S T A T E O F M I C H I G A N

MICHIGAN ADMINISTRATIVE HEARING SYSTEM

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of Consumers Energy Company for approval of its integrated resource plan pursuant to MCL 460.6t and for related accounting and ratemaking relief.	)))))	Case No. U-20165

RULING ADDRESSING MOTION TO STRIKE TESTIMONY

I.

PROCEDURAL HISTORY

This case involves a review of Consumers Energy's June 15, 2018 Integrated Resource Plan (IRP) filing under section 6t of 2016 PA 341, MCL 460.6t. Following the company's filing, a prehearing conference was held on July 16, 2018. At the prehearing conference, intervention was granted to the following parties: the Michigan Environmental Council (MEC), the Sierra Club, the Natural Resources Defense Council (NRDC), the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, Inc. (Energy Michigan), the Michigan Energy Innovation Business Council (Michigan EIBC), the Institute for Energy Innovation (EI), the Independent Power Producers Coalition (IPPC), Solar Energy Industries Association, Inc. (SEIA), the Michigan Chemistry Council, the Michigan Electric Transmission Company, LLC (METC), Cypress Creek Renewables, LLC (Cypress Creek), the Residential Customer

Group (RCG), the Great Lakes Renewable Energy Association (GLREA), Attorney General Bill Schuette, the Midland Cogeneration Ventures, LP (MCV), the Environmental Law & Policy Center (ELPC), the Ecology Center, the Union of Concerned Scientists, Vote Solar, and seven companies referred to as the Biomass Merchant Plants or BMPs (Cadillac Renewable Energy, LLC; Genesee Power Station, LP; Grayling Generating Station, LP; Hillman Power Company, LLC; TES File City Station, LP; Viking Energy of Lincoln, Inc.; Viking Energy of McBain, Inc.). A consensus schedule was established, as reflected in the docket.

ELPC, the Ecology Center, and Vote Solar (collectively referred to as the Joint Intervenors) filed a Motion to Strike Testimony of Certain Consumers Energy Company Witnesses on August 15, 2018. Energy Michigan, IPPC, and SEIA filed written responses in support of the motion. Consumers Energy, Staff and ABATE filed written briefs opposing the motion. At oral argument, counsel for these parties each presented oral argument, and in addition, counsel for GLREA spoke in favor of the motion, counsel for the Attorney General spoke in opposition to the motion, and counsel for the BMPs made comments as discussed below.

II.

POSITIONS OF THE PARTIES

The Joint Intervenors argue that portions of the testimony of certain Consumers Energy witnesses directed to seeking approval for a new methodology for determining avoided costs under the Public Utilities Regulatory Policy Act (PURPA) are not relevant and should be stricken:

> Specifically, Consumers' irrelevant testimony relates to its request to overhaul (1) the method for calculating the Company's avoided costs, (2) the size of facilities eligible for the PURPA Standard Offer Tariff, (3) the term length of the PURPA Standard Offer Tariff, and (4) the length of the company's PURPA capacity planning horizon.[1]

The Joint Intervenors argue that the Commission created in Case No. U-18090 an ongoing process where the company and other parties could revisit the state's implementation of PURPA every two years, and that process is where the company's proposal should be addressed:

> Allowing the Company to relitigate how the state implements PURPA issues in an irrelevant IRP proceeding would exceed the scope of Michigan's IRP statute and completely disregard the Commission's previous orders specifically creating a biennial review process to review and update broader PURPA policy issues. In addition, many of the PURPA issues raised in the Company's testimony in this proceeding have recently been thoroughly litigated in Case No. U-18090, and parties to that case are still awaiting a final order by the Commission resolving outstanding disputes concerning the Standard Offer Tariff. Consumers should not be allowed to relitigate those issues.[2]

The Joint Intervenors' motion reviews the history of Case Nos. U-17973 and U-18090, as well as 2016 PA 341, noting that the new law has separate provisions for this IRP proceeding and for PURPA avoided cost evaluations. The Joint Intervenors cite former R 460.17325(1), now R 792.10427, and the Michigan Rules of Evidence, including MRE 401, 402, and 403. The Joint Intervenors argue that the PURPA-related testimony they seek to strike raises issues that are irrelevant to a determination whether Consumers Energy's IRP is the most reasonable and prudent means to meet its energy and capacity needs under MCL 460.6t, and would confuse the issues and be a waste of time. The Joint Intervenors cite the Commission's April 16, 2003 order in Case No. U-

[1] See Joint Intervenors motion, page 1.
[2] See Joint Intervenors motion, page 2.

13522, its September 26, 2006 order in Case No. U-14702, and its July 12, 2017 order in Case No. U-17087 as examples in which the Commission upheld an ALJ's ruling striking testimony.[3]

Discussing Mr. Troyer's testimony, which has the most extensive material subject to the motion to strike, the Joint Intervenors argue that many of the arguments he presents for changes to the standard offer tariff are the same arguments Consumers Energy presented in Case No. U-18090.[4]

The Joint Intervenors emphasize that they are not disputing that potential changes to the avoided cost methodology as a result of the IRP may be reasonable, but that those should be taken up in due course in the biennial review, not as part of this case.

Anticipating Consumers Energy's response to the motion based on the arguments presented in the subject testimony, the Joint Intervenors dispute the company's characterization of the Commission's November 21, 2017 order in Case No. U-18090 as authorization for presenting its avoided costs proposals in this case, arguing that the quotation the company relies on is taken out of context, and that the Commission did not intend "updating avoided costs" to encompass a wholesale revision of the methodology.[5] To the Joint Intervenors, the value of the IRP process the Commission recognized in Case No. U-18090 was as an easy vehicle for the company to show whether it has a capacity need over the 10-year PURPA planning horizon.[6]

[3] See Joint Intervenors motion, pages 8-9.
[4] See Joint Intervenors motion, page 10.
[5] See Joint Intervenors motion, pages 11-12.
[6] See Joint Intervenors motion, pages 12-13.

The Joint Intervenors argue that the company's proposed overhaul of the PURPA avoided cost methodology in this case will significantly complicate the issues in this proceeding, require extensive reply testimony and legal arguments, and will waste time:

> This IRP proceeding is on a 300-day schedule to completion, and there are many issues to be litigated in this first IRP proceeding. For context, it took parties two years to resolve the last round of updates to the state's PURPA implementation in Case No. U-18090. Here, Consumers presents the testimony of four witnesses in support of its proposed changes, requiring Joint Intervenors to submit witness testimony rebutting each of those witnesses. Joint intervenors will need to submit discovery requests related to each of the PURPA issues, and the amount of time needed for cross-examination on the PURPA issues will eat into an already tight schedule for cross-examination. Addressing these PURPA issues will lengthen Joint Intervenors and the Company's briefs and require the ALJ and the Commission to review testimony and arguments related to issues that are wholly beyond the scope of this IRP proceeding—issues that have already been addressed by the Commission in Case No. U-18090.[7]

The Joint Intervenors argue allowing these issues to be litigated in this proceeding will cause unnecessary confusion:

> Not striking the PURPA implementation issues and allowing them to be litigated in this IRP proceeding would conflict with the Commission's orders in Case No. U-18090 and would render the Commission's biennial PURPA review process superfluous. Interested parties would face uncertainty and confusion as to which docket will address PURPA issues. Indeed, it would result in a situation in which the fundamental PURPA policy issues are subject to continuous litigation in unrelated Commission policy dockets despite the Commission's intent to develop a "routine administrative process" for updating avoided costs.[8]

Energy Michigan supports the Joint Intervenors' motion, emphasizing the provisions of MRE 403 and endorsing the Joint Intervenors' argument that permitting the testimony will significantly complicate the issues in this proceeding. It argues: "The core PURPA determinations, such as avoided cost methodology, standard offer contract

[7] See Joint Intervenors motion, page 13.
[8] See Joint Intervenors motion, pages 13-14.

provisions, length of PURPA contracts, and length of the planning year horizon, should be decided in a proceeding completely focused on these important parameters, as is currently in the final stages of a two-year contested case proceeding in Case No. U-18090."[9] It argues that the Commission has provided for a two-year review of its PURPA determinations, with the next review taking place in 2019.[10] Energy Michigan also argues that allowing multiple simultaneous PURPA proceeding on the same issues will create a hardship on interested parties, and create procedural unfairness "as the ordinary procedural processes for review and appeal of Commission determinations will be bifurcated and confused."[11]

IPPC supports the Joint Intervenors' motion, agreeing with the Joint Intervenors that Consumers Energy is seeking to relitigate determinations made by the Commission in Case Nos. U-17973 and U-18090 and "overhaul" the Commission's implementation of PURPA, and that the issues Consumers Energy raises are outside the scope of this IRP proceeding.[12] IPPC also argues that permitting this testimony will cause unfair prejudice:

> As an interested party whose members' existing facilities will be adversely affected by Consumers' attempts to relitigate issues that have been actively litigated over the ongoing two- year case history of U-18090 (not including the additional year spent on the Commission's PURPA workgroup docket, Case No. U-17973), the IPPC submits that it would violate Rule 403 and result in unfair prejudice to IPPC's members if ELPC's Motion to Strike is not granted and Consumers is allowed to relitigate PURPA issues that are still being reviewed in U-18090.[13]

[9] See Energy Michigan response, page 3.
[10] See Energy Michigan response, page 3.
[11] See Energy Michigan response, page 3.
[12] See IPPC response, page 2.
[13] See IPPC response, pages 3-4.

IPPC further characterizes the company's proposal as a collateral attack on the Commission's decisions in Case No. U-18090:

> The issues highlighted in ELPC's Motion are ones that either have yet to be finally determined in U-18090 or have been decided in Commission Orders earlier in that proceeding and will be able to be appealed (should Consumers or others so desire) once the Commission issues its final order in U-18090. Rather than addressing its apparent concerns with the Commission's determinations in U-18090 within that proceeding itself or through appropriate appeal, Consumers is here seeking to attack them collaterally in this proceeding. This should not be allowed, both for reasons of procedural fairness, and judicial efficiency.[14]

IPPC also characterizes Consumers Energy's inclusion of PURPA proposals in this case as a collateral attack on the Commission's orders in Case No. U-18090.[15]

SEIA also supported the motion, arguing that this is "already a complex case of first impression [that] should not be made more complex by the introduction of extraneous issues recently ruled on by the Commission that are not germane to the issues the Commission must determine in this case. "[16]

In its response defending its prefiled testimony and proposals, Consumers Energy argues that its avoided cost proposals should not be stricken because "they are relevant to and firmly within the scope of this [IRP] proceeding . . . and consistent with the Commission's prior orders concerning the consideration of PURPA avoided costs in IRP proceedings."[17] It further argues that its proposals are necessary "to fully consider the 5-year, 10-year, and 15-year projections of the Company's load obligations and plans to meet those obligations." Consumers Energy argues that its inclusion of the

[14] See IPPC response, page 4.
[15] See IPPC response, page 4.
[16] See SEIA response, page 1.
[17] See Consumers Energy response, page 2.

disputed testimony will not confuse the issues, or waste time, and argues that harm will be suffered by the company and its customers in the event that testimony is stricken.[18]

Consumers Energy's response also reviews the Commission's orders in Case No. U-18090, and discusses 2016 PA 341. Consumers Energy argues that it has determined "in the process of developing [its] IRP" that the avoided cost rates determined in Case No. U-18090 did not reflect the company's actual avoided costs and also determined "that the capacity forecasting methodology and PPA term length approved in Case No. U-18090 does not provide a reasonable means for capacity planning."[19]

After reviewing the testimony of its witnesses regarding its requested revisions to the PURPA avoided cost methodology, other parameters, and contracting issues deliberated in Case No. U-18090, Consumers Energy argues that the Commission's orders in Case No. U-18090 do not prohibit it from making PURPA avoided cost proposals in this case. Further it argues that striking the disputed testimony "is inconsistent with the purpose of an 'integrated' resource plan proceeding, where the entire plan is integrated," and that it "cannot execute its [plan] if substantial portions of its components are dismissed from this case."[20]

Specifically addressing section 6t of 2016 PA 341, MCL 460.6t, which governs this proceeding, Consumers Energy argues that its avoided cost proposals "are of consequence to the matters statutorily required to be considered in this proceeding and have sufficient probative force" to meet the requirements of MRE 401.[21] It argues: “It is

[18] See Consumers Energy response, page 2.
[19] See Consumes Energy response, pages 8-9.
[20] See Consumers Energy response, page 13.
[21] See Consumers Energy response, page 15.

simply not possible to consider the Company's plans to meet customer energy and capacity needs for the next 5, 10, and 15 years without considering the Company's current and potential future PURPA energy and capacity obligations."[22] At pages 16-17, Consumers Energy argues:

> If the Commission were to not address the Company's PURPA avoided cost proposals, it would require the Company to potentially purchase capacity from QFs 10 years prior to a capacity need occurring ...The Company's PURPA avoided cost proposals are integral to the consideration of the Company's PCA and therefore relevant to this case.

The company makes the same argument regarding its "Standard Offer Tariff" proposals, including the size of Qualifying Facilities (QFs) eligible for the tariff, the length of the standard offer, and the planning horizon over which capacity needs are determined. It argues that its proposed changes to these tariff parameters are necessary if its avoided cost rate structure is changed in this proceeding, and argues these parameters are "directly tied to implementing a competitive bidding process for all future capacity needs."[23]

Consumers Energy disputes that the prior Commission orders cited by the Joint Intervenors from Case Nos. U-13522, U-17087, and U-14702 support striking the disputed testimony in this case.[24]

Consumers Energy also disputes the Joint Intervenors' reliance on the Commission's May and November 2017 orders in Case No. U-18090 as establishing a biennial review process. Consumers Energy acknowledges that the Commission approved a biennial review, but argues that the record on which the Commission's decision was based closed before 2016 PA 341 was adopted:

[22] See Consumers Energy response, page 16.
[23] See Consumers Energy response, page 17.
[24] See Consumers Energy response, pages 18-19.

> Therefore, although the Commission approved a biennial review of avoided costs in the May 31 Order, the Commission's approval was based on a record which did not consider the impact of the new IRP law and did not preclude consideration of avoided costs in an IRP. It would not have been possible for Staff to have proposed such a restriction in its biennial review proposal because the IRP law did not exist at the time the proposal was made.[25]

The company also argues that the November 2017 order, which referred to conducting the next avoided cost review in two years, "imposed no specific limitation on the Company with respect to whether or not a review of the Company's avoided costs could occur earlier than in two years or in an IRP proceeding."

Consumers Energy complains that if the Commission adheres to a biennial review, avoided costs could become stale (four years old) by the time a subsequent case is completed.[26]

Consumers Energy also addresses the Joint Intervenors' interpretation of the Commission's November 21, 2017 order that the IRP review process is conducive to updating inputs, but not to revising the whole avoided cost methodology. Consumers Energy argues that because the Commission used the phrase "updating avoided costs" in that order, and because it was aware of the difference between avoided costs generally and avoided cost inputs explicitly: "If the commission had intended to limit the review of avoided costs in an IRP to inputs it would have specifically indicated that limitation."[27]

As a policy matter, Consumers Energy argues, "it would not be reasonable to restrict the review of the Company's avoided costs in this IRP to inputs because it would create a mismatch between the costs that the Company is avoiding, as determined by

[25] See Consumers Energy response, page 20.
[26] See Consumers Energy response, page 22.
[27] See Consumers Energy response, pages 22-23.

the Company's IRP modeling, and the natural gas proxy unit methodology used in Case No. U-18090."[28] Consumers argues at page 23-24:

> [I]f the Company's proposals are not reviewed in the context of this IRP, it would render the IRP meaningless. An IRP allows the Company to conduct resource planning and "integrate" all issues in one docket--as opposed to litigating one-off issues in scattered dockets that all impact each other.

As a consequence, it argues, the result would be a plan that is incomplete and can never be executed.[29]

Consumers Energy also cites the Commission's February 22, 2018 order in Case No. U-20095 as authorization for its proposals in this case. Quoting the Commission's order, it argues:

> [S]ubsequent to the issuance of the Commission's November 21 Order, the Commission further confirmed its openness to considering utility avoided costs in the context of an IRP proceeding in its February 22, 2018 Order and Notice of Opportunity to Comment. In that Order, the Commission found that "[g]iven that costs that are avoided consist of both supply and demand side options, an IRP may be the proper proceeding to evaluate avoided costs based on an actual plan." MPSC Case No. U-20095, February 22, 2018 Order and Notice of Opportunity to Comment, page 5. The Commission further requested comment on the following IRP-related questions:
>
> > "Should the need for capacity over a 10-year period be determined in an IRP? If so, how should the capacity requirement be established? Should capacity need be evaluated for each year or incrementally (i.e., 2019-2021; 2022-2024)?
> >
> > ***
> >
> > "Going forward, should the Commission consider a competitive process for the procurement of QF capacity, based on the utility's capacity need, as determined by the IRP? Should the competitive process be used solely to allocate available capacity, or should it also be used to determine avoided cost payments to QFs?

[28] See Consumers Energy response, page 23.
[29] See Consumers Energy response, pages 24-25.

> "Should the IRP process be used to update avoided energy and capacity payments based on the blended cost of the plan (e.g., energy efficiency, demand response, fossil generation, renewables, market purchases), or some other method that ensures an accurate representation of a utility's actual avoided costs and non-discriminatory treatment of QFs?" MPSC Case No. U-20095, February 22, 2018 Order and Notice of Opportunity to Comment, page 5.
>
> Since the Commission has not yet issued an order in Case No. U-20095 addressing these IRP-related questions or limiting the consideration of PURPA avoided costs in an IRP, it would be unreasonable to limit the Company's ability to raise PURPA avoided cost issues in this case.

Consumers Energy argues that consideration of its proposals in this case will not confuse issues or waste time. It disputes that MRE 403 is applicable, and further argues:

> As an initial matter, the Company's Application and supporting testimony was filed on June 15, 2018, approximately four months prior to the filing date for Staff and Intervenor testimony on October 12, 2018. Between the date when the Company's case is filed and the filing of Staff and Intervenor testimony, the Joint Intervenors have the ability to submit discovery aimed at more fully understanding the Company's proposals.[30]

Noting that most of the parties to Case No. U-18090 are parties to this case, the company further argues that "there is little risk that these parties will be confused by the Company's proposals here.[31]

Reiterating its argument that the company and its customers will be prejudiced by the relief requested, the company argues that because of the integrated nature of the PURPA-related relief it is requesting with the elements of its IRP, if the testimony is stricken, it should be allowed to amend its testimony. Further, it argues that because it

[30] See Consumers Energy response, pages 28-29.
[31] See Consumers Energy response, page 29.

would be burdensome to do this within the established schedule, the Joint Intervenors' motion should be denied:

> If the Joint Intervenors' requested relief were granted, it would substantially impact the Company's other proposals in this case. This would require the Company to reconsider its proposals and amend its IRP filing. The process of reconsidering the Company's proposals and filing amendments to this IRP would be extremely burdensome and difficult to achieve given the schedule that was required to be set for case pursuant to MCL 460.6t. Therefore, as demonstrated above, the burdens and cost to the Company and its customers related to not appropriately considering PURPA avoided cost issues in this proceeding are significant and vastly outweigh the Joint Intervenors' alleged harm in the form of greater amounts of testimony, discovery, cross examination, and briefing.[32]

Staff, ABATE, and the Attorney General agree. ABATE argues that the motion is premature and without merit. It argues that the rules of evidence should be liberally applied. ABATE further argues that the company is not constrained by the parameters established in Case No. U-18461. Instead, it argues, the Commission is rightfully inclined to encourage utilities to explore all viable options.

Staff asks that the motion be denied, arguing that "PURPA issues are properly a part of this IRP case." Staff acknowledges that the Commission has not completed its review of Consumers Energy's avoided cost in Case No. U-18090, but presumes it will be completed before this case is completed. It also argues that: "Nothing in the law or the commission's orders in Case No. U-18090 bar avoided costs from being reviewed ahead of the 2-year mark."[33] Staff cites 18 CFR 292.302(b), which requires utilities to report certain avoided cost statistics every two years. It also argues that the Commission's recognition that a biennial review is appropriate also supports a more

[32] See Consumers Energy response, page 33.
[33] See Staff response, page 2.

frequent review.[34] As Consumers Energy argued, Staff argues that the Commission did not limit its recognition that IRP proceedings are conducive to "updating avoided cost" solely to "avoided cost inputs," but rather "it opened the door to updating avoided costs generally."[35]

III.

DISCUSSION

The motion is addressed to the ALJ's authority to regulate the course of the proceedings to ensure a just and expeditious determination of the issues presented.[36] For example, section 80 of the State's Administrative Procedures Act expressly lists as a power of the presiding officer to: "*Regulate the course of the hearings*, set the time and place for continued hearings, and fix the time for filing of briefs and other documents."[37] In the rules of practice and procedure applicable to Commission cases, R 790.10415 (5) provides:

> (5) The commission or the presiding officer, or the administrative law manager assigned by the hearing system in any proceeding in which a presiding officer has not been assigned, may order proceedings consolidated for hearing on any or all matters at issue in the proceedings or may order the severance of proceedings or issues in a proceeding if consolidation or severance will promote the just, economical, and expeditious determination of the issues presented.

Under R 790.10421, determining the scope of the hearing and separating issues are tasks proper for a prehearing conference.[38] R 790.10421(n) includes: "Considering and ruling on other matters that may aid in the expeditious disposition of the

[34] See Staff response, page 3.
[35] See Staff response, pages 3-4.
[36] See, e.g., May 23, 1977 order, Case No. U-5365.
[37] See MCL 24.280 (1)(d).
[38] See R 790.10421(d) and (e).

proceeding." Overall, R 790.10403(2) requires the rules of practice and procedure to "be liberally construed to secure a just, economical, and expeditious determination of the issues presented."

After reviewing carefully the arguments of the parties in light of the provisions of 2016 PA 341 and prior Commission orders, the ALJ concludes that the exigencies of this case do not permit a comprehensive review of Consumers Energy's avoided cost determinations and associated parameters and tariff. Key to this determination is a review of section 6t of 2016 PA 341, MCL 460.6t, the statute that governs this proceeding. While clearly ambitious, it is more limited than Consumers Energy argues. It is a planning proceeding, not an integration of all possible contested case determinations and approvals that might influence the company's choices or costs over the planning period. The Legislature has crafted specific provisions for approvals relating to certain costs associated with the company's IRP. This and other provisions of 2016 PA 341 show that the 300-day review required by section 6t does not encompass a determination of the PURPA avoided cost methodology and other parameters. See section 1 below. Nor has the Commission determined that this IRP review case is an appropriate forum to reconsider the Commission's evolving avoided cost determinations in Case No. U-18090. See section 2 below. While Consumers Energy views this case as an opportunity to relitigate its dissatisfaction with the Commission's decisions to date in Case No. U-18090, the company's arguments do not overcome the need to provide in this case a reasonable opportunity to conduct the legislatively-mandated review of the company's plans. See section 3 below. Other arguments presented by Consumers Energy, including the benefit to customers from

revising the avoided cost methodology, are not persuasive in light of the statutory scope of the proceeding, the applicable time constraints, and the burden to the parties of litigating the same costs and tariff in two forums, as discussed in section 4 below. How to address the situation presented in this case created by Consumers Energy's incorporation of its proposed avoided cost relief as a key element of its IRP is discussed in section 5.

1. MCL 460.6t does not contemplate that avoided cost methodologies and related parameters and tariffs will be determined in this IRP case.

This complex statutory provision first requires that the Commission determine modeling scenarios and assumptions each electric utility should include in developing its integrated resource plan. Once the Commission completes this task as described in subsections 1 and 2 of section 6t, and establishes filing requirements as described in subsection 3, the utility must file an IRP that "provides a 5-year, 10-year, and 15-year projection of the utility's load obligations and a plan to meet those obligations, to meet the utility's requirements to provide generation reliability, including meeting planning reserve margin and local clearing requirements determined by the commission or the appropriate independent system operator, and to meet all applicable state and federal reliability and environmental regulations over the ensuring term of the plan."[39] Under subsection 5, the utility's plan must include all the following:

> (a) A long-term forecast of the electric utility's sales and peak demand under various reasonable scenarios.
>
> (b) The type of generation technology proposed for a generation facility contained in the plan and the proposed capacity of the generation facility, including projected fuel costs under various reasonable scenarios.

[39] See MCL 460.6t(3).

(c) Projected energy purchased or produced by the electric utility from a renewable energy resource. If the level of renewable energy purchased or produced is projected to drop over the planning periods set forth in subsection (3), the electric utility must demonstrate why the reduction is in the best interest of ratepayers.

(d) Details regarding the utility's plan to eliminate energy waste, including the total amount of energy waste reduction expected to be achieved annually, the cost of the plan, and the expected savings for its retail customers.

(e) An analysis of how the combined amounts of renewable energy and energy waste reduction achieved under the plan compare to the renewable energy resources and energy waste reduction goal provided in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001. This analysis and comparison may include renewable energy and capacity in any form, including generating electricity from renewable energy systems for sale to retail customers or purchasing or otherwise acquiring renewable energy credits with or without associated renewable energy, allowed under section 27 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1027, as it existed before the effective date of the amendatory act that added this section.

(f) Projected load management and demand response savings for the electric utility and the projected costs for those programs.

(g) Projected energy and capacity purchased or produced by the electric utility from a cogeneration resource.

(h) An analysis of potential new or upgraded electric transmission options for the electric utility.

(i) Data regarding the utility's current generation portfolio, including the age, capacity factor, licensing status, and remaining estimated time of operation for each facility in the portfolio.

(j) Plans for meeting current and future capacity needs with the cost estimates for all proposed construction and major investments, including any transmission or distribution infrastructure that would be required to support the proposed construction or investment, and power purchase agreements.

(k) An analysis of the cost, capacity factor, and viability of all reasonable options available to meet projected energy and capacity needs, including, but not limited to, existing electric generation facilities in this state.

(l) Projected rate impact for the periods covered by the plan.

(m) How the utility will comply with all applicable state and federal environmental regulations, laws, and rules, and the projected costs of complying with those regulations, laws, and rules.

(n) A forecast of the utility's peak demand and details regarding the amount of peak demand reduction the utility expects to achieve and the actions the utility proposes to take in order to achieve that peak demand reduction.

(o) The projected long-term firm gas transportation contracts or natural gas storage the electric utility will hold to provide an adequate supply of natural gas to any new generation facility.[40]

Subsection 6 requires Commission action within 300 days of the plan filing:

> Not later than 300 days after an electric utility files an integrated resource plan under this section, the commission shall state if the commission has any recommended changes, and if so, describe them in sufficient detail to allow their incorporation in the integrated resource plan. If the commission does not recommend changes, it shall issue a final, appealable order approving or denying the plan filed by the electric utility.

This section goes on to provide:

> If the commission recommends changes, the commission shall set a schedule allowing parties at least 15 days after that recommendation to file comments regarding those recommendations, and allowing the electric utility at least 30 days to consider the recommended changes and submit a revised integrated resource plan that incorporates 1 or more of the recommended changes. If the electric utility submits a revised integrated resource plan under this section, the commission shall issue a final, appealable order approving the plan as revised by the electric utility or denying the plan. The commission shall issue a final, appealable order no later than 360 days after an electric utility files an integrated resource plan under this section. Up to 150 days after an electric utility makes its initial filing, the electric utility may file to update its cost estimates if those cost estimates have materially changed. A utility shall not modify any other aspect of the initial filing unless the utility withdraws and refiles the application. A utility's filing updating its cost estimates does not extend the period for the commission to issue an order approving or denying the integrated resource plan. The commission shall review the integrated resource plan in a contested case proceeding conducted pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission shall allow intervention by interested

[40] See MCL 460.6t(5).

persons including electric customers of the utility, respondents to the utility's request for proposals under this section, or other parties approved by the commission. The commission shall request an advisory opinion from the department of environmental quality regarding whether any potential decrease in emissions of sulfur dioxide, oxides of nitrogen, mercury, and particulate matter would reasonably be expected to result if the integrated resource plan proposed by the electric utility under subsection (3) was approved and whether the integrated resource plan can reasonably be expected to achieve compliance with the regulations, laws, or rules identified in subsection (1). The commission may take official notice of the opinion issued by the department of environmental quality under this subsection pursuant to R 792.10428 of the Michigan Administrative Code. Information submitted by the department of environmental quality under this subsection is advisory and is not binding on future determinations by the department of environmental quality or the commission in any proceeding or permitting process. This section does not prevent an electric utility from applying for, or receiving, any necessary permits from the department of environmental quality. The commission may invite other state agencies to provide testimony regarding other relevant regulatory requirements related to the integrated resource plan. The commission shall permit reasonable discovery after an integrated resource plan is filed and during the hearing in order to assist parties and interested persons in obtaining evidence concerning the integrated resource plan, including, but not limited to, the reasonableness and prudence of the plan and alternatives to the plan raised by intervening parties.

Subsection 8 provides the standards for approval:

(8) The commission shall approve the integrated resource plan under subsection (7) if the commission determines all of the following:

(a) The proposed integrated resource plan represents the most reasonable and prudent means of meeting the electric utility's energy and capacity needs. To determine whether the integrated resource plan is the most reasonable and prudent means of meeting energy and capacity needs, the commission shall consider whether the plan appropriately balances all of the following factors:

(i) Resource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement.

(ii) Compliance with applicable state and federal environmental regulations.

(iii) Competitive pricing.

(iv) Reliability.

(v) Commodity price risks.

(vi) Diversity of generation supply.

(vii) Whether the proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective. Exceeding the renewable energy resources and energy waste reduction goal in section 1 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001, by a utility shall not, in and of itself, be grounds for determining that the proposed levels of peak load reduction, renewable energy, and energy waste reduction are not reasonable and cost effective.

(b) To the extent practicable, the construction or investment in a new or existing capacity resource in this state is completed using a workforce composed of residents of this state as determined by the commission. This subdivision does not apply to a capacity resource that is located in a county that lies on the border with another state.

(c) The plan meets the requirements of subsection (5).

Specific cost approvals resulting from Commission approval of an IRP are provided for in subsections 11, 12 and 13 as follows:

(11) In approving an integrated resource plan under this section, the commission shall specify the costs approved for the construction of or significant investment in an electric generation facility, the purchase of an existing electric generation facility, the purchase of power under the terms of the power purchase agreement, or other investments or resources used to meet energy and capacity needs that are included in the approved integrated resource plan. The costs for specifically identified investments, including the costs for facilities under subsection (12), included in an approved integrated resource plan that are commenced within 3 years after the commission's order approving the initial plan, amended plan, or plan review are considered reasonable and prudent for cost recovery purposes.

(12) Except as otherwise provided in subsection (13), for a new electric generation facility approved in an integrated resource plan that is to be owned by the electric utility and that is commenced within 3 years after the commission's order approving the plan, the commission shall finalize the approved costs for the facility only after the utility has done all of the following and filed the results, analysis, and recommendations with the commission:

(a) Implemented a competitive bidding process for all major engineering, procurement, and construction contracts associated with the construction of the facility.

(b) Implemented a competitive bidding process that allows third parties to submit firm and binding bids for the construction of an electric generation facility on behalf of the utility that would meet all of the technical, commercial, and other specifications required by the utility for the generation facility, such that ownership of the electric generation facility vests with the utility no later than the date the electric generation facility becomes commercially available.

(c) Demonstrated to the commission that the finalized costs for the new electric generation facility are not significantly higher than the initially approved costs under subsection (11). If the finalized costs are found to be significantly higher than the initially approved costs, the commission shall review and approve the proposed costs if the commission determines those costs are reasonable and prudent.

(13) If the capacity resource under subsection (12) is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility, the utility shall submit an application to the commission seeking a certificate of necessity under section 6s.

Further regarding cost approvals, subsection 17 provides:

(17) The commission shall include in an electric utility's retail rates all reasonable and prudent costs specified under subsections (11) and (12) that have been incurred to implement an integrated resource plan approved by the commission. The commission shall not disallow recovery of costs an electric utility incurs in implementing an approved integrated resource plan, if the costs do not exceed the costs approved by the commission under subsections (11) and (12). If the actual costs incurred by the electric utility exceed the costs approved by the commission, the electric utility has the burden of proving by a preponderance of the evidence that the costs are reasonable and prudent. The portion of the cost of a plant, facility, power purchase agreement, or other investment in a resource that meets a demonstrated need for capacity that exceeds the cost approved by the commission is presumed to have been incurred due to a lack of prudence. The commission may include any or all of the portion of the cost in excess of the cost approved by the commission if the commission finds by a preponderance of the evidence that the costs are reasonable and prudent. The commission shall disallow costs the commission finds have been incurred as the result of fraud, concealment,

> gross mismanagement, or lack of quality controls amounting to gross mismanagement. The commission shall also require refunds with interest to ratepayers of any of these costs already recovered through the electric utility's rates and charges. If the assumptions underlying an approved integrated resource plan materially change, or if the commission believes it is unlikely that a project or program will become commercially operational, an electric utility may request, or the commission on its own motion may initiate, a proceeding to review whether it is reasonable and prudent to complete an unfinished project or program included in an approved integrated resource plan. If the commission finds that completion of the project or program is no longer reasonable and prudent, the commission may modify or cancel approval of the project or program and unincurred costs in the electric utility's integrated resource plan. Except for costs the commission finds an electric utility has incurred as the result of fraud, concealment, gross mismanagement, or lack of quality controls amounting to gross mismanagement, if commission approval is modified or canceled, the commission shall not disallow reasonable and prudent costs already incurred or committed to by contract by an electric utility. Once the commission finds that completion of the project or program is no longer reasonable and prudent, the commission may limit future cost recovery to those costs that could not be reasonably avoided.

Subsection 15 provides authority for the Commission to authorize a financial incentive:

> For power purchase agreements that a utility enters into after the effective date of the amendatory act that added this section with an entity that is not affiliated with that utility, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital.

Nothing in the ambitious scope of review provided for in section 6t calls for a determination of the company's avoided cost methodology, parameters, or tariff provisions. Instead, section 6v of 2016 PA 341, MCL 460.6v, speaks directly to PURPA avoided cost determinations.[41] It requires

> (1) Notwithstanding any existing power purchase agreement, the commission shall, at least every 5 years, conduct a proceeding, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, to reevaluate the procedures and rates schedules including avoided cost rates, as originally

[41] In Case No. U-18090, the Commission determined that it would consider that docket to be the first case under section 6v. See May 31, 2017 order, page 28.

established by the commission in an order dated March 17, 1981 in case no. U-6798, to implement title II, section 210, of the public utility regulatory policies act of 1978, as it relates to qualifying facilities from which utilities in this state have an obligation to purchase energy and capacity. Nothing in this section supersedes the provisions of PURPA or the Federal Energy Regulatory Commission's regulations and orders implementing PURPA.

(2) In setting rates for avoided costs, the commission shall take into consideration the factors regarding avoided costs set forth in PURPA and the Federal Energy Regulatory Commission's regulations and orders implementing PURPA.

(3) After an initial contested case under subsection (1), for a utility serving less than 1,000,000 electric customers in this state, the commission may conduct any periodic reevaluations of the procedures, rate schedules, and avoided cost rates for that utility using notice and comment procedures instead of a full contested case. The commission shall conduct the periodic reevaluation in a contested case under chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287, if a qualifying facility files a comment disputing the utility filing and requesting a contested case.

(4) An order issued by the commission under subsection (1) shall do all of the following:

(a) Ensure that the rates for purchases by an electric utility from, and rates for sales to, a qualifying facility shall, over the term of a contract, be just and reasonable and in the public interest, as defined by PURPA.

(b) Ensure that an electric utility does not discriminate against a qualifying facility with respect to the conditions or price for provision of maintenance power, backup power, interruptible power, and supplementary power or for any other service.

(c) Require that any prices charged by an electric utility for maintenance power, backup power, interruptible power, and supplementary power and all other such services are cost-based and just and reasonable.

(d) Establish a schedule of avoided cost price updates for each electric utility.

(e) Require electric utilities to publish on their websites template contracts for power purchase agreements for qualifying facilities of less than 3 megawatts that need not include terms for either price or duration of the contract. The terms of a template contract published under this subsection are not binding on either an electric utility or a qualifying facility and may

> be negotiated and altered upon agreement between an electric utility and a qualifying facility.
>
> (5) Within 1 year after the effective date of the amendatory act that added this section, and every 2 years thereafter, the commission shall issue a report to the Michigan agency for energy and the standing committees of the senate and house of representatives with primary responsibility for energy and environmental issues. The report shall provide a description and status of qualifying facilities in this state, the current status of power purchase agreements of each qualifying facility, and the commission's efforts to comply with the requirements of PURPA.

Also noteworthy is section 6s, MCL 460.6s, which was amended by 2016 PA 341. It provides for the Commission to grant certificates of necessity for new construction, new investments in existing generation, or for power purchase agreements in excess of $100 million. For certain proposed generation, it expressly states:

> If the application is for the construction of an electric generation facility of 225 megawatts or more or for the construction of an additional generating unit or units totaling 225 megawatts or more at an existing electric generation facility submitted as required under section 6t(13), *the commission shall consolidate its proceedings under section 6t and this section*.[42]

The legislature thus could have chosen, but did not choose, to have the avoided cost cases under MCL 460.6v consolidated with the IRP cases under MCL 460.6t.

Finally, note that MCL 460.6t provides for expedited appellate review in subsection 16:

> Notwithstanding any other provision of law, an order by the commission approving an integrated resource plan may be reviewed by the court of appeals upon a filing by a party to the commission proceeding within 30 days after the order is issued. *All appeals of the order shall be heard and determined as expeditiously as possible with lawful precedence over other matters.* Review on appeal shall be based solely on the record before the commission and briefs to the court and is limited to whether the order

[42] See MCL 460.6s(1) (emphasis added).

> conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.[43]

Similar language is found in MCL 460.6s(14). The legislature did not provide this expedited appeal for all other determinations required to be made under 2016 PA 341.

After reviewing these provisions, the ALJ thus concludes that determining a PURPA avoided-cost methodology and other parameters and tariff provisions, as Consumers Energy proposes, is not required for a plan review proceeding under section 6t, and was not contemplated in the statutory scheme.

2. The Commission has not determined that this IRP review case should also include a reconsideration of the avoided cost methodology, related parameters, and standard tariff.

Second, the Commission has not expressly provided for the avoided cost methodology, other parameters, and tariff provisions to be determined in this course of an IRP review. Indeed, as the parties acknowledge, the Commission has an ongoing proceeding to determine the avoided cost methodology, other parameters, and tariff provisions for Consumers Energy.

By way of background regarding that case, on May 3, 2016, the Commission initiated Case No. U-18090 to determine Consumers Energy's avoided cost under PURPA. In its initial order, the Commission referred to its investigation in Case No. U-17973 and the Staff report filed in that docket, and directed Consumers Energy (and other utilities in other dockets) to file avoided cost calculations using: (1) the hybrid proxy plant method proposed in the PURPA report; (2) the transfer price method developed under 2008 PA 295; (3) another method, if any that the company wishes to

[43] See MCL 460.6t(16).

propose; and (4) proposed standard rate tariffs, including applicable design capacity. Consumers Energy's first filing in that docket was made on June 17, 2016.

Through a series of orders in Case No. U-18090, the Commission began the process of specifying an avoided-cost method, inputs, and other parameters to define Consumers Energy's obligations to purchase energy from QFs under PURPA. In its most recent order in that docket, on February 22, 2018, the Commission reviewed the history of the case, and explained its prior determinations as follows:

> On May 31, 2017, the Commission issued an order (May 31 order) finding: (1) the most appropriate method for determining Consumers' avoided capacity and energy costs is the Staff's hybrid-proxy method, which is based on the avoided capacity cost of a natural gas combustion turbine (NGCT) and the avoided energy cost of a natural gas combined cycle (NGCC) unit; (2) zonal resource credits (ZRCs) should be applied to intermittent resources like wind and solar; (3) a fixed investment cost attributable to energy (ICE) should be added to the energy portion of avoided costs; (4) a 10-year planning horizon is reasonable for determining whether Consumers requires additional capacity, and if the company requires any capacity during the planning period, it should pay qualifying facilities (QFs) for both capacity and energy; (5) expiring contracts for existing QFs should be renewed at the full avoided cost rate, whether or not Consumers forecasts a capacity shortfall; (6) if no capacity is needed during the 10-year planning horizon, then Consumers shall make a filing so indicating, and, going forward, the avoided cost for capacity shall be reset to the Midcontinent Independent System Operator, Inc.'s (MISO's) planning reserve auction (PRA) price; (7) the design capacity for the Standard Offer should be set at two megawatts (MW); (8) Standard Offer term lengths should be set at five, 10, 15, and 20 years at the option of the QF; (9) except for line losses, there was insufficient evidence in this record to quantify other avoided costs including reduced transmission costs, reduced air emissions and environmental compliance costs, and the hedging value resulting from QF power; however, this issue should be revisited in the company's next avoided cost review; (10) a line-loss credit of 2.37% should be applied to the energy portion of the Standard Offer, until more information is available, and the credit should be negotiated for other agreements; (11) renewable energy credits belong to the QF under both the Standard Offer and negotiated power purchase agreements (PPAs); (12) the next review of Consumers' avoided costs should be conducted in two years; and (13) additional PURPA issues, including rates for stand-by service, back up, and supplementary power

> are being addressed in other proceedings. The Commission further determined that the record should be reopened for the taking of additional evidence on the appropriate inputs for the hybrid proxy model.
>
> After a second hearing and briefing, the Commission issued an order on July 31, 2017 (July 31 order), in which it: (1) approved inputs to the NGCT model; (2) upon further consideration, found that the MISO ZRC capacity structure should apply to all QF resources, not only solar and wind; (3) found that run-of-the-river hydro only may opt for a levelized energy payment in lieu of an escalating payment; and (4) determined an appropriate heat rate and assumed capacity factor for the NGCC proxy unit. However, the Commission also found that there was insufficient information in the record to develop an appropriate schedule of avoided energy costs. Accordingly, the Commission remanded the case a second time for the submission of additional evidence. After a hearing and one round of briefing, the Commission issued a final order in this proceeding on November 21, 2017 (November 21 order), approving final avoided cost methods and costs and a final Standard Offer tariff, subject to clarification of the early termination provision in the tariff. On December 20, 2017, the Commission issued an order suspending the implementation of new avoided costs.[44]
>
> On December 20, 2017, Consumers filed a motion to stay the company's obligation to purchase capacity from QFs. On that same day, Consumers filed a petition for rehearing and clarification. Also on December 20, 2017, IPPC filed a motion to stay the implementation of new avoided costs and petition for rehearing. On December 28, 2017, ELPC filed a response to IPPC's motion. On January 10, 2018, ELPC and the Staff filed responses to Consumers' motion to stay and its petition for rehearing, and Consumers filed a response to IPPC's petition for rehearing. On January 11, 2018, the Staff filed a corrected response to IPPC's petition for rehearing and motion to stay. On January 22, 2018, Cypress Creek Renewables LLC (Cypress Creek) filed a response to Consumers' motion to stay.

The Commission's February 22, 2018 order continued the stay it adopted in its December 20, 2017 order: "The Commission urges the parties to settle these final issues and finds that pending the completion of this final phase of the proceeding, the

[44] See order, pages 2-3.

implementation of avoided costs and the Standard Offer tariff should continue to be stayed."[45]

The Commission's February 22, 2018 order addressed Consumers Energy's request for reconsideration of the Commission's prior determination that any changes to the avoided capacity rates, including changes based on the utility's claimed lack of need for capacity, would require Commission approval:

> The Commission further agrees with ELPC that only the Commission can approve changes to avoided cost rates and that for a utility to merely make a filing, then unilaterally reduce the payment for avoided capacity, would not comport with PURPA and would be an abdication of the Commission's responsibilities. Thus, the additional language in the November 21 order that capacity costs may only be reduced 'upon Commission approval' is consistent with the requirements of PURPA as interpreted by the Supreme Court in [*Indep Energy Producers Ass'n v Cal Pub Utils Comm'n*, 36 F3d 848 (CA 9, 1994)].[46]

The Commission also expressly addressed Consumers Energy's December 20, 2017 motion for stay. As noted above, that motion sought a stay to allow the company to demonstrate that it does not need new capacity over the next 10 years. The Commission explained:

> Consumers claims that because the company has determined that it has no capacity need over the 10-year planning horizon, and because the suspension of capacity payments now requires Commission approval, it has filed a 10-year capacity position for Commission review in Case No. U-18491. Consumers notes that it has received numerous inquiries about solar development and interconnection since May 31, 2017, and until the Commission issues an order reducing the avoided capacity cost, the company will be forced to pay for unneeded capacity, unless the Commission issues a stay during the pendency of Case No. U-18491. Consumers reiterates its belief that it has approximately 300 MW of solar capacity in the queue which, if PPAs are executed, could result in $26 million in ratepayer costs annually for 20 years. And Consumers U-18090

[45] See order, page 12.
[46] See order, page 12.

> repeats its argument that a capacity review outside an IRP could render the central purpose of the IRP meaningless.[47]

The Commission reviewed the company's arguments and the responses filed by Cypress Creek and ELPC. After reviewing the factors to consider in granting a stay, found in MCR 7.123(E)(3), the Commission concluded that Consumers Energy's request for a stay should be denied: "[T]he Commission agrees with the Staff and Cypress Creek that Consumers failed to allege, let alone demonstrate, all of the prerequisites the Commission must find before granting a stay."[48]

The Commission February 22, 2018 order directed Consumers Energy to file its final Standard Offer tariff and draft power purchase agreement by March 1, 2018 and provided for an evidentiary hearing for the parties to address disputes over terms and conditions including the terms of early termination and other disputes.[49]

Since the Commission issued that order, hearings were held in accordance with the Commission's instructions, and briefing was completed on August 14, 2018. Also, on March 12, 2018, Staff filed a petition for rehearing and clarification and to expand the scope of the reopened proceeding. On March 14, 2018, IPPC filed a response to Staff's petition. On March 22, 2018, Ranger Power, Geronimo Energy, and Cypress Creek Renewables filed petitions for reconsideration or clarification of the February 22, 2018 order. Responses to pending petitions for reconsideration were filed on April 2, April 11, April 12, and April 16, 2018 by several parties as reflected in the docket. Consumers Energy's April 2 response to Staff's petition endorsed Staff's request to expand the

[47] See order, pages 13-14.
[48] See order, page 17.
[49] See order, page 11.

scope of the reopened proceeding to consider identification of the interconnection queue.

While Consumers Energy relies on the Commission's language in the Commission's November 21, 2017 order as explicit authorization for its proposals in this case, the ALJ does not find such authorization. As noted above, beginning with its May 31, 2017 order, the Commission determined that reviews of the avoided cost methodology should be made every two years:

> The Commission agrees that, given the rapid changes to the energy landscape, and pursuant to MC 460.6v(3), a biennial review of PURPA avoided costs is appropriate and that for purposes of Section 6v(1) this proceeding should be considered the initial five-year review for Consumers.[50]

Subsequently, in its November 21, 2017 order and in its February 22, 2018 order, the Commission reiterated that the next review would be in two years.[51] In its November 21, 2017 order, the Commission addressed the inputs to the avoided cost calculation. It also addressed IPPC's rehearing petition. In this order, the Commission stated:

> Going forward, the Commission believes that PURPA avoided costs should be integrated with capacity demonstrations and IRP proceedings in order to more accurately assess capacity needs. The IRP proceedings are conducive to updating avoided costs, because the Commission will already be evaluating, in detail, utility-specific plans for any incremental generation or purchases along with their associated costs.[52]

This contemplation appears to relate to a future time period, consistent with the Commission's inquiry in Case No. U-20095. In Case No. U-18090, the Commission's subsequent order on February 22, 2018 reiterated that the next review of the avoided

[50] See May 31, 2017 order, page 28.
[51] See November 21, 2017 order, page 4; see February 22, 2017 order, page 3.
[52] See November 21, 2017 order, page 33.

cost methodology would be in two years. Additionally, as the Joint Intervenors argue, an "update" of avoided cost, including an update of the company's capacity need that determines the capacity payments required under the methodology approved to date in Case No. U-18090, is vastly different from reconsideration and relitigation of virtually all of the determinations the Commission has made to date in Case No. U-18090.

Likewise, while Consumers Energy cites the Commission's February 22, 2018 order in Case No. U-20095 as explicit authorization for its proposals in this case, the ALJ does not find such authorization. Instead, the Commission is considering what provision to make for future IRP cases, as it has issued no order expressly directing or providing for Consumers Energy to seek a revised methodology for its avoided cost determination, along with revised other parameters and tariff language, in this case. And, in an order issued on the same date in Case No. U-18090, the Commission reiterated that the next review of Consumers Energy's avoided costs should be in two years, and declined the company's request for a stay. Indeed, in that February 22, 2018 order in Case No. U-18090, the Commission acknowledged Consumers Energy's argument, repeated in this case, that refusing its request would render the IRP process meaningless.[53]

3. It is not feasible to consider wholesale revision to the PURPA avoided cost methodology, related parameters, and tariff in this case.

In the absence of an explicit requirement to address these PURPA proposals in this IRP case, the ALJ needs to consider the feasibility of expanding this case from the statutory parameters to include Consumers Energy PURPA proposals. The ALJ concludes that it is not feasible to consider such proposals in this case. The company's

[53] See February 22, 2018 order, page 6.

argument that interjecting an entirely new method for determining PURPA avoided costs in comparison to the method the Commission has so far approved in Case No. U-18090 does not unduly add to the complexity of this case is wholly unjustified on this record. As the Joint Intervenors argue, this IRP proceeding is a case of first impression and requires the Commission to consider a host of statutory factors within a 300-day timeframe.

A few reference points from the docket in Case No. U-18090 are instructive. That proceeding, which has evaluated an avoided cost method, considered inputs to the method, considered the size of projects eligible for the standard offer tariff, considered the length of contract terms, and now has under consideration the terms of the standard offer tariff, commenced with the Commission's order on May 3, 2016 and has not yet been completed, 860 days later. The docket currently contains over 800 transcript pages, not including prehearings and motions, and over 700 pages of briefs. The Commission orders in that docket, subsequent to its initial order, total over 150 pages to date.

In this docket, to accomplish the items expressly provided for in section 6t, and address the arguments of up to 23 parties already participating in this case, including Consumers Energy and Staff, the established schedule allows the ALJ 38 days for the preparation of a Proposal for Decision following the submission of reply briefs, and allows the Commission 31 days to prepare its decision by the statutory deadline of April 11, 2018, following the submission of replies to exceptions. While the Joint Intervenors have asked to have portions of the testimony of four witnesses and two

exhibits stricken, Consumers Energy has prefiled the testimony of 24 witnesses and 97 exhibits in a filing that is approximately 1500 pages.

The record in Case No. U-18090 also gives some insight into the nature of the issues that would need to be addressed in conjunction with Consumers Energy's proposal to use a "competitive bidding" method[54] for setting avoided costs, as well as its alternative "specific avoided cost" that is based on the EWR, CVR and DR resources identified in the IRP. For example, Kevin Krause, presenting testimony for Staff on December 8, 2016, identified the following FERC-approved methods for determining avoided cost: Proxy Unit Method; Peaker Unit Method; Differential Revenue Requirement; IRP Based Avoided Cost Method; Market Based Pricing; and Competitive Bidding.[55] He explained the IRP-based method as follows:

> This method uses an integrated resource plan (IRP) to produce values for energy and capacity. IRPs often involve sophisticated pieces of software running simulations of the current electricity system plus forecasts for demand growth and generation retirements to determine when capacity will be needed, and based on supply and demand, what type of generation is most likely to be beneficial to the system. IRPs can forecast the market prices and energy and capacity which could be used to determine avoided cost. While utilities often have the necessary software, QFs and state commissions often have to rely on third parties to assist with the analysis.[56]

And he explained the competitive bidding method as follows:

> This method can rely on a utility issuing a request for proposal (RFP) and using those results to determine a competitive price for energy and capacity. Often there would be expectations surrounding what makes a bidder qualified, considerations such as access to capital, previous experience, and employee safety, just to name a few. Also a sufficient

[54] The concept of "competitive bidding" as an option for setting avoided cost rates is not new. The Commission considered such a method decades ago. See, e.g., the Commission's January 14, 1988 order in Case Nos. U-8531, U-8636, U-8869, and U-8879, pages 14-15.

[55] See Case No. U-18090, 2 Tr 171 (December 8, 2016 hearing).
[56] See Id., 2 Tr 173-174.

> number of qualified bidders would need to take part. QFs could participate in the RFP process, or potentially wait to see if they would accept the rates resulting from the process. This process could potentially be time consuming, and may be challenging to set up because there might be a wide variety of opinion surrounding the appropriate ground rules for the RFP.[57]

Because the ALJ concludes that the burden of addressing a completely revised approach to PURPA avoided cost and contracting issues itself justifies excluding such issues from this case, it is arguably not necessary to consider the arguments raised by the Joint Intervenors and other parties as discussed above regarding the potential unfairness and wastefulness that would result from having the PURPA avoided-cost methodology, contract parameters, and standard offer tariff under review in two cases at once. Nonetheless, for completeness, these arguments are addressed below.

4. Consumers Energy has not established a persuasive reason to undertake an extensive review of avoided cost methods, parameters and tariff terms in this case, while Case No. U-18090 is pending.

At the heart of Consumers Energy's arguments for inclusion of its proposals in this case is clear dissatisfaction with the determinations of the Commission in Case No. U-18090. Indeed, some of the arguments it advances are arguments it has already raised with the Commission.

Consumers Energy argues that the avoided cost determinations made in Case No. U-18090 do not reflect the company's actual avoided costs. Clearly in Case No. U-18090, Consumers Energy argued that the proxy plant approach did not reflect what the company would actually purchase to meet its capacity needs.[58] Consumers Energy

[57] See Id., 2 Tr 174.

[58] See Consumers Energy's February 9, 2017 reply brief, page 7 ([Consumers Energy] does not currently have plans to build a NGCT or NGCC resource, and therefore does not believe that its true avoided cost is currently based on either of those proxy units.") See Consumers Energy's March 24, 2017 exceptions,

initially proposed a "tiered" approach to avoided cost, which it also characterized as a modified IRP approach. Apparently in the interest of compromise, it abandoned that approach in favor of a revised Natural Gas Combined Cycle (NGCC) approach.

Consumers Energy also argued in Case No. U-18090, as it does now, that the avoided cost determinations that the Commission was making did not reflect its more recent capacity costs, citing its recent experience with wind generation and other natural gas generation. In its July 5, 2017 brief to the Commission regarding the choice of inputs for the avoided cost determination, Consumers Energy argued:

> [T]he Company believes that there are a number of examples that illustrate the fact that the Company's actual avoided costs are lower than proposed. Company witness Timothy J. Sparks testified:
>
> > "In 2015, the Company entered into an agreement to purchase the output of the Apple Blossom wind generation plant at a levelized price less than $45/MWh. In 2016, the Company received approval for a wind generation plant, Cross Winds II wind farm, at a levelized price of $45/MWh. Recently, the Company received approval for construction of a new wind generation plant, Cross Winds III wind farm, with a levelized cost of $46/MWh. As demonstrated by these facilities, the Company's actual avoided cost is significantly lower than the rates being proposed by Staff. Applying the Cross Winds III wind farm cost to the 30 QF facilities that the Company currently purchases from, that would result in payments of only $37 million. These are not the only examples of recent low-cost energy and capacity. Additionally, some of the Company's recently acquired natural gas generation facilities, like the Jackson natural gas fueled plant, cost far less than rates proposed by Staff." 2 TR 89.
>
> Given that the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601 et seq. ("PURPA") requires that avoided cost rates be "just and reasonable to the electric consumers of the electric utility and in the public interest" and prohibits approval of "a rate which exceeds the incremental cost to the electric utility of alternative electric energy", the Commission should consider customer cost impacts of the avoided cost rates proposed in this case and the costs that the Company will actually avoid when

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page 7 ("[Consumers Energy] does not currently have plans to build a NGCT or NGCC and therefore does not believe that its true avoided cost is currently based on either of these proxy units.")

> making Qualifying Facilities ("QFs") purchases when reaching its final determination.[59]

In its two December 20, 2017 filings in that case, Consumers Energy asked the Commission for rehearing and to stay its capacity purchase obligations, arguing that Consumers Energy will otherwise be obligated to purchase significant amounts of unneeded capacity, until it can make the required capacity showing, and that this will make its integrated resource planning irrelevant, which is akin to the argument Consumers Energy has presented here.

Consumers Energy has had ample opportunity to seek rehearing or reopening of the Commission's determinations in Case No. U-18090. R 792.10436 provides for reopenings, and includes changed conditions as a basis for the request:

> (1) evidence when a reopening is necessary for the development of a full and complete record or there has been a change in conditions of fact or law such that the public interest requires the reopening of the proceeding.

R 792.10437 provides for rehearings and includes newly discovered evidence, facts or circumstances arising after the close of the record, and unintended consequences as grounds for a request:

> A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

[59] See July 5, 2017 brief, pages 1-2.

In contrast, as IPPC argues, it is a burden on parties to be forced to continually relitigate issues, and to address the same issues in multiple forums at the same time. The Commission has had a long-standing policy against the "pancaking" of rate cases, and the principles support the arguments the Joint Intervenors make in this case.[60]

5. Consumers Energy chose to make approval of its avoided cost method and parameters a lynchpin of its IRP.

The company argues at length that its proposed avoided cost methodology is "integral" to its plan. But that is a choice the company made in designing its plan. While including in the plan projected results based on its preferred method of avoided cost determination, with a path to obtain those results, is not in itself objectionable, attempting to force consideration of the avoided cost method in its plan by failing to provide a status-quo alternative is objectionable.[61] By analogy, in several cases in the 1990s, the Commission considered whether certain gas utilities had an obligation to seek to reform gas purchase contracts under Act 9 as part of their GCR obligation to minimize the cost of gas. While the Commission found that consideration of the opportunities available under Act 9 was appropriate in a GCR proceeding, the price redeterminations were required to be brought under Act 9.[62]

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[60] See, e.g., the Commission's June 28, 1976 order in Case No. U-5110, page 4 ("[I]t was persuasively, and the Commission believes, correctly argued that the filing of an application to increase rates by a regulated utility before the rendition of a final decision in a previous rate case is inconsistent with Michigan's statutory scheme, 1939 PA 3, as amended, MCL 460.1 et seq. In both Case No. U-4717 and Case No. U-5110, Applicant is requesting the same relief, that the Commission set just and reasonable rates for the future. Simple logic dictates that the Commission cannot in a final decision set rates which it has found to be just and reasonable for a future period when it is simultaneously acting on another application which also seeks just and reasonable rates for the future. Additionally, the Michigan regulatory scheme with its emphasis on the expeditious processing of rate requests and provisions for interim and partial relief does not sanction the practice of 'pancaking' rate applications.")

[61] Consumers Energy did provide an alternative avoided cost methodology, but did not present a plan based on or incorporating the rulings to date in Case No. U-18090.

[62] See, e.g., the Commission's October 7, 1996 order in Case No. U-10915, page 15. (The Commission finds that the fact that this case was initiated under Act 304 does not preclude a finding concerning the company's obligations to meet the requirements of Act 9. Act 304 requires that, in order to be

The Commission has granted the company broad discretion in formulating alternative assumptions and scenarios as part of its IRP. In its November 21, 2017 order in Case No. U-18418, adopting modeling assumptions and scenarios, the Commission issued the Michigan Integrated Resource Planning Parameters. The Executive Summary states:

> None of the scenarios, sensitivities or other modeling parameters included within this document should be construed as policy goals or even as likely predictions of the future. Instead, the scenarios, sensitivities and modeling parameters are more aptly characterized as stressors utilized to test how different future resource plans perform relative to each other with respect to affordability, reliability, adaptability, and environmental stewardship. In some instances, scenarios and sensitivities intentionally push the boundaries on what may be viewed as probable and could be considered as bookends on the range of possible future outcomes. Utilities may also include separate additional scenarios and sensitivities in their IRPs, and may use different assumptions or forecasts for the additional scenarios and sensitivities. However, the assumptions and parameters outlined in this document should be used for the required scenarios and sensitivities.[63]

Thus, while the ALJ does not believe Consumers Energy should be permitted to seek revision of its avoided cost rates, related parameters, and tariff in this case, the ALJ concludes that Consumers Energy should be allowed to outline its plans to seek such a result in the future, either in Case No. U-18090, the next two-year review, or any other forum provided by the Commission in Case No. U-18090, and to show how this will affect its IRP.

Given the tight timeframes established in this case, Consumers Energy should revise its testimony within a week of the date of this order to present its preferred and

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recoverable through the GCR clause, costs must be reasonably and prudently incurred. Costs cannot be reasonably and prudently incurred if they are unlawful. Thus, a determination concerning [Michigan Consolidated Gas Company's] obligation to file for Act 9 approve of changes to its intrastate gas contracts is appropriate in this case.)

[63] See November 21, 2017 order, Case No. U-18418, Attachment A, page 2 (Emphasis added).

alternative preferred avoided cost methods, parameters, and tariff language as options the utility may pursue, but not items of relief requested in this case.[64]

Additionally, given the tight timeframes applicable to this case, the ALJ is providing one week from the date of this ruling for parties so choosing to file an interlocutory appeal to the Commission, and the ALJ is providing one week after that date for any party so choosing to file a response.

IV.

CONCLUSION

For the reasons explained above, the Joint Intervenors' motion to strike the testimony of four Consumers Energy witnesses as well as two exhibits is granted. Consumers Energy, however, is granted one week, until September 17, 2018, to file revised testimony showing its preferred avoided cost scenarios as options it intends to pursue in the future, without seeking specific relief in this case.

Additionally, as provided for in R 792.10433, the ALJ is requiring interlocutory appeals of this ruling to be filed within one week, by September 17, 2018, and requiring any responses to be filed by September 24, 2018.

[64] Consumers Energy also has the option to voluntarily withdraw and refile its IRP as provided in MCL 460.6t(7).

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Sharon L. Feldman

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Sharon L. Feldman
Administrative Law Judge

Issued and Served:
September 10, 2018

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN	)	
	)	
County of Ingham	)	Case No. U-20165
	)	

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on September 10, 2018, she served a copy of the attached Ruling Addressing Motion to Strike Testimony via email and/or first-class mail, to the persons as shown on the attached service list.

Meaghan Dobie

Subscribed and sworn to before me
this 10th day of September 2018.

Lisa Felice

Lisa Felice
Notary Public, Eaton County
My Commission Expires April 15, 2020

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Case No. U-20165

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