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March 4, 2019

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, Michigan 48909

Re: MPSC Case No. U-20165

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Exception of Energy Michigan, Inc., as well as the Proof of Service. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy Lundgren

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Timothy J. Lundgren

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

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of CONSUMERS ENERGY COMPANY for Approval of an Integrated Resource under MCL 460.6t and for other relief.	)))))	Case No. U-20165

EXCEPTION OF ENERGY MICHIGAN, INC.

Pursuant to Rule 435 of the Commission's Rules of Practice and Procedure before the Commission, R 792.10435, and in accordance with the schedule set by the Administrative Law Judge ("ALJ") in this proceeding, Energy Michigan, Inc. ("Energy Michigan") submits these Exceptions to the Proposal for Decision ("PFD") issued in this case on February 20, 2019.

The PFD makes recommendations in response to Consumers Energy Company's ("Consumers") June 15, 2018 Integrated Resource Plan ("IRP") filed pursuant to Section 6t of 2016 PA 341, MCL 460.6t. Energy Michigan provides the following exception to the PFD.

I. EXCEPTION TO THE PFD

A. Energy Michigan Takes Exception to the ALJ's Criteria of Exclusive Utility Ownership of Assets Before a Financial Incentive Can be Granted.

The ALJ argues that Consumers has not shown on this record that it needs an incentive to pursue a least-cost strategy of supply acquisition. PFD, p. 254. The criteria that she suggests be applied to the utility to make that showing is that it has pursued a model of exclusive ownership of generation assets: "Consumers Energy has not established that it has pursued a business model of exclusively company ownership of assets, since its current generating plant makes up only 70% of supply portfolio." PFD p. 254. Energy Michigan disputes that the appropriate basis for

allowing an incentive to the utility to enter into Purchase Power Agreements ("PPAs") with independent power producers should be when the utility has "established that it has pursued a business model of exclusively company ownership of assets." The ALJ's proposed standard would have the effect of incentivizing utilities to pursue a strategy of 100% utility ownership in the short-term, in order to be able to make the argument in the longer term for a financial incentive. This is exactly the opposite of what Energy Michigan believes the Legislature intended this incentive to do as a public policy matter.

Energy Michigan and its members were involved in the stakeholder discussions and working groups that led up to the drafting of Senate Bill 437, which eventually became 2016 PA 341, as well as the various amendments of that Senate Bill. During that process, significant discussion focused on the fact that the current regulatory structure provided incentives for utility ownership of generation assets, and generally dis-incentivized purchases of power from independent power producers ("IPPs"). This was a pressing issue because Consumers had (and has) PPAs with IPPs that were/are up for renewal. The utility was reluctant to renew these PPAs, and Energy Michigan believed that this was due, in large part, to the structure of incentives under the then-current regulatory regime (before SB 437/PA 341). The way the traditional regulatory system disincentives the utility is a point that has been made at some length by Consumers' witness Michael A. Torrey (see, for example, 8 Tr 14 72-1475) and others. During the legislative stakeholder meetings surrounding SB 437, certain IPPs, some of whom are Energy Michigan members, suggested the concept of an incentive for utilities to enter into PPAs in order to try to make them more "agnostic" with respect to purchasing power from IPPs rather than owning the generating facilities themselves. That concept, originally proposed to aid existing facilities to obtain renewal of expiring contracts with the utilities, was broadened in the bill amendment

process to serve as a general means to advance a policy aim of leveling the playing field between IPP and utility-owned resources in the utility resource procurement process.

The language adopted in Section 6t(15) reflects this understanding of the statute's purpose. The statutory language explicitly recognizes, 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." MCL 460.6t(15). It does not speak of utility cost recovery for imputed debt, or any of the other justifications raised by Consumers. Instead, it reflects, purely and simply, a policy choice by the Legislature to add *an incentive* to the current regulatory structure for utilities to purchase from IPPs, thereby encouraging movement *away from* utility ownership of generating resources. In light of this, the ALJ's criteria, that seems to find the current state of affairs to be acceptable and an incentive necessary only when the utility pursues exclusive ownership, would undercut the Legislature's apparent policy choice in adding this new incentive.

Furthermore, the ALJ never explains how an FCM would ever be implemented if to approve an FCM the utility first had pursued a strategy of exclusive ownership, but under the statute, the FCM only is considered when the utility presents PPAs for the Commission's consideration. These would be mutually exclusive requirements. If the utility proposed any PPAs for approval with an FCM to the Commission, then it couldn't have been pursuing a path of "exclusive ownership" and its mix of owned resources and PPAs might be considered "good enough." Alternatively, if it pursued a path of "exclusive ownership," then it would never have any PPAs for which to request an FCM approval. The ALJ's standard therefore creates an

unacceptable Catch-22 situation that would prevent the legislative policy in Section 6t(15) from being implemented.

While Energy Michigan disagrees with the ALJ over the criteria she creates for when an incentive should be granted, we share the skepticism of the ALJ and many other parties to this proceeding as to Consumers' methods for justifying and calculating its proposed FCM. For instance, we agree with the ALJ's conclusion that there is no "unfairness" that needs to be remedied by the FCM for some alleged use of the utility's capital structure by independent suppliers under a PPA. PFD p. 258-259. We further agree that Consumers does not need an FCM to address "imputed debt." We share the ALJ's concerns that an FCM should not create an uneven playing field between utility-owned projects and those of IPPs, as that would defeat the very policy purpose of the FCM, as discussed above. We believe, therefore, that an FCM must be implemented in a manner that avoids this pitfall, and, as the ALJ notes, various parties have proposed methods for addressing this issue. See PFD, p. 266. We encourage the Commission to carefully consider those, without here endorsing any one method in particular.

In the end, however, Energy Michigan parts company with the ALJ's reasoning on the issue of the need for an incentive. We believe that the Legislature has indicated that the status quo incentive structure was insufficient and so required the Commission to consider an incentive if it is requested so as to encourage utilities to move in the direction of opening up their systems further to IPPs. We also believe it is noteworthy that the Legislature did not establish criteria such as those the ALJ now has sought to erect, for when an FCM should be granted, leaving it as a policy matter to the Commission rather than indicating that it should be based on some cost-recovery basis, or some triggering mechanism such as utility exclusive ownership. Energy Michigan believes that the legislative intention is clearly in favor of the use of a mechanism to

incent the desired behavior effectively, rather than to establish a mechanism for utility recovery of imputed debt or some other theory of cost recovery.

II. CONCLUSION

Energy Michigan hereby respectfully requests that the Commission reject the ALJ's criteria that before a financial incentive can be granted for entering into a PPA, a utility must show a policy of exclusive ownership of assets.

Respectfully submitted,

Varnum, LLP
Attorney for Energy Michigan, Inc.

March 4, 2019

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of CONSUMERS ENERGY COMPANY for Approval of an Integrated Resource Plan under MCL 460.6t and for other relief.	)))))	Case No. U-20165

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Kimberly J. Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 4th of March, 2019, she served a copy of the Exception of Energy Michigan, Inc., as well as this Proof of Service, upon those individuals listed on the attached Service List via email at their last known addresses.

Kimberly Champagne

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