliability of Michigan's electric grid consistent with Act 341. *Id.*, pp. 15-16.

Consumers asserts that the Staff's proposed LCR for planning years 2022 and 2023 is unreasonably *de minimus*. *Id.*, p. 17. Further, because it could take decades to achieve a 100% load ratio share of the LCR under this approach, Consumers asserts that the Staff appears extremely reticent to require all electric providers to contribute equally to the zone's resource adequacy requirements. *Id.* Additionally, Consumers argues that none of the proffered reasons



the Staff presented in support of its approach are supported by Act 341 and they do not support the Staff's requirement that utilities continue to bear the responsibility and cost of ensuring the reliability of Michigan's electric grid. *Id.*, p. 18. Consumers reminds the Commission that Act 341 does not differentiate between subcategories of electric providers and instead requires all electric providers to ensure the reliability of supply for their own customers. Likewise, the SRM was never intended to allow AESs to both evade meeting resource adequacy requirements and avoid the imposition of an SRM capacity charge. *Id.*, pp. 19-20. Additionally, Consumers argues that the Staff presents no evidence that a costly oversupply situation will arise if AESs are required to bear an equitable share of LCR. No analysis was performed and no data was presented on this issue. Accordingly, Consumers asserts that the Commission should reject this speculation. Consumers argues that, instead of viewing the AES share of the LCR as "oversupply," it should be viewed as equitable contributions to reliability consistent with Act 341. *Id.*, p. 20.

Consumers also seeks to debunk the Staff's concern about market power as justification for adopting the Staff's incremental approach by alluding to the amount of available in-zone capacity not owned or under contract by utilities in planning year 2019/2020. *Id.*, pp. 21-22. Consumers likewise points out that this concern ignores the fact that AESs are free to build in-zone capacity resources. *Id.*, p. 22. Consumers stresses that, although Staff witnesses expressed doubt about the ability of AESs to secure financing for new electric generation resources, these witnesses performed no analysis or study of the ability of an electric provider to secure financing for such investments. *Id.*, p. 22. Additionally, no evidence was presented of improper utility conduct in this regard. Finally, the utility asserts that adequate means exist to police the exploitation of market power at the FERC and MISO. *Id.*, p. 23.

Consumers also argues that the Staff's delayed incremental approach provides a disincentive for all electric providers to invest in generation located in Michigan. *Id.*, p. 24. Moreover, the utility asserts that this approach would be harmful to its customers because the retail bundled customer would have to continue subsidizing the provision of LCR for the benefit of ROA customers and their AESs. *Id.* Consumers would be required to assume a greater amount of risk, and its customers would assume a greater amount of cost. *Id.* And, it claims that oversupply resulting from the requirement that the utility be "long" in capacity might result in the bundled customer paying a premium via depressed spot market prices. Consumers therefore urges the Commission to reject the Staff's proposal. *Id.*

Nevertheless, if the Commission adopts the incremental approach despite Consumers' protestations, Consumers recommends the following modifications to the Staff's method of determining the incremental need for the LCR. Consumers recommends that the four-year forward incremental capacity be determined each year as part of the Commission's assessment of electric providers' resource adequacy undertaken pursuant to Section 6w of Act 341. *Id.*, p. 25. Further, the incremental capacity need would be determined by taking the current base capacity resources (in operation on or before June 2, 2000) less any planned and announced retirements of base resources proposed to occur before the start of the four-year forward planning year and subtracting the amount from the projected LCR for the four-year forward planning year. *Id.*, pp. 25-26. Consumers explains that June 2, 2000, is the date that the Customer Choice and Electricity Reliability Act was signed into law in Public Act 141 of 2000. *Id.*, p. 26. It advocates for the use of this date as the starting date because the majority of the incumbent utilities' generation portfolio resources were put into service before the implementation of electric retail choice in Michigan. Consumers asserts that AESs should not be allowed to obtain benefits from

utility investments made after the implementation of retail choice in 2000. As an alternative date, Consumers proposes October 6, 2008, the date of the enactment of 2008 PA 286, which established the 10% cap on ROA service. *Id.* Having recommended a starting date, Consumers further proposes that the fourth year of the demonstration be the ending date. *Id.*, p. 27.

On the issue of factoring in planned retirements of resources to determine incremental need, Consumers concurs with the Staff that planned and announced retirements occurring before the start of the four-year forward planning year should be considered in a manner that increases the amount of incremental resources required for that four-year forward planning year. *Id.*, p. 27. Further, Consumers urges the Commission not to base the implementation of an LCR on unsupported speculation that a utility would manipulate its retirement of generating assets so as to impact the LCR and harm AESs, as there is no evidence to support that speculation. *Id.*, p. 28. On the topic of new resources, including generation and demand response, Consumers supports the Staff's position that new resources included in resource adequacy demonstrations should count toward the individual LSE's forward locational requirement, even if those planned resources were not included in the calculation of the incremental need. *Id.* With respect to planned capacity additions, Consumers argues they should count as incremental needed capacity. *Id.* Therefore, Consumers advocates that planned investments not reduce the incremental need for capacity in determining the applicable LCR under an incremental approach. *Id.* Further, the Commission should account for electric providers' recent or planned capacity additions pursuant to each LSE's annual resource adequacy filings pursuant to Section 6w. *Id.*, p. 29.

Consumers agrees with the Staff regarding the treatment of plants whose useful life may be extended, such as investing in older peaking units to allow for continued operation for capacity purposes. The utility agrees that the investment should be treated similar to new resources.

Further, for plants that have initiated commercial operation on or before June 2, 2000, any increase in the facility's UCAP rating resulting from significant investment should be regarded as new or incremental resources. *Id.*

Consumers agrees with the Staff that the load projection be based on the four-year forward projection or interpolation from the LOLE Study most recently issued before the December and February LSE capacity demonstrations. Consumers' initial brief, p. 30. However, unlike the Staff's proposed biennial review, the company recommends that the incremental capacity need be established for the four-year forward planning year on an annual basis, consistent with the timeline for forward resource planning set forth in Section 6w. *Id.*

Further, if the Commission adopts the Staff's approach, Consumers differs from the Staff by advocating that the incremental capacity need be allocated to each LSE based on each LSE's deficiency in satisfying the LCR, explaining that an LSE who meets its load-ratio share should not be required to contribute to the incremental capacity need. *Id.* Consumers criticizes the Staff's recommended allocation stating it is neither equitable nor cost-effective. According to Consumers, this allocation provides those LSEs who fall short with little incentive to secure the required capacity for future planning periods. Consumers also points out that ABATE agrees with the company that the incremental capacity need be allocated as Consumers recommends.

For load levels that change over time, Consumers recommends that its proposed annual process should assess the forward demand and establish a fourth-year forecast before December 1 of each year should be used to address changes in load. Consumers states that its position is consistent with the Commission's findings on this issue in Case No. U-18197. The need for the fourth-year forward planning year should be determined annually before the December and February demonstrations of capacity resources by LSEs. *Id.*, p. 33.

Consumers prefers DTE Electric's ECIL approach over the Staff's recommended incremental approach. Regarding Energy Michigan's proposal that an electric supplier be permitted to meet its forward locational requirement by paying the MISO CONE, and that the payment will be split pro rata by those entities that fill the incremental need, Consumers urges the Commission to reject this proposal. *Id.*, p. 34. Consumers does not take a position on the methodologies that should apply in zones 1 and 2. *Id.* Consumers agrees with the Staff that the Commission should count the same resources that MISO counts toward the LCR as the resources that meet each electric provider's LCR obligation, and that both existing and new resources should be used by individual electric suppliers in meeting their LCR obligations. *Id.*, p. 35. Consumers further recommends that, if MISO changes its criteria related to the resources that satisfy the LCR, the Commission should adopt these changes in the next SRM capacity demonstration following the change. *Id.*, p. 36. Consumers also agrees with the Staff that a small amount of contracted capacity secured by a PPA with a term of not less than 20 years and that was executed prior to June 1, 2013, be considered a local resource until the PPA expires or is amended. *Id.*, p. 35. Consumers agrees with the Staff about the evidence or guarantees an LSE must provide to demonstrate that it will meet Michigan's forward locational requirement. *Id.*, p. 36.

Consumers agrees with the Staff's proposal that the Commission continue to require that no more than 5% of an LSE's forward capacity obligations are planned to be met with MISO PRA purchases. *Id.* Last, if the Commission implements an individual LCR, Consumers urges the Commission to reject the suggestion to engage in a market power study or monitoring when there is no basis for such requests. *Id.*, p. 37.

In its reply, Consumers reiterates that an individual LCR applicable to all LSEs is necessary. Consumers reasons that Section 6w(8) of Act 341 would not require the Commission to determine the PRMR and LCR if those requirements were to have no effect on the adequacy of electric provider resource adequacy demonstrations. Consumers repeats many of its statutory arguments referenced in its initial brief. Consumers further argues that, contrary to Energy Michigan's and CNE's arguments, Section 6w(6) of Act 341 does not prevent the Commission from establishing a forward locational requirement. Consumers repeats that the Commission should abide by Act 341's requirements which do not make any allowance for different treatment of electric providers in the establishment of the components of capacity obligations.

In response to the Staff's assessment that "the sky will not fall" if no individual forward locational requirement is established, Consumers makes the same arguments about unfair discrimination and subsidization of AES capacity imports that it made in its initial brief. Consumers responds to the Staff's argument about incentives that exist that will result in regulated utilities continuing to own the majority of in-state generation resources by pointing out that these same incentives also exist for out-of-state generation resources as well. It further asserts that Act 341 does not provide that an electric provider's capacity obligations can be satisfied by relying on investments in reliability made by other electric providers. The utility reasserts that the Michigan Legislature intended for each provider to take full responsibility for its own proportional share of Michigan's load to ensure reliability, that the Staff and others propose to continue the status quo subsidization that exists now, and that there would have been no need to require the implementation of the SRM if the Legislature intended to continue to require incumbent utilities to bear the burden of ensuring reliability in zone 7.

Consumers disagrees with the Staff that the 10% cap on electric choice warrants the Staff's incremental approach, and argues that the Legislature chose to both retain the cap and impose capacity obligations on all electric providers. *Id.*, p. 16. The utility states that the Staff's point of view is an attempt to rewrite Act 341. *Id.*, p. 17. Moreover, Consumers maintains that the economic potential for the entire zone to be priced at CONE in the event zone 7 fails to meet LCR is not sufficient to ensure grid reliability in Michigan. Consumers warns that the ultimate failure to meet the LCR is that the customer load would be forced to be cut, and there is no way to predict which particular customer load (bundled or ROA) would be curtailed. Consumers disagrees with the Staff that the financial disincentive of the specter of CONE pricing in the event of a zone failure to meet the LCR requirement is sufficient to ensure the reliability of Michigan's electric grid. Consumers' reply brief, p. 18. It urges the Commission to reject the Staff's suggestion to ignore or diminish Act 341's requirements.

Consumers disagrees with the Staff's and others' positions that it and other incumbent utilities serve as the reliability safety net for AESs. According to Consumers, the supplier of last resort (SOLR) obligation found in Section 6w(7) of Act 341 was never intended to allow AESs to escape meeting capacity obligations by relying on the generation resources of incumbent utilities to satisfy those obligations. *Id.*, p. 19. If the Commission adopts the Staff's and other AES intervenors' suggestion to eliminate the LCR for AESs because the utilities have a large portion of generation resources in the state, Consumers asserts that the Commission would be requiring the utilities to act as the supplier of reliability capacity services for no compensation from the ROA load who benefits from this service. According to Consumers, this is inconsistent with the SOLR obligation in Section 6w(7), and is unfair and unreasonable. *Id.*, p. 19.

Consumers further suggests that costs should not determine the issue of whether to impose an LCR on individual LSEs, and that allegations of potential oversupply that could result from Consumers' approach are not supported by any evidence or analysis and do not justify allowing some electric providers to avoid resource adequacy requirements. Consumers repeats that imposition of an individual LCR is consistent with MISO's comments in Case No. U-18197 and ensures reliability in zone 7. *Id.*, p. 23.

Consumers takes umbrage to various statements in the Staff's initial brief. The Staff argued that incumbent utilities are less concerned about subsidization of AESs' capacity imports than they are with attempting to require ROA load to purchase utility capacity, and that Consumers' modification to the Staff's proposal that would require only LSEs who fall short of their forward requirement to contribute to its remedy creates an incentive for LSEs to manipulate their resources. *Id.*, p. 24. According to the utility, these statements are false, unsupported by the record, and should be dismissed. Consumers disagrees with the Staff that Consumers' proposal would provide no incentive to keep generation costs low and would result in increased customer costs and technology stagnation.

Consumers does not oppose the show cause process the Staff recommended for changes in load, but does oppose Energy Michigan's additional proposal to allow parties to enter into financial settlements with each other because Act 341 does not authorize such a settlement process. *Id.*, p. 28. Further, Consumers argues the Commission should reject the Staff's assertion that utilities may manipulate their plant retirements or demonstration of capacity resources so as to harm AESs. In addition, investments made by an electric provider to extend the life of a generation unit should also serve to increase the incremental LCR, and the Commission should reject ABATE's contrary position on this issue. Consumers further asserts



that the Commission reject ABATE's position that planned resource additions should not serve to increase the incremental LCR. *Id.*, p. 29. Consumers urges the Commission to reject CNE's arguments regarding a floor or a ceiling for incremental LCR, stating that the incremental approach requires a baseline determination of in-zone capacity, and that the ceiling should be 100% of the load-ratio share of the LCR. *Id.*, p. 30.

The utility urges the Commission to reject the Staff's stated market power concerns arguing they are not supported by the amount of non-utility generation resources already available in zone 7, do not adequately account for the fact that AESs are free to build capacity resources in zone 7, are not supported by any evidence of improper utility conduct, and do not justify ignoring the mandate of Act 341 to treat electric providers similarly in determining resource adequacy requirements. Consumers' reply brief, pp. 30-34. Consumers likewise urges the Commission to reject Energy Michigan's proposal to mitigate alleged market power concerns by providing a means by which electric providers may pay CONE to parties who are building new capacity so as to satisfy the paying party's LCR requirement, viewing this proposal as an attempt to relitigate the SRM capacity charge. Regarding Energy Michigan's request that the Commission address an error in a MISO calculation of LCR for zones 2 and 7, Consumers responds that it is not appropriate to address this error in the context of this proceeding. *Id.*, p. 34. Consumers urges the Commission to reject Energy Michigan's proposal that, where an AES fails to meet its capacity obligation, the incumbent utility may not use the PRA to supply the ROA load. *Id.*, pp. 34-35. Consumers explains that the issue is beyond the scope of the proceeding, not consistent with Act 341, and moot. Finally, Consumers states that its position that all providers should be allowed to plan to obtain up to 5% of their capacity requirements

from the PRA is reasonable and should not be limited or diminished as a result of an AES's failure to meet capacity requirements. *Id.*, p. 35.

#### 7. DTE Electric Company

DTE Electric proposes its ECIL or load-ratio approach to implement an LCR for individual electric providers in zone 7. DTE Electric presents its approach on page 8 of its initial brief, indicating the following four steps. First, the Commission, after consulting with MISO, annually determines the maximum aggregate level of electricity imports that can be included across all electric supplier resource plans under the SRM in meeting the peak load requirements for a given year. To do this, DTE Electric proposes that the Commission determine how much capacity can be imported while maintaining sufficient local generation to ensure reliability, or the ECIL. *Id.*, p. 8. The Commission must therefore ensure that electric suppliers, in aggregate, do not have peak day resource plans that rely on electricity imports in an amount that exceeds ECIL and must set limits on the amount of capacity that each electric supplier can import as part of its capacity demonstration so that the collective amount of planned imports do not exceed the forecasted ECIL for that planning year. *Id.*, p. 9.

Once this maximum amount has been established, the Commission should deploy a fair and equitable process for awarding import allowances that suppliers can use to meet their SRM requirements that recognizes that peak day transmission import capacity is limited. *Id.* To do this, the Commission indirectly allocates transmission import capacity by awarding import allowances that limit the amount each supplier can plan to import as part of its SRM capacity demonstration. DTE Electric suggests it is equitable for the initial allocation of ECIL to be allocated across all electric suppliers within a resource zone in a pro rata manner based on the forecasted peak demand of the customers they serve. *Id.*, p. 10. This ensures that no electric

supplier or class of suppliers would routinely have rights to a disproportionate share of Michigan's limited transmission import capacity. *Id.*

Further, to ensure efficient use of Michigan's limited import capacity, all suppliers should be required to release any awarded import allowances for which they cannot demonstrate a need. DTE Electric suggests that the Commission establish an equitable process for reallocating unused import awards to other suppliers based on demonstrated need. *Id.*, p. 8. DTE Electric recommends that the Commission should allow suppliers to transfer import allowances through bilateral transactions outside of the formal allocation and reallocation processes that the Commission administers. *Id.*, p. 11. It also suggests that, in calculating how many excess import allowances should be released, that a supplier retain import allowances to cover its open supply position, and notes that the collective open supply position across Michigan could be significant. *Id.* Alternatively, absent such a requirement, each electric supplier should be required to demonstrate owned or contracted resources to cover 100% (not 95%) of their expected peak customer demand plus required reserve margins. DTE Electric's initial brief, p. 12.

Regarding the timing of these reallocations, DTE Electric maintains that they can be accomplished within the time frames required for capacity demonstration, noting that incumbent utilities have to file their demonstrations by December 1 each year, and that there is time for the Commission to reallocate excess import allowances before the AESs and municipal and co-op utilities have to make their demonstrations in February of the following year. *Id.* However, DTE Electric continues that, if the Commission deems this time period insufficient, then it would support a requirement for suppliers to provide notification of 30 to 60 days before their capacity demonstration deadline regarding their intent to release excess import allowances and the amount

expected to be released, which would allow the Commission more time to reallocate the allowances. *Id.*

Last, the Commission should require suppliers to submit resource plans demonstrating they can meet their forecasted customer peak load and reserve margin requirements for the planning year four years out, using a combination of: in-zone owned or contracted generation resources, out-of-zone owned or contracted generation resources paired with awarded import allowances, and plans to source up to 5% of their total capacity obligations in the prompt year through the PRA or other short-term market options paired with import allowances. *Id.*, pp. 12-13. Capacity associated with the last two options is limited to each supplier's import allowances. Subtracting those from the supplier's total capacity obligation defines that supplier's need for local resources if any. *Id.*, p. 13. DTE Electric recognizes that, even with these SRM requirements, some long-term resource adequacy risks will remain and acknowledges that changes will occur in the four years after the capacity has been demonstrated for a particular planning year that may create supply imbalances. *Id.* Nevertheless, DTE Electric asserts that the requirements it set forth are reasonable and prudent measures to ensure long-term resource adequacy for Michigan. *Id.*

On the question of what resources should count toward meeting Michigan's forward locational requirement, DTE Electric indicates that, if the Commission sets an incremental requirement, only new resources should count toward such a requirement. *Id.* The utility criticizes the Staff's incremental need approach, stating that Staff's methodology improperly counts existing resources both in the calculation of whether a zone is short to its LCR, and as a resource to meet the incremental requirement, thereby "double-counting" the resource. The utility asserts that this double counting of existing resources would not remedy any forecasted zonal shortfall to local requirements. DTE Electric's approach, however, does not differentiate

between existing or new resources, as both count toward Michigan's forward locational requirement. *Id.*, p. 14.

In response to how Michigan's forward locational requirement should relate to resources that MISO allows to count, DTE Electric restates its proposal that the locational requirement be defined as the total of the generation resources needed less the amount of capacity resources that can be imported while maintaining zonal reliability. *Id.* According to the utility, allowing additional resources outside the zone to count as local would eliminate the local requirement and would not provide reliability. *Id.* Further, if MISO changes its eligibility criteria over time, DTE Electric recommends that the Commission address the facts and circumstances at that time. *Id.* In response to the required evidence or guarantees an LSE would need to provide to show it will meet the forward locational requirement, DTE Electric indicates that LSEs should be required to provide proof of resource ownership, or proof of contractual rights for the capacity that is demonstrated as well as reliable proof of location for those resources. *Id.*

In its reply, DTE Electric reminds the Commission that, 18 years after the enactment of 2000 PA 141 and the implementation of electric choice, it should no longer expect Michigan's major electric utilities to backstop and subsidize electric choice customers or AESs. DTE Electric's reply brief, p. 2. It points out that its bundled customers comprise 90% of its service territory, yet, it must plan, fund, and demonstrate generation resources necessary to serve 100% of future demand to avoid significant grid and reliability issues. *Id.*, pp. 2-3. Standing by its approach, the utility explains its approach ensures that all electric providers contribute to reliability in a manner proportional to and consistent with the electric reliability risks their business creates. *Id.*, p. 3. DTE Electric asserts its proposal is the most reasonable, and if implemented properly will

result in meeting long-term reliability goals in an equitable, cost-effective manner under Michigan's hybrid market structure. *Id.*, p.4.

DTE Electric criticizes the Staff's brief because it asserts that the major electric utilities in Michigan should continue to subsidize AESs and their customers when neither the law nor equity permits this outcome. *Id.* Further, DTE Electric responds to the Staff's criticism of the timing problems associated with its ECIL approach by arguing that there is no basis for concern, and that this issue was definitively answered by the surrebuttal testimony of Ms. Dimitry. *Id.*, p. 9. It also points out that the Staff acknowledges sufficient generation can be built in the four-year-forward period contemplated by Section 6w(8). *Id.* DTE Electric criticizes certain aspects of the Staff's proposal, citing one especially problematic element as being that it permits existing generation resources to count toward forward locational requirements. *Id.*, pp. 9-10. According to the utility, the Staff's approach makes no meaningful change to the status quo as Act 341 requires, but rather allows a shortage of local resources, and fails to properly credit those LSEs that have been protecting Michigan's electric reliability. *Id.*, p. 10.

DTE Electric also responds that the Staff's fears about the lack of available in-zone capacity and the manipulation of resources through retirements discount the reality that all LSEs can build their own generation or purchase existing available generation. *Id.* DTE Electric asserts that the Staff's proposal to include all existing resources in the projection of the amount of resources needed to meet the LCR, even if those resources are not included in demonstrations, could harm reliability, further subsidizes AESs, and ignores the fact that those resources may not be there to support reliability as they could retire or export to another market. *Id.* The utility states that the Staff discounts the release of unutilized import allowances speculating, based on discovery responses, that electric utilities might find a way to exercise purported market power. DTE

Electric counters the Staff's criticisms that AESs would not know how much ECIL will be allocated to them until right before their February capacity demonstrations, by pointing out that a two-month period exists where AESs would know about such allocations. *Id.*, p. 13. The Staff also ignores that DTE Electric would support a requirement for suppliers to give notice 30-60 days before their capacity demonstration deadline regarding their intent to release excess import allowances and the amount expected to be released. *Id.* And, an LSE could voluntarily demonstrate its capacity a year earlier than Act 341 requires to facilitate timely import capacity reallocations. *Id.*

DTE Electric counters arguments that Act 341 permits only limited Commission action regarding electric providers that are not electric utilities by responding that this interpretation ignores the mandate in Section 6w(8)(b) that the Commission require such providers to demonstrate they own or have contractual rights to sufficient capacity to meet their capacity obligations. *Id.*, p. 14. According to the utility, Act 341 was enacted for a reason and no party has provided a meaningful explanation of how an individual electric provider LCR would run afoul of any law. *Id.*, p. 15.

#### 8. Northern States Power Company

NSP-W argues that no party introduced evidence regarding why applying a forward locational requirement to LSEs in the Michigan portion of zone 1 would be an appropriate exercise of the Commission's discretion, or how such a requirement would be determined. NSP-W's initial brief, p. 2. The Staff did not mention zone 1 in its initial proposal or supporting testimony. *Id.* NSP-W further states that the development of a detailed factual record about each individual zone is an essential prerequisite to determining whether and how to apply a forward

locational requirement to LSEs in that zone. *Id.* Accordingly, NSP-W respectfully requests that the Commission exempt NSP-W from any forward locational requirement. *Id.*

NSP-W also notes that there is no choice load in zone 1, and all of NSP-W's generation resources serving the load are located outside of Michigan. *Id.*, p. 3. Further, it points out that concerns about the future adequacy of NSP-W's service of its entire multistate load, including its Michigan load, are already addressed in a formal review process with the Minnesota Public Utilities Commission (MPUC). *Id.* Further, in February 2019, NSP-W points out that the Commission will have the opportunity to review the same detailed resource plan and to confirm that adequate resources are in place to serve NSP-W's Michigan zone 1. *Id.*

If the Commission finds that it is inappropriate to exempt NSP-W from such a requirement, NSP-W asks that the Commission establish a forward locational requirement of zero for zone 1 for planning years 2022/2023 and 2023/2024 that is not subject to regular reoccurring re-evaluation. *Id.*, pp. 4-5. This is because NSP-W has introduced evidence that the NSP-W system will have a projected surplus in those planning years. *Id.*, p. 5. It would be burdensome for NSP-W or the Commission to gather data about projected unit retirements across the entire expanse of zone 1, which would be necessary in order to set future forward locational requirements for the small Michigan corner of zone 1. *Id.* This would be unreasonable especially since NSP-W's resources are already subject of regular review by the MPUC and will be reviewed by the Commission beginning February 2019. *Id.*

#### 9. Michigan Electric Cooperative Association

MECA filed a limited reply brief to respond to the Staff's initial brief and explain that an LSE with sufficient in-zone resources must be able to use those resources to meet any individual LCR for that LSE under whichever LCR approach the Commission adopts. MECA's reply brief,



p. 3. MECA recognizes that the purpose of the LCR approach is to minimize the potential for service disruption by ensuring adequate capacity in each zone, but has the following concerns about the Staff's proposed incremental approach. First, the Staff's approach envisions determining a forward LCR and allocating to each LSE the load ratio share of the incremental need regardless of whether the LSE has sufficient local resources to meet its proportional share of the zone's LCR. MECA asserts this is inequitable. According to MECA, an LSE that has sufficient zone 7 resources to meet 100% of its load needs within the zone, including a reserve margin, should not be required to procure additional resources to meet an incremental LCR due to a distorted impact of a pro rata allocation to all. *Id.* MECA asserts that only those suppliers who have a shortfall should be allocated incremental need because otherwise LSEs with sufficient capacity would be forced to acquire additional capacity the LSEs do not need at an additional cost to those LSEs. *Id.*, p. 4. MECA argues that the Staff's position on this issue rewards irresponsible actors and fails to incentivize thoughtful generation planning and should be rejected. *Id.*, p. 5.

### **III. APPLICABLE LAW**

This order is governed by the mandates of MCL 460.6w. Key sections provide as follows:

(2) . . . If, by September 30, 2017, the Federal Energy Regulatory Commission does not put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism, then the commission shall establish a state reliability mechanism under subsection (8). The commission may commence a proceeding before October 1 if the commission believes orderly administration would be enabled by doing so. If the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year. 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).

\* \* \*

(6) 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 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. 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. 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.

\* \* \*

(8) If a state reliability mechanism is required to be established under subsection (2), the commission shall do all of the following:

- (a) Require, by December 1 of each year, that each electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable.
- (b) Require, by the seventh business day of February each year, that each alternative electric supplier, cooperative electric utility, or municipally owned electric utility demonstrate to the commission, in a format determined by the commission, that for the planning year beginning 4 years after the beginning of the current planning year, the alternative electric supplier, cooperative electric utility, or municipally owned electric utility owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. One or more municipally owned electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. One or more cooperative electric utilities may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision. A cooperative or municipally owned electric utility may meet the requirements of this subdivision through any resource, including a resource acquired through a capacity forward auction, that the appropriate independent system operator allows to qualify for meeting the local clearing requirement. A cooperative or municipally owned electric utility's payment of an auction price related to a capacity deficiency as part of a capacity forward auction conducted by the appropriate independent system operator does not by itself satisfy the

resource adequacy requirements of this section unless the appropriate independent system operator can directly tie that provider's payment to a capacity resource that meets the requirements of this subsection. By the seventh business day of February in 2018, an alternative electric supplier shall demonstrate to the commission, in a format determined by the commission, that for the planning year beginning June 1, 2018, and the subsequent 3 planning years, the alternative electric supplier owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable. If the commission finds an electric provider has failed to demonstrate it can meet a portion or all of its capacity obligation, the commission shall do all of the following:

- (i) For alternative electric load, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for that portion of the load not covered as set forth in subsections (6) and (7). If a capacity charge is required to be paid under this subdivision in the planning year beginning June 1, 2018 or any of the 3 subsequent planning years, the capacity charge is applicable for each of those planning years.
  - (ii) For a cooperative or municipally owned electric utility, recommend to the attorney general that suit be brought consistent with the provisions of subsection (9) to require that procurement.
  - (iii) For an electric utility, require any audits and reporting as the commission considers necessary to determine if sufficient capacity is procured. If an electric utility fails to meet its capacity obligations, the commission may assess appropriate and reasonable fines, penalties, and customer refunds under this act.
- (c) 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.
- (d) In order to determine if resources put forward will meet such federal reliability requirements, request technical assistance from the appropriate independent system operator to assist with assessing resources to ensure that any resources will meet federal reliability requirements. If the technical assistance is rendered, the commission shall accept the appropriate independent system operator's determinations unless it finds adequate justification to deviate from the determinations related to the qualification of resources. If the appropriate

independent system operator declines, or has not made a determination by February 28, the commission shall make those determinations.

\* \* \*

(11) Nothing in this act shall prevent the commission from determining a generation capacity charge under the reliability assurance agreement, rate schedule FERC No. 44 of the independent system operator known as PJM Interconnection, LLC, as approved by the Federal Energy Regulatory Commission in docket no. ER10-2710 or similar successor tariff.

(12) As used in this section:

(a) “Appropriate independent system operator” means the Midcontinent Independent System Operator.

\* \* \*

(c) “Electric provider” means any of the following:

(i) Any person or entity that is regulated by the commission for the purpose of selling electricity to retail customers in this state.

(ii) A municipally owned electric utility in this state.

(iii) A cooperative electric utility in this state.

(iv) An alternative electric supplier licensed under section 10a.

(d) “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).

(e) “Planning reserve margin requirement” means the amount of capacity equal to the forecasted coincident peak demand that occurs when the appropriate independent system operator footprint peak demand occurs plus a reserve margin that meets an acceptable loss of load expectation as set by the commission or the appropriate independent system operator under subsection (8).

\* \* \*

(h) “State reliability mechanism” means a plan adopted by the commission in the absence of a prevailing state compensation mechanism to ensure reliability of the electric grid in this state consistent with subsection (8).

#### **IV. DISCUSSION**

##### **A. Legal Authority to Impose an Individual Forward Locational Requirement**

The Commission has the statutory authority under Act 341 to impose an individual forward locational requirement on all electric providers in Michigan. The context for Act 341 is discussed in the Commission's September 15 order. Through clear and unmistakable language, Section 6w of Act 341 requires the Commission to implement an SRM to ensure the reliability of Michigan's electric grid and to determine the PRMR and LCR in order to set the capacity obligations of individual electric providers. Section 6w(8)(c) of Act 341. The Commission has considered its authority and obligations under Act 341 before in Case No. U-18197. As the Commission found in its June 15 order, pp. 10-11:

As defined in Section 6w(12)(d), "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)." As noted above, in requesting assistance from MISO in determining capacity obligations, the Commission is tasked with requesting technical assistance in determining this local clearing requirement.

Section 6w(8) also requires individual electric providers to demonstrate to the Commission that they can meet capacity obligations. The Commission is directed to require each electric provider to demonstrate that it "owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator, or commission, as applicable" four years into the future. These capacity obligations necessarily include a local clearing requirement.

It is clear that the statute requires the Commission to create capacity obligations, that these capacity obligations include a locational requirement, and that the Commission, in setting locational capacity obligations, is allowed to require a demonstration by individual electric providers that the resources that they use to meet their capacity obligations meet a local clearing requirement. The Commission acknowledges the inter-relatedness of the MISO and Section 6w capacity demonstration processes, but also points out that these are distinct activities. These activities should be harmonized to the extent practicable, but the fundamental responsibility of the Commission is to meet Michigan's statutory obligations.

Thus, the Commission finds that a locational requirement is required under Section 6w and that a locational requirement applicable to individual LSEs is

allowed as part of the capacity obligations set forth by the Commission pursuant to Section 6w in order to ensure all providers contribute to long-term resource adequacy in the state.

In their briefs, Energy Michigan, ABATE, and CNE allude to comments filed in Case No. U-18197 and arguments presented in the appeal of the Commission's September 15 order before the Michigan Court of Appeals, that question whether Act 341 provides the Commission with the authority to impose an individual forward locational requirement on all LSEs within zone 7. Not wishing to waive those arguments in this case, Energy Michigan and CNE raise identical points here, again arguing that any individual forward LCR is inconsistent with federal reliability requirements and therefore contrary to the Legislature's directive in Section 6w(8)(c) of Act 341 that the requirement be "consistent with federal reliability requirements." However, the Commission does not find this reference to language in Section 6w(8)(c) to be dispositive on the issue of its statutory authority to impose an individual forward locational requirement because federal reliability requirements, and more specifically the "Resource Adequacy Requirements" set forth in MISO's Tariff, Module E-1, do not address an individual four-year forward locational requirement. Rather, the undisputed evidence in this case establishes that the MISO LCR is a prompt-year requirement, not a forward planning tool such as the forward locational requirement adopted here.

Moreover, the Energy Michigan and CNE arguments were addressed by the Commission in its September 15 order:

Many commenters also argue that if the Commission establishes a forward locational requirement, this will conflict with MISO's FERC-approved tariff. The Commission reiterates that MISO establishes capacity obligations for the upcoming planning year, while Section 6w requires that providers demonstrate they can meet their capacity obligations four years into the future. By setting a forward capacity obligation, the Commission does not replace or supplant the MISO prompt year capacity obligation. Rather, the Commission, pursuant to

Section 6w, is attempting to ensure that the needs of all electric customers in the state are being planned for in advance. The Commission views the forward capacity obligations it sets under Section 6w, and the demonstrations that will be made by providers, as being distinct from but complementary to MISO's resource adequacy construct, and as providing visibility into the state's projected resource adequacy farther into the future than existing processes allow. Suppliers will still be required to meet capacity obligations established by MISO once the planning year in question arrives.

Even MISO acknowledges this in its reply comments, p. 1, stating:

MISO's resource adequacy processes do not preclude the Michigan PSC from requiring LSEs to make a forward showing of its ZRCs. Because of the prevalence of bilateral contracting and cost-of-service regulation within MISO's footprint, it is not uncommon for LSEs to procure ZRCs well in advance of the relevant Planning Year. MISO's Resource Adequacy Requirements do not in any way affect state actions over entities subject to a state's jurisdiction. Rather, MISO's resource adequacy processes are complementary to the reliability mechanisms of the states.

As MISO's comments reflect, FERC does not claim exclusive jurisdiction in the field of resource adequacy. Rather, FERC is required to ensure that all rates and charges in connection with the wholesale sale or transmission of electric energy are just and reasonable. 16 USC 824(b)(1); 16 USC 824d(a); 16 USC 824e(a). FERC has repeatedly confirmed that both FERC and the states have jurisdiction over resource adequacy, stating "We will defer to state and local entities' decisions when possible on resource adequacy matters," and that "as a general matter, a state or region may determine in the first instance the appropriate level of planning reserves by balancing reliability and cost considerations." *California Independent System Operator Corp (CAISO)*, 119 FERC ¶ 61,076 at P 540, p. 212 (2007); *ISO New England, Inc.*, 121 FERC ¶ 61,125 at P 47, p. 13 (2007) (citation omitted); *see also*, *CAISO*, 116 FERC ¶ 61,274 at P 1112, p. 305 (2006). Clearly, the LCR is a central part of MISO's tariff and FERC's approval of that tariff. The Commission, in designing any forward locational requirement, would seek to ensure that the energy providers in the state can meet the LCR over the long term in a cost-effective manner and avoid impacting the federal resource adequacy provisions or wholesale markets. The Commission has the discretion under Section 6w to establish a forward locational requirement, and doing so is not inconsistent with – indeed, is complementary to – the MISO tariff.

September 15 order, pp. 38-40.

The Commission's understanding of its authority to impose an individual forward locational requirement under Section 6w of Act 341 has not changed since it issued its September 15 order

in Case No. U-18197. Nor have there been any substantive changes since September 15, 2017 to MISO's FERC-approved Tariff governing resource adequacy. To the contrary, on December 15, 2017, MISO filed with the FERC in Docket No. ER18-462-000 its then-currently effective resource adequacy construct set forth in Module E-1 and related to provisions governing resource adequacy in MISO.<sup>7</sup> MISO submitted this filing to provide certainty regarding the rules and requirements related to resource adequacy in the MISO region.<sup>8</sup> As explained by MISO, “This filing does not change any of the current Tariff provisions regarding MISO’s Resource Adequacy Requirements.”<sup>9</sup> Rather, MISO requested that the FERC reaffirm that its existing Resource Adequacy related Tariff provisions are just and reasonable.<sup>10</sup>

Module E-1 of MISO’s Tariff provides LSEs with a variety of options to meet their resource requirements: (1) purchase capacity through MISO's voluntary PRA; (2) self-schedule capacity to be offered into the PRA; (3) submit a Fixed Resource Adequacy Plan (FRAP) demonstrating that it meets its capacity obligations; or (4) pay a Capacity Deficiency Charge.<sup>11</sup>

MISO's Tariff also makes clear that:

These requirements recognize and are complementary to the reliability mechanisms of states and the Regional Entities (RE) within the Transmission Provider Regions. Nothing in this Module E-1 affects existing state jurisdiction over the construction of additional capacity or the authority of states to set and enforce compliance with standards for adequacy. The Resource Adequacy

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<sup>7</sup> See Transmittal Letter to MISO's December 15, 2017 filing in FERC Docket No. ER18-462-000 at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 6; Tariff Sections 69A.7.1, 69A.7.8, 69A.7.9, and 69A.7.10.



Requirements (RAR) in this Module E-1 are not intended to and shall not in any way affect actions over entities under the states' jurisdiction.<sup>12</sup>

On February 28, 2018, the FERC found that MISO's resource adequacy construct is just and reasonable and accepted MISO's filing effective March 1, 2018.<sup>13</sup> The FERC expressly makes clear that its approval of MISO's resource adequacy construct, including the PRA, is not intended to preempt states from implementing a forward locational requirement. As noted by the FERC:

the vast majority of MISO load is served by LSEs that are subject to state or local integrated resource planning processes. Such processes typically consider resource needs multiple years in the future. Furthermore, based on recent legislation, competitive suppliers in Michigan must demonstrate that they have sufficient capacity several years out.<sup>14</sup>

The Commission reiterates that its implementation of the statutory requirements in Section 6w is consistent with and complementary to federal reliability requirements as provided in the MISO Tariff. Although these questions are currently the subject of an appeal pending before the Michigan Court of Appeals in Court of Appeals' Docket Nos. 340600 and 340607, the Commission remains steadfast in its interpretation of its authority to impose such a requirement under Section 6w absent a final appellate court opinion to the contrary.

The Commission agrees with Consumers that the term "electric provider" is defined in Section 6w to include rate-regulated utilities, AESs, cooperative electric utilities, and municipally-owned utilities without distinction. *See*, Section 6w(12)(c). Further, the Commission notes that the capacity obligations referenced in Section 6w(8)(a) and (b) are

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<sup>12</sup> *See* Module E-1, Introduction, 68A, 31.0.0.

<sup>13</sup> *Midcontinent Independent Sys. Operator, Inc.*, 162 FERC ¶ 61,176, at PP 1 and 58 (2018).

<sup>14</sup> 162 FERC ¶ 61,176 at P 73, *citing*, Act 341.

individual forward capacity obligations imposed on each electric provider supplying electricity in Michigan. Moreover, in its September 15 order, the Commission determined that these individual forward capacity obligations necessarily include an LCR. There, the Commission noted that “any entity that FRAPs under MISO’s process must demonstrate they have sufficient resources that are physically located in the local zone (or otherwise count toward the LCR) to meet their proportional share of the LCR. MISO’s FRAP process is akin to what is envisioned with the Section 6w capacity demonstration process.” *See*, September 15 order, p. 37. Further, the Commission relied upon the language from Section 6w(8)(b) allowing municipally-owned and cooperative electric utilities to aggregate their resources to meet their individual requirements to support the Commission’s interpretation that utilities are also required to meet local clearing requirements on an individual basis. *See*, September 15 order, p. 38. As the Commission observed then:

The Commission can find nothing in the law, and no rational basis, to indicate an intent to place a local clearing requirement only on non-profit utilities. Instead, the law is more logically understood to require that all individual utilities be treated similarly in terms of requirements, and that the aggregation option was intended to assist non-profit utilities (many of which are small) to comply more easily.

*Id.*

ABATE argues that previous versions of the legislation that preceded Act 341, which imposed an individual LCR, were removed from the final draft of the statute demonstrating a legislative intent not to impose an LCR on AESs. The Commission applies the statutory language of Act 341 as enacted, consistent with longstanding rules of statutory construction. *See, Johnson v Recca*, 492 Mich 169, 175; 821 NW2d 520 (2012). As the Commission observed in its September 15 order:

GRACC and Energy Michigan point to previous versions of the legislation. The Commission acknowledges that previous versions of the legislation included a detailed methodology relative to determining the share of a forward locational requirement each provider would have to demonstrate. What changed from the version passed by the Senate to the one ultimately enacted into law is not that a locational requirement went away entirely, but that an explicit methodology was removed and replaced with provisions that leave decisions on the methodology of how to establish the locational requirement up to the Commission. Rather than a prescriptive requirement that, say, each electric provider is required to demonstrate 50% of their proportional share of an overall LCR, the statute gives the Commission flexibility to determine how best to establish a forward locational requirement and the resources that qualify to meet that requirement.

September 15 order, p. 36. The Legislature knew how to enact a detailed methodology for establishing individual LCRs but opted instead to give the Commission the discretion provided throughout Section 6w(8), mandating that it is *the Commission* which determines the individual capacity obligations that will apply to electric providers. It makes sense that the Legislature would avail itself of the Commission's expertise on this issue, given the Commission's obligation to ensure resource adequacy and the reliability of Michigan's electric grid. One of the Commission's main jobs is to regulate public utilities that provide electric service in Michigan. This role was given to the Commission as the state agency expert, and, recognizing the importance of the task at hand, the Commission will not shy away from its statutory responsibility. Finally, given the compressed timeline to issue this order to guide parties well in advance of their capacity demonstration filings, the Commission finds it expedient to move forward in determining a methodology for such a requirement. Thus, consideration of the various approaches to determine an individual forward locational requirement follows.

**B. Individual Forward Locational Requirement**

The Commission agrees with the Staff's recommendation regarding MISO zones 1 and 2 and concludes that any forward locational requirements for those zones will be set at zero for planning years 2022 and beyond until reevaluated in a future case. Further, because Act 341

defines the independent system operator to be MISO, PJM's independent resource adequacy demonstrations are not impacted by this order. The Commission's primary concern in this order pertains to the resource adequacy and reliability of zone 7.

Regarding zone 7, several parties presented recommendations on the methodology to be used in determining a forward locational requirement. The Staff presented its incremental need approach. Consumers presented its load-ratio share of the LCR or "phase-in" approach, with two alternative timeframes for implementing that approach. DTE Electric presented its load-ratio share or ECIL approach. And, ABATE, Consumers, and Energy Michigan presented numerous modifications to the Staff's incremental need approach, the details of which can be found in their initial and reply briefs. The Commission has read the record in this proceeding and considered the parties' arguments presented in their initial and reply briefs. For the reasons that follow, the Commission adopts the Staff's incremental need approach, as modified by this order.

The Commission is well acquainted with the concerns about the long-term reliability of Michigan's electric grid that led the Michigan Legislature to enact Section 6w of Act 341. It shares those concerns and understands its unique responsibility to ensure resource adequacy in Michigan. The Commission takes its obligation to ensure resource adequacy and the long-term reliability of the state's electric grid seriously and believes that imposing an individual forward locational requirement applicable to all LSEs in zone 7 is a necessary step in accomplishing these objectives. The Commission finds that an overreliance on imported resources is impermissible under MISO's tariff and can threaten electric reliability in Michigan. The Commission further finds that an individual forward locational requirement is necessary to ensure that Michigan, as a whole, meets MISO's requirements and that all LSEs contribute to the long-term reliability of the state's electric grid. It agrees that merely continuing the status quo

where no allocation of forward local resource capacity obligations takes place, is not an option. Adoption of the Staff's incremental need approach is an improvement to the status quo. It moves Michigan in the right direction and promotes the long-term reliability of its electric grid in a reasonable and prudent manner.

Proper evaluation of a just and reasonable methodology to employ in calculating a forward locational requirement requires the Commission to consider certain realities. These include the 10% electric choice market in Michigan, the ownership and control of the vast majority of local generation resources by rate-regulated utilities, and the incentives that exist for those regulated utilities to favor local generation resources over out-of-state capacity. The Commission also recognizes that a proper determination of the reasonable methodology is one that both minimizes the risks, costs, and oversupply of local generation resources for which electric customers must pay while ensuring that sufficient local resources exist to ensure reliability four years into the future.

Having considered the record evidence, competing proposals, arguments, and relevant law, the Commission finds that the Staff's incremental need approach best positions Michigan to ensure local reliability four years into the future while preserving the state's limited electric choice market. Several parties to this proceeding have identified the benefits of this approach. For example, CNE refers to the Staff's approach as a "straightforward methodology" that is "easy to replicate on an ongoing basis in future proceedings," "objective and transparent," "based on readily available information," and one that will "ensure that the LCR will be met on an annual basis with locational capacity, while minimizing the likelihood that zonal resources will be over-procured." CNE's reply brief, p. 3. Contrasting Consumers' phase-in approach with the Staff's approach, CNE explains that an incremental approach "recognizes that the

process of establishing local reliability requirements on individual LSEs starts with a significant amount of local capacity being held by the incumbent utilities” and allows “time for more non-utility supply to become available.” *Id.*, pp. 3-4. According to Energy Michigan, “[t]he incremental approach allows the issues of excessive costs and market power to be more effectively addressed than under any of the other alternatives presented.” Energy Michigan’s initial brief, p. 6. Energy Michigan further recognizes that “only the Staff’s proposal effectively addresses the resource adequacy concerns of [Act 341] without causing additional concerns over market power and imposition of unnecessary costs on Michigan’s electric customers.” *Id.*, p. 7. ABATE likewise supports the Staff’s incremental approach subject to certain proposed modifications. ABATE’s initial brief, p. 9.

Conversely, several parties including the Staff, CNE, Energy Michigan, and ABATE raise concerns about the various utility approaches to determining a forward locational requirement. For example, CNE criticizes Consumers’ phase-in approach because “it results in increased costs to AES customers with little or no incremental reliability benefits.” CNE’s reply brief, p. 4. CNE took issue with DTE Electric’s ECIL approach because it “results in an LCR on AESs that is highly sensitive and dependent on utility decision-making.” *Id.* The Staff urges the Commission to reject DTE Electric’s ECIL approach in part because an allocation of ECIL is not a good indicator of what actual zonal imports will be, noting that Staff’s Exhibit S-13 shows that planned external purchases by LSEs must be netted against uncontracted local generation being offered into the PRA to have an accurate picture of net capacity imports into the zone. Staff’s reply brief, p. 5. Energy Michigan argues that Consumers’ phase-in approach would impose unnecessary costs and enhance the ability of large suppliers to exploit their market power over smaller suppliers. Energy Michigan’s reply brief, p. 10. Likewise, Energy Michigan denounces

the ECIL concept that DTE Electric uses, asserting that ECIL is a made-up concept that is inconsistent with the MISO Tariff and could end up being a negative number with a nonsensical outcome. *Id.*, pp. 13-14. Additionally, ABATE asserts that Consumers' approach would lead to an inefficient use of resources. ABATE's reply brief, p. 9. ABATE and the Staff agree that both utility approaches have a deleterious effect on long-term resource adequacy and that requiring a load-ratio share of the LCR or ECIL would increase the price of local generation and remove the incentive for local generation to be competitive. *Id.*

The Commission has carefully considered each approach, and agrees with CNE, Energy Michigan, ABATE, and the Staff that the Staff's incremental need approach provides a straightforward, transparent, objective, and verifiable approach based on readily available information that can easily be repeated in future proceedings, that minimizes the costs of oversupply of in-zone capacity, and that also addresses the market power concerns briefed in this case. The Commission also agrees that the Staff's approach effectively addresses the ownership and control of local generation resources and allows time for more non-utility supply to be developed. Additionally, like many of the parties in this case, the Commission is concerned about approaches that could result in the costly oversupply of local generation resources, potential market power abuses, utility control over and hoarding of import capacity allowances, and the hindrance of electric choice in Michigan.

Consumers and DTE Electric claim that the Staff's proposed incremental approach does not ensure long-term reliability and merely continues the status quo where the incumbent utilities will remain responsible for the reliability of the electric grid in Michigan and for securing and paying for in-zone resources for ROA load, resulting in unfair subsidization of ROA load by these utilities' bundled customers. The Commission disagrees with the characterization that the

Staff's incremental-need approach "continues the status quo." Had the Commission desired to continue the status quo for zone 7, it would have set the forward locational requirement for zone 7 at zero as the Commission has determined to do for zones 1 and 2 in this order. Instead, the Commission is improving the long-term reliability of zone 7 through a carefully balanced approach that implements a positive forward locational requirement applicable to all LSEs in the zone, reducing perceived inequities, while at the same time minimizing costs to customers.

The Commission finds persuasive the Staff's testimony responding to Consumers' claims that the bundled customers of incumbent utilities are subsidizing AES customers. The Commission agrees with the Staff that in these utilities' resource plan filings, incumbent utilities subtract ROA load, and also agrees with the Staff that the utilities' excess supply cushion has been shrinking. *See*, 2 Tr 361. Moreover, as the Staff and ABATE note, the ability of AESs to import capacity from outside of zone 7 up to the CIL is a result of the incumbent utility's reliance on locally-owned resources to obtain capacity. *See*, ABATE's reply brief, p. 8. The Commission agrees with ABATE and the Staff that these utilities have fair access to the transmission system used to import out-of-zone resources and are not being forced to rely on local capacity. *Id.* Clearly the utilities have significant generation resources located within zone 7, which makes sense given historical load and the 10% limit on electric choice participation. As older generation resources retire due to age and economics, the utilities' replacement strategies may involve building new generation resources, relying more on demand-side resources such as energy waste reduction and demand response, or purchasing capacity from third parties, potentially from outside of zone 7, and thus utilizing more of the CIL. The Commission notes that there will be continued opportunity to evaluate these issues in the context of individual



utility IRPs filed in accordance with Section 6t of Act 341, but is not persuaded that the Staff's incremental need approach places an undue burden on incumbent utilities.

The Commission also disagrees with Consumers and DTE Electric that adopting the Staff's approach does not ensure long-term reliability in Michigan. Before Act 341, AESs were not required to plan to meet individual capacity obligations four years forward or to plan at all. Incorporating an individual forward locational requirement that applies to all electric providers based on zonal incremental need is an aspect of forward planning that can ensure that zone 7 meets the LCR when the MISO planning year becomes the prompt year four years later. This kind of safety net ensures that zone 7 will meet federal reliability standards and therefore also ensures long-term reliability in Michigan.

The Commission appreciates the time and effort the parties expended to present it with a variety of different approaches and suggestions to determine the forward locational requirement. The Commission finds DTE Electric's ECIL load-ratio share approach intriguing from a conceptual standpoint, but ultimately rejects that approach because of the lack of detail, concerns over last-minute utility hoarding of import capacity, lack of transparency, the potential unfairness to non-incumbent utility electric providers that results from utility control of import allowances, and the limited timeframe provided to non-utility electric providers to make procurement decisions that would include the use of any import allowances released by the utilities. The Commission finds that DTE Electric's proposal provides AESs with only a limited amount of time to make capacity supply arrangements, creates uncertainty for AESs regarding the amount of available allowances to be allocated, and has the potential to inflate prices and affect the ability of electric providers to contract for cost-effective resources. Regarding DTE Electric's surrebuttal testimony proposing a 5-year forward demonstration providing more time for the

reallocation of ECIL to take place and its assertion that it would never manipulate resources or imports, this testimony fails to address the fact that planned forward purchases outside of the zone by LSEs must be netted against uncontracted local generation being offered into the PRA to have an accurate picture of net capacity imports into the zone in the prompt year. Therefore, the Commission rejects DTE Electric's ECIL approach. Further, the Commission rejects DTE Electric's ECIL approach and Consumers' phase-in approach as they fail to consider the costs to customers that result from an oversupply of local generation, the discrepancy that currently exists in the ownership and control of local generation resources between certain types of electric providers, and the time it would likely take to develop non-utility supply in zone 7.

C. The Incremental Need Approach

Turning to the specifics of the Staff's proposal for zone 7, the Commission next considers various recommendations and adjustments to that approach. First, the Commission agrees with the Staff that an electric provider's load ratio share of the zonal incremental need should be assigned to all providers regardless of whether they fall short or not. The Commission views Consumers' proposal (to allocate the incremental need to only those LSEs who fall short) as defeating the purpose of adopting the Staff's incremental need approach. Consumers' modification, if adopted, could result in AESs not knowing, before their capacity demonstration deadline, what the need is for zone 7, and could therefore result in AESs procuring resources equal to their full load-ratio share of the zone's LCR regardless of whether the zone might have excess resources from other suppliers. Costly over-procurement of in-zone resources is precisely what the incremental need approach is designed to avoid. Further, the evidence indicating that the incumbent utilities have not been procuring capacity to serve ROA load for several years is persuasive. The Commission therefore finds that both ROA and bundled utility customers

should be allocated portions of the resulting incremental need arising from new local generation retirements.

In addition, although the Commission agrees with Consumers that no evidence of past manipulation of resources through retirements or other means was presented in this case, the Staff's approach reduces the potential for future manipulation of resources or related misconduct more than the other proposals considered. Accordingly, the Commission rejects this modification proposed by Consumers and supported by ABATE.

Moreover, to remedy any potential manipulation of resources, the Commission specifies that the list of a zone's resources that is being compared to the projected LCR needs to include all existing in-zone resources reasonably expected to continue to be available in the MISO market to meet the prompt-year zonal LCR, regardless of whether an LSE included it in a capacity demonstration.

The Staff has gone to great lengths in this proceeding to stress that rate-regulated utilities have financial incentives to own capacity resources within their service territories, and that given the amount of capacity resources currently owned by DTE Electric and Consumers, as well as the 10% cap on choice load, the Staff does not believe there is a necessity from a *reliability* standpoint for AESs to contribute to the forward locational requirement. The Staff does suggest that if the Legislature lifts or expands the choice cap, the Commission should open a new contested case to reevaluate forward locational requirements as soon as practicable. The Commission acknowledges that the Staff's position in this proceeding relative to establishing a forward locational requirement for individual electric providers is predicated on a continuation of the current market structure, with a 10% cap on electric choice, and regulatory incentives for utility ownership of capacity resources. As older generating resources retire, the Commission

will evaluate the future resource mix of rate-regulated utilities like DTE Electric and Consumers in the context of IRP proceedings, and also anticipates more frequent proposals for financial incentives that break the link between utility ownership of resources and the opportunity to earn a return thereon. The Commission intends to monitor these market dynamics closely. The Commission declines to establish a specific remedy for speculative future events, but notes that if there is an expansion of electric choice, or other significant changed circumstances such as major shifts in the CIL or the sources of energy and capacity used by incumbent utilities, the Commission will determine the best way to proceed at that time.

The Commission agrees with the Staff's proposal to use planning year 2021/2022 as the baseline forecast year to calculate incremental need. Further, the Commission agrees with the Staff's recommendation for a biennial reassessment of the calculation of the incremental need and forward locational requirement in a contested case process. For the initial requirements, the Commission will assess the planned resources as filed in Case No. U-18197, with minor adjustments as shown in Staff Exhibit S-24, compared to the projected LCR in planning year 2023 to set an individual LCR requirement for planning years 2022 and 2023. The Commission will repeat this process in two years, by comparing the Case No. U-18197 resources to the projected requirements derived from the most recent LOLE Study, to set the requirements for planning years 2024 and 2025. Accordingly, for planning years 2024 and 2025, the next contested case shall conclude in the Spring of 2020 to give electric providers adequate notice of the forward locational requirements in time to make their annual capacity demonstration filings. The Commission also agrees with the Staff that this biennial reevaluation and reassessment process should capture periodic changes in load levels using the MISO peak demand projection in determining the incremental need. In this same contested case, the Commission agrees to

review the percentage of non-auction purchases in planning years 2024 and beyond. For planning years 2022 and 2023, the Commission agrees with and approves the Staff's recommendation of 5% allowable planned PRA purchases and 95% of planned non-auction resources, as supported by Exhibit S-9.

The Commission rejects Energy Michigan's recommendation that LSEs be given the option of settling capacity obligations at ACP when customers transfer from one LSE to another as set forth in Mr. Zakem's testimony at 2 Tr 74-75. Instead, the Commission approves the Staff's recommendation that changes in load levels for an LSE that affect its forward capacity demonstration be litigated in a show-cause case. However, this determination does not preclude LSEs from settling capacity obligations among themselves when customers transfer to a new supplier in order to allow for sufficient LSE capacity demonstrations to take place, or as a proposed remedy to an insufficient capacity demonstration in a show-cause case.

The Commission, as noted above, agrees with and adopts the Staff's proposed start date of April 20, 2017, or the effective date of Act 341, for the period under consideration here because the Commission views this particular starting date to be the most relevant for the implementation of Act 341 capacity obligations. Additionally, the Commission further concludes that the ending date for the forward locational requirement imposed in this proceeding should be May 31, 2024. Likewise, the Commission agrees with ABATE and the Staff that the Staff's proposal is to be modified to calculate the LCR to include a subtraction of non-pseudo-tied exports.

The Commission agrees with the Staff that owned generation, demand response, capacity contracts, and forward ZRC contracts should count toward meeting Michigan's forward locational requirement provided those resources are in-zone. In addition, the Commission agrees with the Staff that all resources that MISO currently counts toward meeting MISO's LCR, count

towards meeting Michigan's forward locational requirements. No party disagreed with this proposal. The Commission notes that this is consistent with federal reliability standards as required by Section 6w(8)(c).<sup>15</sup> The Commission therefore agrees to adopt any changes in eligibility criteria for a resource to count toward the MISO zonal LCR unless the Commission determines otherwise in a future contested case. The Commission agrees with the Staff that both new and existing resources should count toward meeting the forward locational requirement. Regarding the kind of evidence that the Commission will accept to show that a resource qualifies to meet the forward locational requirement, the Commission agrees with the Staff that the LSE must provide the zonal location of that resource or documentation from MISO that the resource counts toward MISO's zonal LCR. The Commission therefore adopts the Staff's proposal included as Exhibit S-25 on this topic.

Regarding the Staff's exceptions to allow certain specific out-of-zone resources to count toward meeting an electric provider's forward locational requirement, the Commission approves the Staff's recommendation that long-term, out-of-state contracts that some Michigan municipalities have for capacity, entered into before the creation of MISO local resource zones, be allowed to count toward meeting any forward locational requirements that the Commission sets.

Further, the Commission finds that retirements of in-zone resources should be removed from the resource total for that zone before comparing the resource total to the zonal LCR. The

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<sup>15</sup> With respect to ABATE's recommendation that the Commission consider the case of *Taylor v SmithKline Beecham Corp*, 468 Mich 1; 658 NW2d 127 (2003), when determining which version of MISO's acceptable resources applies, the Commission has reviewed that case and finds it helpful and illustrative of the independently significant standard that Michigan courts apply in determining whether a violation of the nondelegation doctrine has occurred, but further notes that the Commission is not a court vested with the jurisdiction to rule on matters of constitutional law.

Commission agrees with the Staff that planned retirements will be removed from the resource total in the announced retirement year only if the generation owner has either filed an Attachment Y at MISO or has made a public announcement of the planned retirement. The Commission notes that on June 13, 2018, in advance of filing its IRP (Case No. U-20165), Consumers announced<sup>16</sup> the retirements of two of its “Medium 4” coal-fired power plants, Karn units 1 and 2, in 2023. Consistent with the Commission’s adoption of the Staff’s approach related to calculating incremental need, the Commission directs the Staff to update its calculations to take account of the announced retirements. Further, all resources – including new resources – that were included in the April 2017 filings for Case No. U-18197 are to be included in the zonal resource totals for determining the incremental need. All other potential future resources should not be included. Those planned additions far enough along in the planning process to be included in the Case No. U-18197 filings will be counted in the resource totals available to meet the needs of the zone. Resources not included in those filings will not count in the zone’s resource totals. The Commission agrees with the Staff that, for purposes of capacity demonstrations, all planned new capacity additions will be allowed to meet capacity requirements provided they are properly demonstrated, as outlined in Exhibit S-25. The Commission adopts the Staff’s recommendations included in the determination of the projected incremental need in Exhibit S-24, as modified by the inclusion of the announced retirements of Karn units 1 and 2.

For capacity purposes, investments in older peaking units that allow for continued operation will be treated in the same manner as planned new generation resources are treated. The Commission disagrees with ABATE’s recommendations regarding the inclusion of all planned

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<sup>16</sup> See, press release at <https://old.consumersenergy.com/News.aspx?id=8868&year=2018>

new capacity and the exclusion of assets requiring investment that would otherwise retire when determining the incremental need.

Regarding Energy Michigan's recommendation that the Commission correct for an error in MISO's formula for calculating the LCR by removing 300 MWs from the LCR calculation, the Commission finds that this proceeding is not the appropriate venue for addressing claims of alleged errors in calculating the MISO LCR. The Commission also rejects Energy Michigan's recommendation that the Commission file a complaint challenging MISO's tariff at the FERC at this time.

In response to an issue raised in MECA's reply brief, the Commission clarifies that an electric provider with sufficient in-zone resources may use those resources to meet its individual forward locational requirement under the Staff's incremental need approach that the Commission adopts here.

In addition, the Commission rejects Energy Michigan's proposal that the Commission require incumbent utilities to own or contract for capacity resources that are available and qualify to meet the capacity need pursuant to Section 6w(6), over and above what the utility has already demonstrated for its bundled load, when an LSE is unable to meet its forward capacity obligations and its customers are paying the SRM to the utility. Since the utility will have already completed its capacity demonstration requirements for the planning year in question by the time it could be assigned any additional capacity obligations arising from insufficient LSE demonstrations, the Commission grants flexibility to the incumbent utility to serve that capacity by whatever means are possible for the remainder of the planning year, until the capacity demonstration filings are due for the next planning year. Likewise, the Commission declines to impose the additional requirement that, if the utility fails to meet this standard, the SRM payment



should go toward purchasing new forward capacity resources, either by means of new contracts or construction. There was no evidence presented on this topic in the record to support this position. However, should an LSE fail to meet incremental capacity need at some point in the future, the Commission will of course oversee rate-regulated utilities' compliance with required capacity obligations through the annual capacity demonstration, and this review will include assessments regarding adequacy of the resources utilities will use to provide capacity-only service to AES customers. Additionally, the Commission will have visibility into the long-term planning and procurement strategies of rate-regulated utilities through the IRP process, including sensitivities modeling for different levels of electric choice load.

On pages 80 and 81 of the Staff's initial brief, the Staff proposed several recommendations to mitigate potential market power. These recommendations include: (1) a market power study for four-year forward capacity in zone 7; (2) a forward locational requirement ceiling of 47.5% of the forward LCR for planning years 2022/2023 and 2023/2024; (3) inclusion of all existing in-zone resources currently in the MISO market in zone 7 in forward capacity calculations and projections unless a utility has filed an Attachment Y or made a public announcement of the planned retirement; and, (4) a Staff-recommended show cause case for any utility the Staff suspects has exercised market power in its future forward capacity demonstration filings.

The Commission agrees that all existing in-zone resources currently in zone 7 should be included in forward capacity calculations and projections unless a generation owner has filed an Attachment Y or made a public announcement of the planned retirement. The Commission, however, considers adoption of the remaining recommendations to be unnecessary for the two planning years in question in this case given the Commission's adoption of the Staff's recommended incremental need approach and the relatively small forward locational

requirements assigned to each LSE for planning years 2022/2023 and 2023/2024. Accordingly, the Commission disagrees that a market power study, a ceiling of 47.5% of the forward LCR for planning years 2022/2023 and 2023/2024, or a Staff-recommended show cause hearing for suspicion of utility exploitation of market power are necessary at this time and therefore rejects these recommendations. Accordingly, the Commission adopts that recommendation.

The Commission rejects Energy Michigan's recommendation that an LSE be allowed to meet its share of the incremental need by paying a pro rata share of the cost of building new capacity within zone 7, i.e., the MISO CONE, to those parties that are building new capacity. In rejecting this recommendation, the Commission agrees with Consumers and the Staff that this proposal seems to be an attempt to relitigate the SRM capacity charges that the Commission already established in other dockets. Likewise, the Commission rejects ABATE's recommendation that the Commission force regulated utilities to sell excess local capacity to other LSEs at certain prescribed or market prices. During the biennial reassessment of the forward locational requirements, the Commission can revisit any market power mitigation recommendations proposed by parties should such exploitation arise in the future.

Regarding the method for determining the forward PRMR, the Commission approves the Staff's process to calculate the forward PRMR presented in Staff Exhibit S-25. The Commission notes that this process is consistent with and complementary to the federal reliability requirements put in place by MISO, and is the same process the Staff proposed and the Commission approved in Case No. U-18197, and which the Staff subsequently employed in Case No. U-18441.

THEREFORE, IT IS ORDERED that:

A. The Commission Staff's incremental need approach is adopted as the methodology to be used in determining the individual forward locational requirement, as modified by this order.

B. For local resource zone 7, the Commission Staff's recommended forward locational requirements for each load serving entity of 1.5% of the load serving entity's peak demand in planning year 2022/2023 and 3.0% of peak demand for planning year 2023/2024 shall be updated based on the publicly-announced retirements of two of Consumers Energy Company's medium four units, Karn 1 and 2.

C. The Commission Staff's process to calculate the forward planning reserve margin requirement presented in Exhibit S-25 is approved.

D. The incremental need shall be reevaluated and reassessed in a contested case proceeding opened on the Commission's own motion every two years, with the next Commission order expected two years from the date of this order. This reassessment will include consideration of periodic changes in load levels, and will review the percentage of non-auction purchases in future planning years beginning with 2024/2025.

E. The Commission Staff's recommended exceptions that allow certain out-of-zone resources to count toward meeting an entity's forward locational requirement as set forth in pages 81-82 of the Commission Staff's initial brief are approved.

F. The individual forward locational requirements for local resource zones 1 and 2 shall be zero and are not subject to biennial reevaluation unless the Commission directs otherwise in a future Commission order.

G. By August 1, 2018, the Commission Staff shall update Exhibit S-25, the Capacity Demonstration Process and Requirements applicable to planning years 2022/2023 and

2023/2024, consistent with the Commission’s findings in this order and shall post the updated exhibit in this docket and the docket in Case No. U-20154.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court’s requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission’s Executive Secretary and to the Commission’s Legal Counsel. Electronic notifications should be sent to the Executive Secretary at [mpscdockets@michigan.gov](mailto:mpscdockets@michigan.gov) and to the Michigan Department of the Attorney General – Public Service Division at [pungpl@michigan.gov](mailto:pungpl@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General – Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Sally A. Talberg, Chairman

By its action of June 28, 2018.

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Norman J. Saari, Commissioner

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Kavita Kale, Executive Secretary

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Rachael A. Eubanks, Commissioner

# PROOF OF SERVICE

STATE OF MICHIGAN )

Case No. U-18444

County of Ingham )

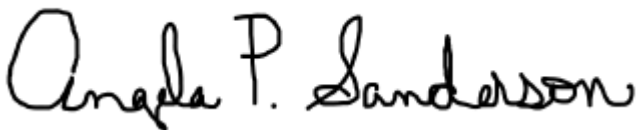
Lisa Felice being duly sworn, deposes and says that on June 28, 2018 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).



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Lisa Felice

Subscribed and sworn to before me  
this 28th day of June 2018



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Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

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