FraserTrebilcock
LAWYERS

124 West Allegan Street, Suite 1000
Lansing, Michigan 48933
T (517) 482-5800 F (517) 482-0887
www.fraserlawfirm.com

jheston@fraserlawfirm.com
(517) 377-0802

April 8, 2019

Ms. Kavita Kale, Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

RE: MPSC Docket No. U-20165

Dear Ms. Kale:

Attached herewith for filing in the above-referenced matter, please find the ***Objections of the Solar Energy Industries Association to the Proposed Settlement Agreement*** and Certificate of Service.

Should you have any questions or concerns with the attached, please do not hesitate to contact me. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.

Jennifer Utter Heston

Jennifer Utter Heston
Digitally signed by Jennifer Utter Heston
Date: 2019.04.08 15:27:40 -04'00'

Jennifer Utter Heston

JUH/ab
Attachments
cc: All parties of record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	Case No. U-20165
for approval of its integrated resource plan	)	
pursuant to MCL 460.6t and for other relief.	)	
	)	

OBJECTIONS OF
THE SOLAR ENERGY INDUSTRIES ASSOCIATION
TO THE PROPOSED SETTLEMENT AGREEMENT

Dated: April 8, 2019

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Jennifer U. Heston (P65202)
Fraser Trebilcock Davis & Dunlap, P.C.
124 W. Allegan, Suite 1000
Lansing, MI 48933
Telephone: (517) 482-5800
E-mail addresses: jheston@fraserlawfirm.com

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NOW COMES the Solar Energy Industries Association ("SEIA"), by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C., and, pursuant to the Commission's Notice to Respond to Proposed Settlement Agreement, hereby respectfully submits these objections to the proposed Settlement Agreement filed by Consumers Energy Company ("Consumers" or "CE") in this proceeding on March 23, 2019.

I. <u>INTRODUCTION</u>.

On June 15, 2018, Consumers filed an application, testimony and exhibits seeking approval for its Integrated Resource Plan ("IRP") pursuant to Section 6t of 2016 PA 341, MCL 460.6t. Consumers' IRP contains many significant proposals, including its "Proposed Course of Action" or "PCA." Consumers' PCA involves substantial generation retirements, competitive procurement of solar generation resources to meet needs for new capacity identified in the IRP process, full cost recovery for its PCA, and approval of unrecovered booked costs of Karn Units 1 and 2, including decommissioning costs and proposed regulatory accounting treatment. Consumers' PCA is a bold plan for eliminating Consumers' dependence on utility-owned coal-fired generation in favor of competitively procured renewable energy.

At the same time, however, Consumers seeks approval of significant changes to the MPSC's recent policy decisions regarding the implementation of the Public Utility Regulatory Policies Act of 1978 ("PURPA") – and does so without any consideration of the rights and reasonable expectations of renewable energy developers who have been making investments based on the MPSC's current PURPA implementation regime. In particular, Consumers' IRP and PCA give no consideration to the substantial volume of PURPA "qualifying facilities" ("QFs") that are under development in its service territory and that have rights under federal and state law to sell their output to Consumers at rates and under contractual terms that have been established by the MPSC. Consumers' proposed changes to PURPA implementation include (i) much more limited eligibility for the PURPA "standard offer" program, (ii) dramatically shorter contract length for PURPA power purchase agreements ("PPAs"), and (iii) an entirely new methodology for determining Consumers' "avoided costs," which in turn determine the PPA purchase price Consumers must pay to QFs for their output. Consumers also sought approval to utilize a three-year period for determining its capacity need and related obligations under PURPA, but subsequently conceded to a five-year period. Consumers also proposes a new Financial Compensation Mechanism ("FCM") for any new power purchase agreements ("PPAs"), including PURPA PPAs.

As part of this proceeding, SEIA put forth expert witness testimony by its witness Kevin Lucas. SEIA's expert reviewed Consumers' proposals and made numerous observations and recommendations. Overall, Mr. Lucas found Consumers' PCA to be a bold plan for moving towards cleaner, renewable generation procured from independent power producers in smaller, more modular increments than developing large, base-load generating plants, thereby reducing risks to ratepayers. Mr. Lucas concluded that with appropriate modifications, Consumers' ratepayers can and will benefit from Consumers' PCA in the coming years.

After careful review of the record, the ALJ made numerous determinations and recommendations in her PFD. The ALJ correctly determined that Consumers' PCA is deficient in several respects.[1] Among other things, the ALJ correctly determined that Consumers' proposal to use competitive solicitations lacked safeguards to ensure a fair and transparent process and that ratepayers' interests are protected.[2] The ALJ recommends that the

[1] PFD, pp. 158-163.
[2] *Id.,* 202-205.

Commission engage in oversight over each solicitation, with stakeholder input, or pursue rulemaking protections to ensure that solicitations are fair and transparent.[3]

The ALJ also correctly determined that Consumers' proposed FCM is unnecessary, not supported by the evidence, in excess of the statutory cap as originally proposed, does not properly reflect the cost to Consumers and its ratepayers of imputed debt, and, if used in the competitive bidding process, would unfairly favor Consumers and its affiliates.[4] The ALJ correctly recommended that the FCM be rejected.[5]

The ALJ also correctly decided several important PURPA-related issues. In her PFD, the ALJ recommended that the Commission reject Consumers' proposal to reduce the size of projects eligible for the standard offer,[6] find that Consumers' does, in fact, have a capacity need,[7] reject Consumers' proposal to reduce to 5 years the term of contract offered to a QF in the event that Consumers' has no capacity need,[8] and reject Consumers' proposal that it should reduce the fixed-forecast energy price it pays to QFs based on the value of renewable energy credits.[9] In these important regards, the Commission should adopt the ALJ's recommendations.

Subsequent to the ALJ issuing her PFD in this case, a number of parties to this proceeding entered into a settlement agreement, which was filed in this case on March 23, 2019. The settlement agreement recommends approval of most of Consumers' PCA, ensures cost recovery for specified capital costs, ensures the retirement of certain coal plants, adopts competitive bidding to procure additional capacity and set avoided cost rates, adopts an FCM for Consumers and its shareholders, and seeks to alter several prior Commission determinations

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[3] *Id.*, p. 205.
[4] *Id.*, p. 243-266.
[5] *Id.*, p. 266.
[6] *Id.*, p. 282.
[7] *Id.*, p. 289.
[8] *Id.*, p. 291.
[9] *Id.*, p. 292.

related to the implementation of PURPA. The settlement agreement also provides for numerous additional studies and reviews, and for Consumers to file another IRP within three years, by June 2021. Consumers "brokered" this agreement with the settling parties while excluding SEIA and intentionally seeking to exclude from the settlement agreement a resolution of SEIA's most important issue – resolution of the rights of QFs to contract with Consumers at existing avoided cost rates and terms and conditions established by the Commission.

This constitutes a fundamental flaw in Consumers' PCA and a material issue remaining in this proceeding: the rights of PURPA QF projects pending in Consumers' interconnection queue and how they should be addressed in Consumers' PCA. Consumers' PCA is deficient in that it effectively ignores the legal rights of these QFs to obtain a power purchase agreement from Consumers and Consumers' obligation to purchase energy and any needed capacity from these QFs. As SEIA has explained in its filings during this proceeding, this issue is integrally related to Consumers' proposal in the PCA to transition away from the Commission's current implementation of PURPA to a new regime based on competitive solicitations. Recognition of the legacy rights of QFs under the prior regime is a key element of that transition.

Also absent from the settlement agreement is any determination of Consumers' capacity needs, despite the Commission's statements in MPSC Case No. U-18090 that Consumers' capacity needs would be determined in this IRP proceeding.[10] Consumers plans to procure 6,500 MW of new generation between 2018 and 2040,[11] yet the settlement agreement concludes that so long as Consumers is implementing its PCA then it does not have a capacity need under PURPA. A plan for procuring new capacity, however, does not equate to the absence of a

[10] See, Order dated October 5, 2018, pp. 17-18. The Commission determined that the 150 MW eligible for full capacity payments was a stopgap measure until the Commission could determine Consumers' capacity needs based on a stronger record in this IRP proceeding.
[11] 8 Tr. 1983-84.

capacity need for PURPA purposes. The Commission should consider the record developed in this case and determine that Consumers does, in fact, have a capacity need of no less than 80 zonal resource credits ("ZRCs"). This amount is in excess of the 150 MW of capacity need the Commission tentatively identified in MPSC Case No. U-18090 and subject to further consideration in this IRP proceeding.

The settlement agreement also neglects to address the treatment of the 100 MW of solar capacity that the Commission deferred to this proceeding from Consumers' renewable energy plan case, MPSC Case No U-18231. SEIA recommends that the Commission definitively reject Consumers' self-build solar projects presented in Consumers' REP proceeding and incorporate this 100 MW into the Commission's determination of Consumers' capacity need in this case.

As described in these objections, major adjustments are needed to the settlement agreement and Consumers' PCA before it can be approved. Consumers' PCA contains provisions that would unnecessarily increase costs to ratepayers and impede the development of independent solar projects under PURPA. The settlement agreement, as proposed, is not a fair and reasonable resolution of this proceeding, is not in the public interest, and the public interest was not adequately represented by the parties to the settlement. SEIA respectfully requests that the Commission reject the proposed settlement as a basis for granting the relief requested in this case. If the Commission does not reject the settlement agreement, then the Commission must set a contested case schedule to permit SEIA a reasonable opportunity to present evidence and argument on the proposed settlement. If the Commission approves the settlement, then SEIA requests that the Commission make the requested clarifications and adjustments noted below and condition its approval on the implementation of SEIA's proposal for addressing the existing PURPA QFs in Consumers' interconnection queue.

II. THE PROPOSED SETTLEMENT AGREEMENT

On March 23, 2019, Consumers filed a settlement agreement in this IRP proceeding that was joined by less than half of the parties to this proceeding. The settlement agreement was signed by seven attorneys on behalf of eleven entities: Consumers, the MPSC Staff, the Attorney General, ABATE, Energy Michigan, Inc., the Independent Power Producers Coalition of Michigan ("IPPC"), the Michigan Chemistry Council, the Michigan Electric Transmission Company, and environmental advocates Michigan Environmental Council, the Sierra Club, the Natural Resources Defense Council.

The remaining 19 parties to this case did not sign the settlement agreement. Parties who did not join the settlement but who indicate that they will not object to the settlement agreement are the Michigan Energy Innovation Business Council, Institute for Energy Innovation, the Environmental Law & Policy Center, the Ecology Center, Union of Concerned Scientists, Vote Solar, Great Lakes Renewable Energy Association, the Residential Customer Group, and Invenergy Renewables LLC. Other parties not joining the settlement agreement are the Solar Energy Industries Association, Inc., Cypress Creek Renewables, LLC, Midland Cogeneration Venture, LP, and the Biomass Merchant Plants (Cadillac Renewable Energy, LLC, Genesee Power Station, LP, Grayling Generating Station, LP, Hillman Power Company, LLC, T.E.S. Filer City Station, LP, Viking Energy of Lincoln, Inc, and Viking Energy of McBain, Inc.).[12] The settlement agreement put forth by Consumers does not represent a consensus proposal among the varied parties and interests in this proceeding. Importantly, not a single entity that is seeking to develop new PURPA QFs in Michigan joined the settlement agreement.

[12] On April 5, 2019, the Biomass Merchant Plants filed a Notice of Withdrawal.

Although Consumers' PCA seeks to advance the development of renewable energy, which is a laudable goal, it does so in a manner that is both unlawful and unreasonable.

The signatories to the settlement agreement agreed to the following:

1. The parties agree that the Company's PCA, as modified herein, should be approved as the most reasonable and prudent means of meeting the Company's energy and capacity needs over the 5-year, 10-year, and 15-year time horizons. Such approval shall mean that the Company's PCA will be evaluated in future IRP proceedings to determine if the PCA continues to represent the most reasonable and prudent means of meeting the Company's energy and capacity needs. The Company will file a new IRP by June 2021.

2. The parties agree that the identified capital costs for DR ($21,028,357) and CVR ($8,924,600) that the Company will incur in the next three years (June 2019 – June 2022) are reasonable and prudent and pre-approved for cost recovery purposes and will be included in rates in a future Company rate case consistent with MCL 460.6t(11) and (17). The parties further agree to the approval of the capacity value provided by the DR (total peak load reduction of 607 MW (incremental 238 MW) from 2019 levels proposed in the Company's pending electric rate case) by June 1, 2022; CVR (a total peak load reduction of 44 MW (incremental 40 MW) by June 1, 2022); and EWR (total EWR peak load reductions of 718 MW (incremental 52 MW from current EWR Plan) by June 1, 2022) resources that the Company will invest in during the next three years. The Company shall file an annual reporting template with the Commission addressing the implementation of the approved DR, CVR, and EWR resources above. The parties further agree that the Company shall communicate any significant changes or anticipated changes to the expected cost, timing, or size of any of the above resource additions to Staff.

3. The parties agree that Karn Units 1 and 2 will be retired in 2023. The Company agrees to seek recovery of the Karn Units 1 and 2 unrecovered book balance by no later than May 31, 2023, filing an application under the applicable provisions of Customer Choice and Electricity Reliability Act, MCL 460.10 *et seq*., seeking a financing order from the Commission authorizing Consumers Energy to recover the unrecovered book balance of Karn Units 1 and 2.

4. The Parties agree that the Company will conduct a retirement analysis of J.H. Campbell ("Campbell") Units 1 and 2 in the

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Company's next IRP case, which will be filed in June of 2021 and that analysis shall include the following assumptions:

a. The analysis will evaluate the following potential retirement dates: 2024, 2025, 2026, 2028, and 2031;

b. For each of the potential retirement dates, the analysis will evaluate the retirement of Campbell Unit 1, Campbell Unit 2, and Campbell Units 1 and 2 together;

c. The analysis will (i) provide a detailed explanation for the Company's capital expenditure and major maintenance cost projections for each retirement scenario; (ii) provide a detailed explanation of how the Company's forecasted unit heat rates are consistent with its cost projections; and (iii) apply consistent assumptions to each retirement scenario to address how capital and major maintenance costs change in the years leading up to an assumed retirement date;.

d. The analysis's modeling of potential replacement resources will include, but not be limited to, (i) Michigan wind and out-of-state wind; and (ii) capacity purchases (i.e., bilateral contracts), including MCV, both within and external to Zone 7. For the capacity purchases option, the assumed cost should include the Company's recent bilateral capacity contracts;

e. The analysis will (i) include different capacity price assumptions (0, 25, 50, 75, 100% of cost of new entry), as in the prior retirement analysis; and (ii) also include a capacity price assumption based on the Company's most recent reverse capacity auction;

f. The analysis will determine the potential impact of retiring Campbell Units 1 and 2 on the current Capacity Import Limit ("CIL");

g. The analysis will identify any transmission system improvements (and the estimated costs) associated with retiring Campbell Units 1 and 2 and adding any equivalent replacement capacity; and

h. The analysis will model the potential retirement of Campbell Units 1 and 2 using the Company's gas price forecast in addition to any MPSC-mandated forecast (e.g., the Energy Information Administration's Annual Energy Outlook forecast).

5. If, in the Company's next IRP, the Company proposes to retire Campbell Unit 1 and/or Unit 2 in 2025 or earlier or agrees to a Commission recommendation that the Company should retire Campbell Unit 1 and/or Unit 2 in 2025 or earlier, the Company commits to retiring the unit(s) within three years from the Commission's final order approving the Company's IRP. However, the above addressed three-year retirement window shall be subject to the Midcontinent Independent System Operator, Inc.'s ("MISO") designation of Campbell Unit 1 and/or Unit 2 as a System Support Resource ("SSR"). If MISO makes such an SSR designation, the Company shall operate Campbell Unit 1 and/ or Unit 2 in accordance with MISO's designation and direction. This provision does not preclude any party from advocating for a retirement date for Campbell Unit 1 and/or Unit 2 prior to 2025 or for a shorter retirement window than three years from the Commission's final order approving the Company's IRP.

6. The parties agree that the Company will identify in its intervening rate cases avoidable capital expenditures (environmental and non-environmental) and avoidable major maintenance for Campbell Units 1 and 2 in 2024 and 2025 retirement scenarios. The parties further agree that the terms of this Settlement Agreement do not limit any party's right to advocate for a retirement analysis of Campbell Units 1 and 2 to be provided prior to the Company's next IRP and any party's right to advocate for the retirement of Campbell Units 1 and 2 any time prior to 2031 in other Commission cases and advocacy.

7. The parties agree that a competitive bidding process should be used to address future capacity needs of the Company during the IRP period approved as provided in Paragraph 1 of this Settlement Agreement and also for determining the Company's PURPA avoided cost rates. The Company shall use a five-year outlook for determining capacity needs. The competitive bidding process shall utilize the following parameters:

   a. The Company shall conduct annual solicitations for the technology or technologies specified in the PCA;

   b. Any remaining capacity that is not filled by responses to each Request for Proposal ("RFP") would be available to Qualifying Facilities which the Company has a legal obligation to purchase from under PURPA (such facilities are referred to as "QFs" in this Settlement Agreement). The QFs would receive a contract with terms substantially similar to the RFP respondents. Specifically, the full avoided cost rate offered will be equal to the highest priced proposal that received a contract in the competitive solicitation and the contract length will be the same as offered in the competitive solicitation. QFs that enter PURPA-based PPAs with the Company pursuant to this provision shall not be required to automatically transfer Renewable Energy Credits ("RECs") to the Company but may sell RECs to the Company at a mutually agreed upon price;

c. The competitive bid process shall be administered by an independent third party. The evaluation criteria and process is to be made available to all bidders submitting responses for the specific technology requested by the Company, as part of the RFP, to ensure transparency. QFs may bid any technology that meets the requirements of PURPA. A ranking of proposals is to be used by the independent third party and provided to the Company for selection. Both the cost of the resource and the value that it provides are to be considered to determine the net cost of a resource to compare different technologies offered by QFs;

d. The Company shall utilize the competitive bidding procedures attached as Attachment A to this Settlement Agreement during the IRP period approved as provided in Paragraph 1 for all future solicitations until such time that the Commission adopts competitive bidding guidelines or procedures as part of a future proceeding. The Company shall also utilize the competitive bidding procedures attached as Attachment A to this Settlement Agreement for all new Company-owned supply-side resources that are developed as part of the PCA approved by the Commission in this case;

e. The first competitive solicitation for the Company pursuant to this Settlement Agreement will be conducted no later than September 30, 2019. New full avoided cost rates stemming from each competitive solicitation will be filed with the Commission for review and approval within 30 days of the conclusion of each competitive solicitation;

f. The maximum term length of competitively bid contracts will be equivalent to the depreciation schedule of a similar Company-owned asset. For solar projects, this is currently 25 years;

g. Current existing QFs with a PURPA-based PPA with the Company, as of January 1, 2019, shall receive new PPAs, regardless of the Company's capacity need, upon the expiration of their current PPAs based on the Company's full avoided cost rates at the time of PPA expiration. QFs that receive a contract based on the Planning Resource Auction ("PRA") rate and forecasted or actual Locational Marginal Prices ("LMPs") shall not automatically receive a contract at the full avoided cost rate when their current contract expires; however, these QFs will be eligible to participate in future competitive solicitations after their contracts expire;

h. The Standard Offer PPA shall be available to QFs up to 2 MW. QFs at or below 150 kW shall receive a PPA based on the Company's full avoided cost rates, regardless of the Company's capacity need, for the maximum term provided for full avoided costs. QFs above 150 kW to 2 MW in size can participate in the competitive bidding process or can receive the MISO PRA capacity rate and either (i) a 10-year term based on a forecast of LMPs for the first five years and year six through year 10 of the term will be equal to the price of energy in the fifth year of the LMP forecast or (ii) actual LMPs for 15 years. Within 30 days following the Commission's approval of this Settlement Agreement, the Company shall file revised Standard Offer tariff sheets and a revised Standard Offer contract, to reflect the Standard Offer construct and rates approved as part of this Settlement Agreement. Parties shall be given 14 calendar days subsequent to the Company's filing to provide comments to the Commission;

i. The Company has no PURPA capacity need so long as the Company is implementing the Commission-approved PCA, as provided in Paragraph 1, including the competitive bidding process for all future capacity needs;

j. When the Company has no capacity need, as defined in Paragraph 7.i. above, QFs are eligible to receive the MISO PRA capacity rate, which will be adjusted annually each MISO Planning Year based on the results of the MISO PRA, and either (i) a 10-year term based on a forecast of LMPs for the first five years and year six through year 10 of the term will be equal to the price of energy in the fifth year of the LMP forecast or (ii) actual LMPs for 15 years. QFs that enter PURPA-based PPAs with the Company pursuant to this provision shall not be required to automatically transfer Renewable Energy Credits ("RECs") to the Company but may sell RECs to the Company at a mutually agreed upon price; and

k. Subsequent to the issuance of the Commission's order approving this Settlement Agreement and prior to issuance of the first competitive solicitation for the Company pursuant to this Settlement Agreement, the Company shall commence a competitive bidding stakeholder workshop. During this workshop, the Company shall provide draft competitive bidding guidelines to stakeholders so that participating stakeholders can provide recommendations to the Company. After receiving recommendations, the Company shall provide stakeholders with final competitive bidding procedures for the first competitive solicitation to be conducted by September 30, 2019. By April 1, 2020, the Company shall commence a second stakeholder workshop to share, at a minimum, information on bids received and selected, the impact of the FCM on PPA bids, the costs and benefits to ratepayers, the role of the independent evaluator, criteria used to rank proposals, and any other criteria deemed to be important. At the second stakeholder process, interested parties will have an opportunity to discuss the information the Company provides and ask questions. Within 35 calendar days of the second stakeholder process, the Company and interested parties will have an opportunity to file comments about the reasonableness of the Company's competitive bidding procedures and to recommend changes and additions. Parties will then have 21 calendar days to file responses. These comments, recommendations, and responses will be filed in Case No. U-20165 or in another docket that the Commission opens to facilitate this process. Once comments, recommendations, and responses have been filed, the Commission will have an opportunity to consider all interested parties' input and to issue an order adopting uniform standards on best practices for competitive bidding and RFPs. The reasonableness of the Company's competitive bidding procedures shall also be evaluated in the Company's next IRP. This evaluation shall include at least information on bids received and selected, impact of the FCM on PPA bids, costs to ratepayers, role of the independent evaluator, criteria used to rank proposals, and any other criteria deemed to be important.

8. The parties agree that the new capacity that the Company intends to procure through the PCA, in each annual solicitation, shall be: (i) acquired through a competitive bidding process; and (ii) 50% will be from PPAs and 50% will be owned by the Company, as acquired through a competitive bidding process. The Company, at its sole discretion, may choose to acquire more than 50% of its new capacity from PPAs. The parties further agree that the Company's affiliates will be prohibited from bidding on the portion of the Company's new capacity acquired from PPAs.

9. The parties agree that the Company shall receive, and recover in general electric rates an FCM on all new PPAs approved by the Commission on or after January 1, 2019, including PURPA contracts. The method of cost recovery shall be determined in the Company's next rate case. However, the Company shall not receive an FCM on any PPAs executed under the Company's Renewable Energy Plan. For PPAs subject to the FCM, the Company will be authorized to annually earn an FCM equal to the product of PPA payments in that year multiplied by the Weighted Average Cost of Capital ("WACC"), which is currently 5.88%, of the Company's total capital structure at the time of PPA execution, for the entire term of the contract. The FCM shall not exceed the WACC of the Company's total capital structure multiplied by the schedule of MWh prices in Attachment B to this Settlement Agreement based on the time of PPA execution. The parties agree that the Commission has the authority to consider the existence of an FCM in determining the overall cost of capital, including the appropriate capital structure and cost of equity, as it relates to imputed debt. The parties further agree that the amount of the FCM could be reviewed in future IRP proceedings and adjusted if circumstances warrant the adjustment and the Commission may consider the FCM in rate cases when reviewing issues related to imputed debt. However, such an adjustment would not impact the FCM approved as part of any existing PPAs. The parties agree that during the competitive bidding process addressed in Paragraph 7 of this Agreement, the Company shall provide bidding parties with information necessary to calculate the price impact of the FCM on a submitted bid.

10. The Company acknowledges that capacity imports can lend support to the Company's PCA and that opportunities to increase the CIL should be evaluated. In addition, the Company acknowledges that the CIL supports the reliability of the transmission system and that an adequate CIL needs to be maintained. The Company shall continue to collaborate with METC and MISO on the implementation of the PCA to minimize negative impacts on the Zone 7 CIL and investigate opportunities to increase the CIL. The Company also agrees to continued collaboration with METC on the implementation of all future PCAs.

11. If the Commission issues future PURPA-related orders in other proceedings, the impact of those orders on the Company's PCA, as approved pursuant to this Settlement Agreement, will be addressed in future proceedings, including the Company's next IRP, and will not be a basis for re-opening this Settlement Agreement.

12. This Settlement Agreement is not intended to affect or waive, nor should it be construed as affecting or waiving, the PURPA rights or positions of any party existing prior to approval by the Commission.

13. The parties agree that the Company's next IRP shall include:

a. Modeling of in-state and out-of-state wind;

b. A stochastic risk assessment;

c. Modeling of all optimized portfolios in all scenarios as part of the Risk Assessment Methodology;

d. Continued collaboration with METC and MISO on the implementation of the PCA including: (i) an analysis of the PCA's impact on the Zone 7 CIL; and (ii) an analysis of minimizing the impact on the Zone 7 CIL as well as investigating opportunities to increase the CIL and investigating transmission alternatives to improve market access;

e. Utilization of other mediums of communication to educate and collect feedback from interested stakeholders of the public;

f. Modeling of energy storage and solar resources either in isolation or as a combination and continued investigation into energy storage to potentially incorporate into future IRP modeling;

g. A list of all environmental regulations applicable to the utility fleet;

h. A description, to the extent practicable, of how a Michigan workforce will be utilized in the construction or investment in a new or existing capacity resource in this state;

i. Consideration of a distributed generation program, similar to Staff's Customer Distributed Generation Program proposed by Staff witness Meredith A. Hadala in this case;

j. A description of the demand for participation in customer-initiated renewable energy resources that are satisfying the Company's demand. The Company shall consider including the forecast dependent on actual data and trending;

k. A description of the transportation electrification and heating electrification impacts of the Company's demand forecast. The

Company shall consider including the forecast dependent upon actual data and trending;

l. A survey of current DR practices of other electric utilities, particularly an analysis of planning assumptions; whether limits are imposed on the amount of reserves that can be provided by DR; and quantifying the amount of DR as a percent of peak demand. The Company shall meet with representatives from ABATE to discuss the results of these studies prior to the filing of the Company's next IRP;

m. Results of a loss of load expectation study to assess the potential change in either the frequency or durations of curtailments and the role of DR in meeting peak demand. The study should reflect the impact of varying generation capacity mix scenarios, including the PCA and varying amounts of DR. The Company shall also monitor changing requirements for load modifying resources at MISO;

n. An assessment of ways to reduce excess capacity which may exist in the resource plan approved as part of this Settlement Agreement;

o. An assessment showing how the Company intends to meet peak demand during winter months with its resource portfolio in each of the projected plan years; and

p. An assessment of the impact of the FCM on the competitive bidding process.

III. <u>STATEMENT OF LAW</u>.

When a settlement is filed by some of the parties to a proceeding, the Commission's procedural rules afford all the parties certain procedural and substantive safeguards. Rule 431 of the Commission's Rules of Practice and Procedure, 2015 AACS R 792.10431, governs settlements. Rule 431(3) states as follows:

> (3) When a written settlement agreement is proposed by some of the parties, it shall be served on all parties to the proceeding. Each party shall file and serve on all parties, within 14 days after being served, its agreement, objection, or nonobjection to the settlement agreement. Failure to respond in writing within 14 days, unless a different time is set by the presiding officer for good cause, shall

> constitute nonobjection to the settlement agreement. A party who objects to a settlement agreement shall state those objections with particularity and shall specify how it would be adversely affected by the settlement agreement.

Thus, the parties are typically provided 14 days to provide a written communication to the Commission stating whether the party agrees with, objects to, or does not object to, the settlement agreement. If a party objects, then the party must state its objections "with particularity" and specify how the party would be adversely affected by the settlement.

If a party objects to the settlement, then the Commission's procedural rules limit the circumstances under which the Commission may approve the settlement. Rule 431(5) states as follows:

> (5) The commission may approve a settlement agreement if all of the following conditions are met:
>
> (a) Any party that has not agreed to the settlement has signed a statement of nonobjection or has failed to object within the 14 days provided in subrule (3) of this rule, or such other time established by the presiding officer, or the objecting party or parties under subrule (3) of this rule have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement.
>
> (b) The commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement.
>
> (c) The commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and, if the settlement is contested, is supported by substantial evidence on the record as a whole.

Thus, if a settlement agreement is contested, then it cannot be approved unless the Commission finds all of the following: (1) that the objecting parties have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement, (2) the public interest was adequately represented by the parties entering into the settlement, (3) the settlement is the public interest, (4) it represents a fair and reasonable resolution of the proceeding, and (5) it is supported by substantial evidence on the record as a whole.[13] Failure to satisfy any one of the five conditions means that the contested settlement cannot be approved.

IV. THE PROPOSED SETTLEMENT AGREEMENT IS NOT IN THE PUBLIC INTEREST AND DOES NOT REPRESENT A FAIR AND REASONABLE RESOLUTION OF THE PROCEEDING CONSISTENT WITH STATE AND FEDERAL LAW.

As described in these objections, major adjustments are needed to the settlement agreement before it can be approved. Consumers' PCA contains provisions that would unnecessarily increase costs to ratepayers and impede the development of independent solar projects under PURPA. The settlement agreement, as proposed, is not a fair and reasonable resolution of this proceeding, and is not in the public interest, for the reasons stated below.

A. THE SETTLEMENT AGREEMENT FAILS TO ADDRESS CONSUMERS' OBLIGATION TO CONTRACT WITH PURPA PROJECTS IN CONSUMERS' INTERCONNECTION QUEUE AT THE ENERGY + MISO PRA RATE.

Although Consumers sought, and received the Commission's approval, to use this proceeding to propose major changes to the Commission's implementation of PURPA, it totally failed to address in its testimony and briefing its obligation to contract with PURPA QFs at the Commission's established energy + MISO PRA rate where Consumers does not have a current capacity need. This issue is independent of the IRP but must be addressed because the Commission has joined PURPA implementation issues to this proceeding. Specifically, since Consumers has been allowed to use this proceeding as the venue for proposing major prospective changes to the implementation of PURPA, federal law requires that the issue of the

[13] See, Order dated November 14, 1996, MPSC Case No. U-10685 et al., p 8, citing 1992 AACS, R 460.17333(5) (the predecessor rule to the Commission's current Rule 431(5)).

legacy rights of QFs that sought to contract with Consumers before such changes must be determined. In addition, the consideration of Consumers future capacity needs and how they will be met – the essential purpose of the IRP – must consider how the capacity provided by such QFs will be treated. A fundamental flaw of the proposed settlement agreement is that it likewise fails to address this central PURPA issue.

Although SEIA called attention to this important issue, the signatories to the settlement agreement failed to address it, and in doing so present this Commission with an unfair, unreasonable, and unlawful settlement agreement that is not in the public interest. The Commission should reaffirm its previous orders directing Consumers, where there is not a current capacity need, to enter into contracts with QFs at the energy + MISO PRA rate and should create a process for these QFs to receive a higher payment for their capacity when it becomes needed.

1. THE COMMISSION'S OCTOBER 5, 2018 ORDER REQUIRES CONSUMERS TO IMMEDIATELY CONTRACT WITH PURPA PROJECTS.

At the time Staff and intervenor testimony was filed in this case, Consumers reported that approximately 1.8 GW of projects, nearly all solar, had requested interconnection with Consumers' system.[14] Despite the substantial volume of PURPA QFs in the interconnection queue, much of which Consumers is legally obligated to contract with, Consumers assumes no new QF capacity or energy beyond an initial 150 MW which the MPSC ruled in MPSC Case No. U-18090 are entitled to full energy and capacity payments under PURPA.[15] Consumers' PCA is woefully deficient in its failure to recognize the rights of these projects and to provide for the procurement of energy and capacity from these projects as required by the MPSC.

[14] See, Discovery Responses 20165-SEIA-CE-175, admitted into evidence as Exhibit SEIA-7 (KML-7). The capacity of projects in the queue now exceeds 3 GW.
[15] 8 Tr. 1979.

In its order issued on October 5, 2018 in MPSC Case No. U-18090, the MPSC provided clear direction on several of the open PURPA issues. In discussing Cypress Creek's petition for rehearing and clarification of the determination to set the 150 MW limit on payment of the full avoided costs, the Commission stated, as follows:

> In both this proceeding and in Case No. U-20095 the participants agree that the IRP is the optimal proceeding for making capacity need determinations. However, in the meantime, <u>the Commission finds that it is important to finalize this PURPA proceeding and allow the parties to move forward</u>. As the Staff correctly characterized it, the 150 MW need determination is a temporary stopgap measure intended to allow Consumers and QFs to enter into agreements while the IRP proceeding is pending. <u>As the parties know, the limit on the amount of capacity sold at the full avoided cost in no way limits the amount of capacity and energy that may be sold by QFs to Consumers. If that threshold is met, QFs may continue to enter into contracts with Consumers at the PRA price for capacity and one of the forecasted energy prices for energy</u>. See, e.g., Exhibit A-48.[16]

Exhibit A-48 in that case is Consumers standard offer tariff and the presentation of Consumers Commission-approved avoided costs. The MPSC has thus unambiguously and unequivocally reaffirmed Consumers' obligation to contract with the QFs currently seeking to sell their output to Consumers. Further, its direction to "allow the parties to move forward" requires Consumers to begin contracting with QFs immediately – a requirement that Consumers has unilaterally and unlawfully chosen to ignore. The Commission should correct this non-compliance by Consumers by again ordering it to contract with QFs whose capacity is not currently needed at the energy + MISO PRA rate.

[16] Order dated October 5, 2018, MPSC Case No. U-18090 at 17-18 (emphasis added).

2. *Even if the Commission had not ordered Consumers to contract with QFs at the energy + MISO PRA rate, Consumers is obligated under PURPA to contract at that rate with any QFs that form "Legally Enforceable Obligations" prior to the time that any changes are made to the Commission's PURPA implementation regime.*

Congress enacted PURPA in 1978 to "reduce reliance on fossil fuels by increasing the number of … energy-efficient cogeneration and small power-production facilities" known as QFs. *Portland Gen. Elec. Co. v. FERC*, 854 F.3d 692, 694 (D.C. Cir. 2017) (internal quotations omitted); *see also* 16 U.S.C. § 796(17); 18 C.F.R. § 292.101(b)(1); *Indep. Energy Producers Ass'n, Inc. v. Cal. Pub. Utils. Comm'n*, 36 F.3d 848, 850 (9th Cir. 1994) (discussing PURPA's policy objectives). Through PURPA, Congress sought to address two obstacles impeding the development of such nontraditional power facilities:

> (1) traditional electricity utilities were reluctant to purchase power from, and to sell power to, the nontraditional facilities, and (2) the regulation of these alternative energy sources by state and federal utility authorities imposed financial burdens upon the nontraditional facilities and thus discouraged their development.

FERC v. Mississippi, 456 U.S. at 750–51.

To address the first of these barriers—the reluctance of utilities to buy and sell power from QFs—Congress directed FERC to create rules that *require* utilities to "purchase electric energy" from these smaller facilities. *See* 16 U.S.C. § 824a-3(a)(2); 18 C.F.R. § 292.303(a). The certainty that it will not be forced out of the market by traditional generators allows a potential QF developer to make the long-term plans necessary to develop new facilities. *See Indep. Energy Producers Ass'n, Inc.*, 36 F.3d at 850.

To overcome the second obstacle—the imposition of financial burdens on non-traditional facilities that deters development—PURPA requires that FERC promulgate rules to prevent utilities from discriminating against small power producers by setting artificially low rates. *See* 16 U.S.C. § 824a-3(b). In response, FERC promulgated regulations giving QFs the right to sell power to the electrical utility at a price based on the incremental savings to the utility. *See* 18 C.F.R. § 292.304(d)(1). Thus, the price the utility pays for power generated by a QF is equal to the amount it would have cost the utility to generate the power itself or to purchase it from other sources, an amount known as "avoided cost." *See* 18 C.F.R. § 292.303(a). By setting the price at which a utility must purchase QF power at the avoided cost, PURPA ensures that state regulators impose rates that are "just and reasonable to consumers" because the rate is no higher than the utility would otherwise pay to purchase that power. *See* 16 U.S.C. § 824a-3(b)(1).

FERC has recognized that long-term agreements to buy and sell power, such as PPAs, can be the "basis for the financing and construction of the QF projects," *see New York State Elec. & Gas Corp.*, 71 FERC ¶ 61,027 (Apr. 12, 1995), in large part because they guarantee the rate in place when the PPA is tendered and thereby shield a QF from rate volatility created by changes in fossil fuel prices. Creating this certainty for QFs in the market ultimately furthers PURPA's goal of reducing reliance on fossil fuels.

Thus, under FERC regulations furthering these significant legislative objectives, a QF "shall have the option" to sell power to the utility. 18 U.S.C. § 292.304(d). The QF may exercise that "option" in one of two ways.

First, the QF may sell energy "as available," at a rate based on the avoided cost at the time of delivery. *Id.* § 292.304(d)(1).

Second, the QF may enter into a legally enforceable obligation ("LEO") for a term specified by the QF at the time of the LEO's creation. *Id.* § 292.304(d)(2). The QF may choose to be compensated at the avoided-cost rate as calculated either at the time of delivery or at the time the LEO is created. *Id.*

FERC has explained that a LEO is intended "to prevent a utility from circumventing the requirement" to purchase power from a QF "merely by refusing to enter into a contract with the [QF]." 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980). Thus, the entire LEO concept rests on the QF's ability to create a LEO unilaterally, without requiring the consent or participation of the utility:

> [A] QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations.

Cedar Creek Wind, LLC, 137 FERC ¶ 61,006 ¶ 32 (Oct. 4, 2011). This requirement is central to the functioning of PURPA's regime: In order for QFs to be able to sell power to utilities, they must be able to create these obligations unilaterally, without the utility's permission or obstruction. For example, in *Cedar Creek*, FERC stated that a state could not limit the creation of LEOs by mandating that the QF possess a fully-executed contract because requiring the utility's signature would allow the utility to delay or prevent the creation of the LEO. *Id.* at ¶¶ 35–36.

Although the Commission has not adopted a bright-line LEO test, and has initiated a rulemaking for that purpose, that does not mean that individual QFs have been unable to form LEOs by committing to sell their output to Consumers. To the extent that any QF has established a LEO prior to any change in the Commission's PURPA implementation regime, it is entitled – irrespective of the Commission's direct October 5 Order to the same effect – to sell its output to Consumers at the then-applicable avoided cost rate. In the absence of a need for capacity, that rate is the energy + MISO PRA rate established by the Commission in the U-18090 proceeding, which remains in effect today.[17]

3. THE SETTLEMENT AGREEMENT FAILS TO RECOGNIZE THAT RESOLUTION OF PURPA RIGHTS OF QFS IN CONSUMERS' INTERCONNECTION QUEUE THAT HAVE SOUGHT PPAS UNDER THE COMMISSION'S EXISTING APPROVED AVOIDED COSTS IS ESSENTIAL FOR THE ORDERLY TRANSITION TO A NEW AVOIDED COST REGIME.

SEIA has made clear throughout this proceeding that its support for the use of properly designed, independently administered competitive solicitations to procure new capacity and set avoided costs for any new resources requirements not met by the RFPs is conditioned on the recognition of the right of QFs under development to contract with Consumers at the current energy + PRA avoided cost rate where Consumers does not have a current capacity need. As noted above, however, Consumers' PCA and the settlement agreement neglect to address the rights of existing projects in Consumers' interconnection queue to contract at this rate. Although many of these projects will no doubt never be built for various reasons, many others are ready to proceed with contracts with Consumers at the energy + MISO PRA rate and under terms and conditions reflected in Consumers' standard offer PPA – and have the right to do so under PURPA and the MPSC's October 5 Order issued in MPSC Case No. U-18090. Consumers has attempted to pretend that these projects, and the rights they have under PURPA and the October 5 Order, do not exist. Any transition to a new PURPA regime must recognize the rights of projects formed under the existing PURPA regime.

[17] Under a traditional PURPA regime, to the extent that Consumers has a need for additional capacity in the future, QFs that have contracted at the energy + MISO PRA rate should be eligible to receive full avoided capacity payments once the need arises. Alternatively, where additional capacity is procured through competitive solicitation, such QFs should have the opportunity to participate in, and bid their capacity into such solicitations. That is not only fair but creates additional competition and downward pressure on capacity pricing. Moreover, to the extent that QFs are placed in service under contracts at the energy + MISO PRA rate, there will be less risk regarding the ability to meet capacity needs in a timely fashion in the future.

4. THE SETTLEMENT AGREEMENT'S FAILURE TO RECOGNIZE THE PURPA RIGHTS OF QFS IN CONSUMERS' INTERCONNECTION QUEUE RENDERS THE PCA AS NOT THE MOST REASONABLE OR PRUDENT MEANS OF MEETING CONSUMERS' CAPACITY AND ENERGY NEEDS OVER THE NEXT 15 YEARS, AS REQUIRED BY MICHIGAN'S IRP STATUTE.

The settlement agreement recommends that Consumers' PCA, as modified, is the most reasonable and prudent means of meeting Consumers' energy and capacity needs over the next 15 years. This is simply false. Despite plans to acquire over 6,500 MW of new capacity, the PCA assumes that not a single MW of additional capacity beyond the 150 MW mandated in MPSC Case No. U-18090 will be acquired through PURPA. The plan simply ignores the legal mandates of PURPA. If Consumers moves forward with plans to acquire 6,500 MW of new capacity and is later found to be in violation of PURPA and must acquire the PURPA capacity pending in its existing interconnection queue, then Consumers will dramatically over-procure capacity to the detriment of ratepayers. It is not reasonable or prudent to assume no new PURPA capacity beyond 150 MW. If the Commission approves the settlement agreement to the exclusion of new PURPA QFs, then protracted appeals and further litigation will likely result.[18]

5. SEIA PUT FORTH A REASONABLE PROPOSAL FOR ADDRESSING THE PURPA QFS IN CONSUMERS INTERCONNECTION QUEUE. THE COMMISSION SHOULD CONDITION ANY APPROVAL OF THE SETTLEMENT AGREEMENT ON IMPLEMENTATION OF THE SEIA PROPOSAL.

To facilitate the transition to the new PURPA implementation regime envisioned by Consumers without the need for protracted litigation to resolve the rights of what is now more than 3.2 GW of PURPA QF projects pending in Consumers' interconnection queue, SEIA

[18] Indeed, sPower Development Company, LLC and a group of 256 Cypress Creek QFs have already filed PPA complaints against Consumers. See, MPSC Case Nos. U-20500 & U-20516. More complaints are likely to follow.

undertook the significant task of formulating a reasonable compromise proposal. SEIA shared its proposal with developers of PURPA QFs in Consumers' interconnection queue to gain support for this transition. Combined, the developers supportive of SEIA's compromise proposal represent more than 90% of the MW in Consumers' interconnection queue. If approved, the proposal has the potential to facilitate the implementation of Consumers' PCA while avoiding significant litigation. The Commission should condition any approval of the settlement agreement on implementation of the SEIA proposal.

The SEIA proposal for addressing PURPA QF projects in Consumers' existing interconnection queue is, as follows:

1. 800 MW_{AC} of QFs (projects greater than 150 kW_{AC} and less than or equal to 20 MW_{AC}) ("QFs") in the queue as of February 4, 2019 (the "Cutoff Date") would be eligible to enter into PPAs at the existing energy + MISO PRA ("energy only") rate. The 800 MW_{AC}, which is in addition to the 150 MW_{AC} of QFs already eligible for "full capacity" PPAs, would be allocated as discussed below. Projects less than or equal to 150 kWac would receive PPAs at Consumers' full avoided cost.

2. Where a Consumers RFP failed to meet an IRP-identified capacity need, QFs, based on priority of LEO formation (under rules to be adopted by the Commission), would be eligible to contract for the sale of energy and full capacity at the RFP clearing price and for the same term offered under the RFP. In addition, QFs with "energy only" PPAs would be eligible to bid into future RFPs to replace an existing contract with an RFP contract.

3. The PPA utilized for all QFs would be the Commission-approved standard offer PPA for QFs $\leq$ 2 MW and the Commission-approved standard offer PPA with four modifications for QFs greater than 2 MW_{AC}. The four modifications are, as follows:
    1. Section 4.3: Outside Start Date time limit extended to 365 days
    2. Section 4.3: Allow for the use of a suety bond to satisfy the Earnest Money Deposit
    3. Section 4.5: Seller termination right if interconnection costs identified in Distribution Study exceed $125,000/MW

4. Section 8.3 and Exhibit A, Option 3: Reduction of the Administrative fee to $0.10 per megawatt-hour.

4. Allocation of the 800 MW_{AC} would be as follows:

a) After the award of the 150 MW_{AC} of full capacity PPAs, 800 MW_{AC} of energy + MISO PRA PPA rights would be awarded to eligible projects submitted to the queue as of the "Cutoff Date".

b) Eligibility requirements as of application for allocation would be (a) current status in the interconnection queue (i.e., either a complete application and up-to-date payment of fees or pending Consumers' determination of completeness); (b) FERC QF certification, and (c) site control through ownership, lease, or option to purchase or lease for 20-year PPA term.

c) Within 30 calendar days of approval of the settlement agreement by the MPSC, developers must send a statement to Consumers identifying those eligible projects they wish to include in the allocation process and provide Consumer with documentation of project eligibility. Consumers will have 30 days to confirm project eligibility and shall advise each developer of its determination. If Consumers identifies a ministerial defect in a developer's eligibility determination, it shall promptly inform the developer, who shall have five business days to cure such defect. At the conclusion of all such cure periods, Consumers will notify all eligible developers of their allocation award.

d) The 800 MW_{AC} would be allocated to developers on a proportional basis based on their qualifying MW in the Consumers interconnection queue as of three specified dates – (a) February 22, 2018 (date of Commission's order on motions for reconsideration) ("Bucket 1"), (b) October 5, 2018 (date of Commission's order on reopened proceeding) ("Bucket 2"), and (c) the Cutoff Date ("Bucket 3").

e) Allocations within each bucket would be made on a self-contained basis. There would be no rollover of eligibility from earlier buckets to later ones.

f) Rather than allocating capacity through a lottery, each developer in each bucket would be awarded allocation based on the application of a defined percentage factor to its total number of eligible MW in the bucket.

g) Different percentage factors would be applied to each bucket to recognize the priority and investment of earlier queued projects. The percentages would be set so that when applied to the total eligible MW_{AC} in each bucket and aggregated, the total awarded MW would equal 800 MW_{AC}. The percent awarded in

Bucket 2 will be equal to the percent that 800 MW_{AC} is to the total MW_{AC} of eligible projects in queue as of the Cutoff Date (e.g. 800 MW_{AC} is 25% of 3.2 GW_{AC}), subject to a floor for Bucket 2 of 22%. The percent to be applied to Bucket 1 will be equal to the percent applied to Bucket 2 plus 10 percentage points (e.g. if Bucket 2 is 25%, then the percent for Bucket 1 is 35%), subject to a floor for Bucket 1 of 32%. The percent applied to Bucket 3 is the resulting percentage necessary to get to 800 MW_{AC} after the allocations are performed for Bucket 1 and Bucket 2. Any positive or negative percent adjustments needed to get to 800 MW_{AC} total for any reason will be applied to Bucket 3. For example, based on current estimate of the size of the three buckets and allowing for an increase in the size of the third bucket between the beginning of the year and the Cutoff Date, it appears that applying a 35% factor to Bucket 1, a 25% factor to Bucket 2, and 15% to Bucket 3 would yield a total award of approximately 800 MW_{AC}. Percentages would need to be adjusted to yield exactly 800 MW_{AC}. In this example and for illustrative purposes only, each developer in Bucket 1 would receive an award equal to 35% of its eligible MW in that bucket, and so on with respect to the applicable percentages in Buckets 2 and 3.

5. With respect to interconnection:

a) Awarded MW can be aggregated and/or transferred within and among awardees (and across buckets) for thirty days to generate an initial list of projects that would comprise the Award Queue. A waiver to the interconnection standards would be granted to allow the Award Queue to be processed on a priority basis after the 150 MW and any project with a signed interconnection agreement. Projects within the Award Queue would be processed in sequential order relative to each other and in accordance with Consumers' current practice of allowing projects that are ready to move forward to proceed ahead of those that delay execution of study agreements and payments.

b) At any time after the formation of the Award Queue a developer could transfer any portion of its allocation to a specific project outside of the Award Queue, but any such project would enter the Award Queue at the back of the line. The project transferring allocation would return to its position in the sequential queue behind the Award Queue or withdraw from the queue.

c) Lower project queue order takes precedent when transferred or aggregated. In other words, if a QF with a more favorable queue position transfers an award to a QF with a less favorable queue position, then the less favorable queue position applies. Transfers that occur after the initial 30-day period go to the end of the Award Queue for purposes of interconnection study priority.

d) Consumers will complete engineering review and distribution study for all projects in the Award Queue by December 31, 2019.

e) Consumers will give QFs the option to contract directly for interconnection construction based on specifications provided by Consumers and subject to Consumers' right to confirm build to specifications. If a developer does not elect to contract directly for interconnection construction, then Consumers will use commercially reasonable efforts to interconnect 500 MW_{AC} of grandfathered QFs by December 31, 2020 and all grandfathered QFs (950 MW_{AC}) by December 31, 2021.

f) The Settlement Agreement would be conditioned on Commission approval of all interconnection rule waivers necessary to implement the lottery/interconnection provisions.

6. Consumers would conduct competitive solicitations for at least 300 MW_{AC} of solar in 2020 and 2021 and 500 MW_{AC} in 2022 that are open to all projects that have submitted interconnection requests as of the RFP date.

SEIA's proposal reflects a significant compromise wherein less than 25% of the amount of MW currently pending in Consumers' interconnection queue would proceed to obtaining PURPA PPAs. The proposal, however, ensures that every developer with QF projects in queue would have a right to move forward with a portion of its portfolio or could transfer that right to another QF. SEIA's proposal would eliminate the need or the Commission to determine on a case-by-case basis the rights of every QF in Consumer' interconnection queue. The proposal limits the amount of QF capacity that would move forward under PURPA and ensures that Consumers will engage in competitive bidding in the near future to acquire additional needed capacity. SEIA recommends that the Commission condition any approval of a settlement agreement in this case on implementation of this proposal.

Fraser Trebilcock LAWYERS

B. <u>THE SETTLEMENT AGREEMENT BALDLY ASSERTS THAT CONSUMERS DOES NOT HAVE A CAPACITY NEED WHEN THE RECORD OF THIS CASE CLEARLY DEMONSTRATES OTHERWISE. THE COMMISSION SHOULD DETERMINE THAT CONSUMERS HAS A CAPACITY NEED IN THE AMOUNT OF 80 ZRCs AND THAT ADDITIONAL QFs IN CONSUMERS INTERCONNECTION QUEUE WITH THAT CAPACITY ARE THEREFORE ENTITLED TO CONTRACT WITH CONSUMERS AT THE FULL AVOIDED CAPACITY RATE</u>.

After reviewing Consumers' IRP, SEIA's witness, Mr. Lucas, determined that Consumers' proposed assessment that it does not have a need for additional capacity is suspect. Indeed, it was revealed during this IRP proceeding that a component of Consumers' baseline capacity assessment, namely the T.E.S. Filer City plant power purchase agreement ("PPA") amendment that would have provided additional capacity, will now not be realized. Furthermore, during the pendency of this proceeding, the Commission did not approve Consumers' proposed 100 MW self-build solar facilities including in Consumers' REP proceeding in MPSC Case No. U-18231. The ALJ also determined that Consumers' reliance on conservation voltage reduction ("CVR") was unreasonable because Consumers has not completed its CVR pilot.[19] Considering these gaps in Consumers' capacity plan, Commission should find that Consumers does, in fact, have a capacity need that obligates it to make full capacity payments to QFs beyond the 150 MW previously required by the Commission.[20]

Although the ALJ in her PFD does find that Consumers has a capacity need because Consumers is planning to acquire long-term capacity,[21] she does not make a specific

[19] PFD, p. 169.
[20] This is especially true given that Consumers' capacity demonstration relies on aggressive and speculative plans for meeting its near-term capacity needs through unprecedented levels of demand side management ("DSM").
[21] PFD, p. 289.

recommended capacity need determination.[22] Based on the record in this proceeding, and regardless of whether the Commission approves or rejects Consumers' proposed IRP, the Commission should find that Consumers has a capacity need of no less than 80 ZRCs.[23] Consumers' capacity need would be even greater if Consumers were to utilize an industry standard electric vehicle growth forecast and less aggressive DSM projections.

1. CONSUMERS' PLANNED CAPACITY ADDITION FOR T.E.S. FILER CITY IS NO LONGER AVAILABLE.

Consumers' analysis, as presented in its application, shows that Consumers has a capacity surplus throughout the next ten years. Consumers' capacity surplus, however, is the smallest in 2021. In that year, Consumers projected a capacity surplus of just 34 ZRCs in its baseline capacity positions and 109 ZRCs for its adjusted baseline capacity position.

After Consumers filed its application in this case, however, Consumers learned that its planned incremental ZRCs associated with the T.E.S. Filer City PPA amendment will now no longer be available. Mr. Lucas explained:

> As I noted, there is much that must fall into place for CE's plan to fulfill its forecasted capacity need. There are many assumptions embedded in CE's IRP that may prove inaccurate, and different sensitivities that could come to fruition and change the outcome. One such assumption has recently come to light. After the time that CE conducted is modeling for this IRP, Filer City's request for QF status at FERC was rejected. The planned capacity for Filer City was included in CE's base capacity position. Consumers now no

[22] It should be noted that the ALJ's basis for finding a capacity need was different than that stated here. As explained above, SEIA relies on record evidence that Consumers' PCA does not include sufficient generation resources to meet its own baseline capacity need. In contrast, the ALJ found that Consumers' proposal to procure additional generation resources necessarily demonstrates a capacity need.

[23] Consumers' final projected capacity surplus is the smallest in 2023. In that year, Consumers projected a capacity surplus of just 183 ZRCs. This capacity need determination is comprised of the 157 ZRCs associated with the failed TES Filer City PPA amendment, the 100 MW (50 ZRCs) associated with Consumers' self-build solar facilities included in its REP, and 56 ZRCs associated with CVR that the ALJ determined was unreasonable to include in the PCA. With the loss of the 157 Filer City ZRCs, 50 ZRCs for the REP solar facilities, and 56 ZRCs for CVR, Consumers now has a projected capacity deficit of 80 ZRCs in its baseline capacity position and 154 ZRCs in its adjusted baseline capacity position in 2023.

longer expects to have the additional approximately 157 ZRCs for Filer City in its supply portfolio by June 1, 2020.[24]

Due to the elimination of the 157 ZRCs associated with the T.E.S. Filer City PPA amendment, Consumers' adjusted baseline capacity demonstration now shows that Consumers has a need for additional capacity.[25]

2. THE COMMISSION DID NOT, AND SHOULD NOT NOW, APPROVE CONSUMERS' PLANNED 100 MW SELF-BUILD SOLAR FACILITIES INCLUDED IN CONSUMERS RENEWABLE ENERGY PLAN.

On September 29, 2017, Consumers filed an application, testimony and exhibits in MPSC Case No. U-18231 seeking approval for its amended REP pursuant to 2008 PA 295, MCL 460.1001 et seq., ("Act 295"), as amended by 2016 PA 342 (Act 342"). Consumers' REP set forth Consumers' plan to add up to 525 MW of new wind facilities and up to 100 MW of solar facilities to meet Michigan's enhanced REC standard under Act 342.

On February 7, 2019, the MPSC issued its order in Consumers' REP proceeding, granting, in part, Consumers' REP. Importantly, the Commission deferred ruling on Consumers' proposed 100 MW of solar facilities to this IRP proceeding.[26] The proposed settlement agreement fails to address this issue. The MPSC did not, and should not now, approve Consumers' proposed solar facilities.

Consumers' REP was unreasonable and imprudent. Consumers' proposed REP did not include any renewable resource options from independent power producers. Instead, Consumers' proposed REP was an unnecessarily high-cost plan focused solely on utility-owned resources. Incorporating purchases of renewable energy and capacity from QFs into

[24] 8 Tr. 1972, ln. 18 – 1973, ln. 2 (internal citations omitted).
[25] With the loss of the 157 Filer City ZRCs alone, Consumers now has a projected capacity deficit of 123 ZRCs in its baseline capacity position and 48 ZRCs in its adjusted baseline capacity position in 2021.
[26] Order dated February 7, 2019, MPSC Case No. U-18231, pp. 27-28 and Order Paragraph A.

Consumers' REP would have enabled Consumers to fully comply with Michigan's REC standard at a lower cost than the new utility-owned resources proposed in Consumers' REP. Consumers' failure to include lower-cost purchases from independent power producers in its REP was unreasonable and imprudent.

Consumers' plan for complying with Michigan's renewable energy standard included the development of two new 50 MW solar arrays at a cost of $79 million each. The projected Levelized Cost of Energy ("LCOE") for these resources was $135.10/MWh. On March 8, 2018, Consumers filed supplemental testimony and exhibits updating its REP costs due to the effects of the federal Tax Cuts and Jobs Act of 2017. Due to the tax law changes, Consumers' revised LCOE of these solar facilities was projected to be $126.35/MWh and $126.71/MWh.[27]

In contrast, Cypress Creek Renewables, LLC's witness Casey May testified about the cost of renewable energy, capacity and RECs from independent power producers.

> Under the Commission's recently approved avoided cost rates for Consumers in MPSC Case No. U-18090, the LCOE from solar projects will be approximately $95/MWh- $110/MWh, depending on the various assumptions utilized. Consumers estimates that the cost it projects to pay for solar energy and capacity from PURPA projects will be approximately $99.38/MWh (see response to discovery request 18231-CCR-CE-60, attached as Exhibit CCR-8 (CJM-8)). Thus, Consumers could pay the QF $16-$30 per REC and the cost to Consumers would be less than or equal to Consumers' proposed solar projects included in Consumers' REP.[28]

Furthermore, the record in this case reflects that the LCOE for many resources available to Consumers and included in its resource modeling in this proceeding are far below the LCOE of the solar facilities included in Consumers' REP. Exhibit A-13 shows the LCOE of resources screened in Consumers' IRP modeling, including numerous resources available below

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[27] 4 Tr. 212-13, MPSC Case No. U-18231.
[28] 4 Tr. 300, MPSC Case No. U-18231.

$95/MWh. In short, Consumers can meet its capacity needs and renewable portfolio standards with less costly resources than the planned 100 MW of utility self-build facilities included in its REP. The Commission should address this issue that it deferred to this case and not approve Consumers' planned self-build 100 MW of solar facilities.

The elimination of the 100 MW (50 ZRCs) associated with Consumers' self-build solar facilities means that Consumers has a need for additional capacity and should therefore be required to contract with QFs in its interconnection queue at the Commission-approved full capacity rates.

3. THE ALJ DETERMINED THAT CONSUMERS' RELIANCE ON CVR TO MEET ITS PROJECTED DEMAND WAS UNREASONABLE.

Capacity associated with Consumers' implementation of CVR was included in Consumers final capacity position in this case. In her PFD, the ALJ found that the Commission should not include capacity from Consumers' pilot CVR program in its PCA. The ALJ stated, "the PCA's reliance on CVR is premature and should not be approved until the company's next IRP, when the results of the ongoing pilot program can be reviewed."[29] Despite the ALJ's recommendations, the settlement agreement includes the CVR capacity. Thus, the 56 ZRCs associated with Consumers' CVR program should be removed from Consumers' final capacity position. Even if the Commission accepts the settlement agreement and the CVR included therein, the Consumers would still have a capacity shortfall of no less than 24 ZRCs.

4. *CONSUMERS' ELECTRIC VEHICLE GROWTH FORECAST IS DEFICIENT.*

Consumers' analysis of its capacity position differs from other energy forecasts, such as the Energy Information Administration's ("EIA's") Annual Energy Outlook ("AEO").

[29] PFD, p. 169.

Mr. Lucas' analysis shows that Consumers' baseline capacity forecast more closely resembles the AEO forecast than Consumers' adjusted forecast.[30] Mr. Lucas explains that a substantial difference between Consumers' projects and EIA's forecasts related to electric vehicle sales.

> While both project very flat residential and commercial sales, AEO 2018 projects substantially higher electric vehicle transportation sales. In 2018, after scaling transportation sales by 47% (the same fraction of CE sales to total RFC-M sales), AEO 2018 projects transportation sales of 108,873 MWh in 2018, or about 0.30% of CE's adjusted sales. CE's electric vehicle (EV) load forecast shows only 1,677 MWh in 2018, representing only 0.005% of sales. While AEO 2018 includes more than just residential EV usage in its transportation sales figures, the magnitude of difference and growth is hard to explain.
>
> Aside from the dramatic difference in starting point, AEO 2018 projects 2030 transportation sales to grow more than 6 times from its 2018 values, while CE's EV load forecast actually projects EV energy sales to fall between 2018 and 2022 before growing somewhat through 2030. By 2030, AEO 2018's scaled transportation sales would comprise 1.9% of CE's net sales, while CE's own forecast remains a *de minimus* 0.007%.[31]

Thus, the difference between Consumers' electric vehicle load growth forecast and industry standard forecasts is significant and certainly not immaterial to Consumers' forecasted capacity position. Mr. Lucas' examination of other industry sources, such as Bloomberg New Energy Finance 2018 Electric Vehicle Outlook, Edison Electric Institute and the Lawrence Berkeley National Laboratory all project electric vehicle growth consistent with EIA's AEO, rather than Consumers' own forecast.[32]

Mr. Lucas concludes that while Consumers uses standard forecasting methodologies, Consumers' analysis likely understates its capacity needs.

> With the exception of the transportation assumptions, CE's forecast methodology appears to be sound. However, two of the three load

[30] 8 Tr. 1961.
[31] 8 Tr. 1961, ln 10 – 1962, ln. 5 (internal citations omitted).
[32] 8 Tr. 1962-63.

> sensitivities would cause the Company to go from a net capacity surplus to a net capacity shortfall position between 2021 to 2029. Additionally, the embedded DSM reductions found in CE's adjusted sales forecast substantially exceed those included in AEO 2018. Together, these factors suggest that the actual peak demand that CE attains in the future will more likely be higher than forecast than lower.[33]

The Commission should direct Consumers to utilize an industry standard forecast for electric vehicle growth in its future IRP proceedings.

The ALJ likewise found that Consumers' electric vehicle load growth forecast included in Consumers' PCA was deficient.[34] "The ALJ finds that Consumers Energy's forecast is deficient in failing to recognize project increases in electric vehicles . . . "[35] The ALJ, however, went on to state that the record was insufficient to conclude that the deficiency was material to Consumers' plan.[36] On the contrary, SEIA's witness Mr. Lucas presented ample evidence in this case showing the dramatic discrepancy between Consumers' electric vehicle load forecast and industry standard forecasts and the impact that the discrepancy would have on Consumers' forecasted capacity position.

Utilization of an industry standard forecast would improve Consumers' capacity forecasts and bring Consumers' forecasts more in line with independently developed and tested outlooks. The record shows that reliance on industry standard forecasts, such as EIA AEO, would further increase Consumers' forecasted capacity need.

[33] 8 Tr. 1963, ln. 17-22.
[34] *Id.*, p. 175.
[35] *Id.*
[36] *Id.*

5. *Even if the Commission approves the Settlement Agreement, the Commission should still explicitly find that Consumers has a capacity need of no less than 80 ZRCs.*

In its Exceptions to the PFD filed in this proceeding, SEIA noted that Consumers had an actual capacity shortfall for the reasons stated above. In its replies to exceptions, the MPSC Staff agreed that Consumers would have a capacity shortfall if the ZRCs identified above are removed from Consumers' PCA.

> Removing the 157 ZRCs from the surplus for the Filer City PPA that FRC refused to recertify as a qualifying facility, (6 TR 274), 50 ZRCs for solar in the Company's Renewable Energy Plan that the Commission deferred to this case, (6 TR 253), and 56 ZRCs for the CVR that the ALJ recommended excluding from the IRP leaves the Company with the 80 ZRC deficit SEIA referenced.[37]

The MPSC Staff, however, claimed that if Consumers has a capacity shortfall, then Consumers should be permitted an opportunity to revise its PCA before the Commission determines a capacity need, such as by allowing Consumers to conduct more DSM or to adjust its competitive bidding plans.[38] The MPSC Staff's suggestion to expand DSM even further would be incremental to an already aggressive and unprecedented levels of assumed DSM included in Consumers' PCA.

The settlement agreement, however, does not accommodate Staff's proposal. The settlement agreement states that Consumers' PCA, as modified by the settlement agreement, should be approved.[39] The modifications to the PCA contained in the settlement agreement, however, do not address the elimination of the assumed capacity addition for Filer City. Consequently, the settlement agreement assumes that the Filer City ZRCs will be in the PCA when, in fact, they cannot be.

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[37] MPSC Staff's Replies to Exceptions, p. 27.
[38] *Id.*, p. 28.
[39] Settlement Agreement, ¶1.

Additionally, the settlement agreement adopts the levels of DSM contained in Consumers' application. At paragraph 2 of the settlement agreement, the parties agree to 607 MW from 2019 levels for demand reduction, 44 MW for CVR, and 718 MW for energy waste reduction. Because these levels of DSM are consistent with the levels assumed in the PCA, the settlement agreement does not accommodate Staff's proposal that Consumers be allowed to amend its PCA to include more DSM to avoid a Commission finding of a capacity need.

Further, it is not just and reasonable, or in the public interest for the Commission to approve 100 MW of utility self-built solar capacity included in Consumers' renewable energy plan and PCA at a price projected to be $126.35/MWh and $126.71/MWh when solar capacity acquired under PURPA at Consumers' avoided costs will be less costly. Consumers full avoided cost rate approved in MPSC Case No. U-18090 would amount to approximately $95/MWh for solar capacity and energy.

The settlement agreement states that Consumers' has no PURPA capacity need so long as it is implementing its PCA.[40] While the settlement agreement contains this assertion, the bald claim alone does not make it true. The dogged efforts to avoid PURPA's must purchase obligation and requirement to pay full avoided costs for PURPA capacity when the facts show that Consumers has a capacity need, puts the settlement agreement at risk for further legal challenges. Even if the Commission were to approve Consumers' settlement agreement, it should still find that Consumers has a capacity need and quantify that need.

[40] Settlement Agreement, ¶ 7(i).

C. **THE PROPOSED SETTLEMENT AGREEMENT PROVIDES CONSUMERS WITH AN UNNECESSARY AND UNWARRANTED SUBSTANTIAL FINANCIAL COMPENSATION MECHANISM TO THE DETRIMENT OF RATEPAYERS AND QFS.**

The settlement agreement provides Consumers with a financial compensation mechanism ("FCM") for any new third-party PPAs approved by the Commission after January 1, 2019, except for PPAs executed under Consumers' renewable energy plan.[41] The FCM would be added to the underlying costs of the PPA to provide a financial incentive to Consumers for entering the PPA. In its application, Consumers claimed that the FCM:

> is intended to incentivize the Company to implement the competitive-bid methodology in the PCA and execute PPAs that are cost-effective for customers, while compensating the Company for the inherent financial burden associated with the imputed debt and corresponding financial obligations associated with PPAs.[42]

The record in this case shows that Consumers made essentially three arguments in support of its FCM. First, Consumers notes that the traditional regulatory model creates an incentive for Consumers to build assets on which it can earn a return, rather than contract for assets which is a pass-through expense, and that it loses the benefit of these incentives when it enters into PPAs.[43] Second, Consumers claims that long-term PPAs place a financial strain on the company because PPAs create imputed debt that is accounted for by credit rating agencies.[44] Third, Consumers claims that, by leveraging the financial balance sheet of Consumers without offering a corresponding payment, third-party developers are being subsidized by Consumers' investors. Consumers asserted that without an FCM, it would abandon the proposed competitive solicitation process and possibly the entire PCA.

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[41] Proposed Settlement Agreement, ¶ 9.
[42] Application at 14.
[43] 8 Tr. 1472.
[44] 8 Tr. 1474.

In her PFD, the ALJ correctly determined that Consumers' proposed FCM is unnecessary, in excess of the statutory cap, does not properly reflect the cost to Consumers and its ratepayers of imputed debt, and if used in the competitive bidding process, would unfairly favor Consumers and its affiliates.[45] The ALJ recommended that Consumers' FCM be rejected.[46]

Nevertheless, the signatories to the settlement agreement agreed to give Consumers an FCM. The FCM would be applied to the total PPA payments in a year multiplied by Consumers' weighted average cost of capital ("WACC"), which the parties agree is currently 5.88%. The FCM is not in the public interest, is unwarranted and unreasonable, and is set at the highest level permitted by law.

1. CONSUMERS INCORRECTLY CLAIMED THAT AN FCM IS NECESSARY TO OFFSET REGULATORY INCENTIVES TO BUILD ASSETS.

SEIA agrees that the traditional regulatory model incentivizes utilities to pursue utility-owned generation because the utility earns a return on utility plant in service but does not earn a return on expenses, such as the costs of PPAs. However, in granting a utility a monopoly franchise to provide electric service in a defined territory, the state does not guarantee the utility the right to build and own all the generation assets or to make a defined level of earnings.

The MPSC, however, should not succumb to utility demands for increased profits or to the claim that a government-regulated business must be paid in order to accept a changed regulatory and procurement regime. As SEIA's witness Mr. Lucas testified, there are other ways to compensate utilities fairly in the absence of an incentive for them to build and own generation assets:

[45] PFD, pp. 265-266
[46] *Id.*

> However, the regulatory compact that provides utilities with monopoly control over its customers does not contemplate a guaranteed level of earnings by the utility, let alone perpetual earnings growth, nor is the Commission obliged to provide utility investors the opportunity to earn returns above and beyond what is appropriate to maintain safe and reliable service. As the dynamics of the energy industry change, including the stagnation of energy sales and demand growth, the availability of cost-effective zero-marginal cost resources such as solar, and the plateauing and potential reversal of the decline in natural gas prices, the massive increase in utility investment in recent years cannot be hidden further by declining power supply costs. These factors point to increases in rates for customers as more costs are divided by fewer sales.
>
> One way that policy makers can counter this trend is to implement alternative regulatory structures that help break the bias towards utility-owned generation. For instance, performance-based ratemaking can link utility earnings to performance on specific, discrete metrics. ROE adders can be used to steer investments into areas that align with public policy goals. More radical business model changes, such as those found in the NY-REV proceeding, can change the scope of work that a utility is responsible for and compensate it accordingly.
>
> While SEIA is not averse to alternative regulatory structures, the way in which CE proposed to solve this issue through its FCM tax proposal is high problematic. It misapplies S&P's methodology for calculating imputed debt, resulting in a massive overstatement of costs. It levies the FCM tax as a penalty to third-party PPAs prior to a competitive evaluation, tilting the scales towards utility-owned generation. Despite its protestations to the contrary, CE's methodology would likely do nothing in practice to shift away from the traditional utility-owned paradigm.
>
> It should also be noted that CE will continue to have significant opportunity to generate earnings on transmission and distribution system investments. If it cannot compete successfully against independent power producers on a level playing field, then there is no reason that it should expect to realize revenues and profits on generation resources, particularly those where all development and operational risks are borne by third parties.

Thus, Consumers has no right to demand that ratepayers pay Consumers a financial incentive to not own generation and the ALJ agreed.

In her PFD, the ALJ determined that the record in this case does not show that Consumers needs an incentive to pursue a least-cost strategy of supply acquisition.[47] The ALJ correctly noted that Consumers has not currently pursued a business model of exclusively utility-owned resources noting that utility-owned resources currently make up only 70% of Consumers' supply portfolio.[48] The ALJ found that there were many reasons why Consumers would pursue a mix of supply resources in its shareholders best interests.[49] The ALJ also noted that the law requires Consumers to consider alternate sources of generation to utility-built resources.[50]

2. The Settlement Agreement Fails to Acknowledge That Consumers Is Obligated Under Federal Law to Enter to PPAs With QFs Regardless of Whether It Receives an FCM.

Consumers inaccurately stated that it is not legally obligated under PURPA to pay QFs for capacity, and therefore can avoid doing so if it is not awarded an FCM.[51] Consumers' argument is that where it has a capacity need it can simply choose to self-build a large generation resource to meet that need and thereby be relieved of the obligation to pay QFs for full capacity. That is decidedly not the case. The whole point of PURPA is to require utilities to look first to comparably priced QF generation to meet their resources needs and to the extent that they can do so thereby reduce the need to build new generation resources themselves. Whatever conclusion this Commission may reach about the appropriateness of Consumers receiving an FCM in connection with competitively procured PPAs, under no circumstances

[47] PFD, pp. 254-257.
[48] *Id.*, p. 254.
[49] *Id.*
[50] *Id.*, p. 255.
[51] Consumers' Exceptions, p. 84.

should Consumers be entitled to receive a massive incentive and windfall for complying with its obligations under federal law.

Moreover, there is no nexus between this IRP proceeding and Consumers' proposed PCA and the issue of whether Consumers should receive an FCM on PURPA PPAs. Indeed, in its approval of a standard offer PURPA contract in the U-18090 proceeding, the Commission, with Consumers' concurrence, expressly provided that Consumers' right to receive an FCM on a PURPA PPA should be determined at the time Consumers seeks approval of the PPA. Thus, if the Commission does not deny the FCM altogether, it should certainly not grant that request with respect to PURPA PPAs.

3. CONSUMERS INCORRECTLY CLAIMED THAT AN FCM IS NECESSARY TO OFFSET NEGATIVE TREATMENT OF PPAS BY CREDIT RATING AGENCIES.

Consumers claimed that the FCM is necessary to offset negative treatment of PPAs by credit rating agencies. Consumers' claim was demonstrated by several parties' witnesses to this proceeding, including SEIA's witness Mr. Lucas, to be entirely without merit, and the ALJ concurred.

SEIA's witness Mr. Lucas provided information from credit rating agencies concerning the treatment of long-term PPAs.[52] Mr. Lucas carefully explained that Consumers' witness Maddipati exaggerates the effects of PPAs on the utility's imputed debt by credit rating agencies and misapplies S&P's methodology.[53] When questioned, Mr. Maddipati could not identify even a single utility whose credit rating was downgraded due to PPAs, nor could Mr. Maddipati demonstrate that Consumers' own credit rating would be hurt as a result of Consumers' PCA.[54]

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[52] 8 Tr. 1994-96.
[53] *Id.*
[54] 8 Tr. 1996-97.

Moreover, Consumers dramatically overstated the risks of being a party to a PPA, in part due to its misapplication of S&P's imputed debt methodology, and is effectively asking that ratepayers pay twice for portions of the same product. Mr. Lucas explained:

> [T]he proposed FCM tax would require a 24.2% adder on a 25-year PPA. As also shown, this figure is based on an incorrect application of S&P's methodology for calculating imputed debt on PPAs. Regardless of whether one agrees that CE shareholders should be compensated for acting as counterparties to PPAs, it is simply not the case that the risk requires this size of a premium. Using simple expected value math, CE would be collecting additional revenues commensurate with the risk that roughly 1 in 5 PPAs would fail to provide any energy to CE at all and that CE would have to pay the PPA holder regardless. If CE were signing contracts with risky developers with massively disadvantageous contract terms, this risk could be more likely. But given the vetting of the RFP process, the expertise required to win a competitive solicitation, the performance security required by PPAs, and the many attorneys who will be reviewing contract terms, this outcome is exceedingly unlike to occur. CE's proposed FCM tax is simply too high for the risk.[55]

Thus, Consumers sought dramatically inflated incentive payments to compensate it for its risk of being a party to a PPA. While the settlement agreement adopts a 5.88% FCM for Consumers, the 5.88% level is at the statutory maximum that the Commission could award. By law, any financial incentive on PPAs must not exceed the utility's weighted average cost of capital.[56]

Today, Consumers does not have an FCM for existing PPAs, which are substantial. At present, Consumers has very large, long-term PPAs with MCV and Palisades and carries current levels of imputed debt ranging from $992 million to $1.3 billion.[57] Despite these PPAs, Consumers' debt ratings have all improved between 2010 and 2017.[58] Thus, existing rate-making methodologies, including a review of the utility's authorized rate of return, are more

[55] 8 Tr. 1998, ln. 15 – 1999, ln. 4 (internal citations omitted).
[56] See, MCL 460.6t(15).
[57] 8 Tr. 1998.
[58] *Id.*

than sufficient to maintain investor interest and ensure financially sound utilities. The ALJ, herself, determined that Consumers has a supply portfolio with 30% PPAs and maintains good credit ratings.[59]

Consumers' attempt to minimize the fact that its financial health has not suffered even though a large portion of its resource needs have for some time been met by PPAs is unconvincing.[60] Although Consumers stated that the portion of its generation supplied by PPAs may significantly increase under the PCA, there is no guaranty that that will occur. Indeed, Consumers is not proposing in its PCA to increase its supply portfolio above current levels until 2025 or later.[61] Rather than applying an exorbitant and unsubstantiated FCM to all future PPAs, it would be much more reasonable to consider the need for an FCM after PPA supply exceeds some baseline level, such as the 30% PPA contribution that has existed for some time.

4. CONSUMERS MISINTERPRETED HOW CREDIT RATING AGENCIES CALCULATE IMPUTED DEBT.

Mr. Lucas' analysis shows that Consumers is misapplying S&P's imputed debt methodology. Mr. Lucas explained:

> I was able to verify that CE is applying the methodology incorrectly. The actual guidance that S&P provides on this issue is clear that the imputed debt is only calculated based on the capacity value of the contract, not the full value of the PPA as CE proposes.
>
> We calculate the present value (PV) of the future stream of **capacity** payments under the contracts as reported in the financial statement footnotes or as supplied directly by the company… Some PPA contracts refer only to a single, all-in energy price. We identify an **implied capacity pric**e within such an all-in energy price, to determine an **implied capacity payment** associated with the PPA. This **implied capacity payment** is expressed in dollars per kilowatt-year, multiplied by the number of kilowatts under contract. (In cases that exhibit markedly different capacity factors, such as wind power,

[59] PFD, p. 245.
[60] Consumers' Exceptions, pp. 84-85.
[61] PFD, p. 248.

> the relation of capacity payment to the all-in charge is adjusted accordingly.)
>
> In situations where the contract does not contain an explicit capacity price, S&P will use publicly available information such as RTO clearing prices and resource capacity carrying credits to determine the implied capacity payment. For CE, this means the PRA clearing price and the 50% solar capacity credit. When this calculation is properly performed, the imputed debt value falls precipitously.[62]

Because Consumers proposed to apply the FCM to the full value of the PPA, as does the settlement agreement, and not just the capacity value of the PPA, Consumers dramatically inflates the cost of the FCM, in some cases by nearly 50 times.[63] Consumers seemed unaware of the critical distinction in S&P's imputed debt methodology.[64] The ALJ, herself, determined that Consumers' claim of financial harm without the FCM was "hyperbole."[65] If the Commission determines that a FCM is warranted, under Consumers' imputed debt theory, the FCM should be applied only to the capacity portion of the PPA payments, not the total payments as included in the settlement agreement.

5. CONSUMERS' PROPOSED FCM NEEDLESSLY INCREASES COSTS FOR RATEPAYERS AND TO THE DETRIMENT OF THIRD-PARTY DEVELOPERS.

SEIA's witness Lucas explained the fundamental fallacy with Consumers' proposed FCM:

> When a developer submits its bid, it incorporates all its costs, including interest on debt and return on equity. The debt and equity that are used to fund the project are based on many factors, including the strength of the developer, the terms of the contract, and the counterparty risk. The developer must also compete against other developers in the solicitation. This price pressure to contain costs and maximize the chance of winning the bid is exactly what a market is supposed to do, and is one of the reasons that CE's customers will be better off using a competitive solicitation to procure capacity.

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[62] 8 Tr. 2001, ln. 16 – 2002, ln. 14 (internal citations omitted).
[63] 8 Tr. 2002.
[64] 8 Tr. 2003.
[65] PFD, pp. 248-249.

> By adding an FCM tax to this transaction, CE is asking its customers to pay more for risk and return (expressed through the project financing that was used to build the project) that was already incorporated into the PPA price. CE also wants its customers to pay the Company for purchasing the output. As discussed earlier, the premise for the FCM tax is to compensate CE's shareholders and bondholders for the supposed increase in risk of being a counterparty to PPAs. But CE has offered no evidence and performed no analysis to show whether this risk even exists. It simply presents a "parade of horribles" scenario where capital investors would flee, borrowing costs would increase, and CE's customers would be left paying the bill.[66]

An FCM would result in Consumers' ratepayers providing far too much compensation to Consumers for alleged risks for which the utility is already compensated.

Moreover, Consumers has not quantified the cost impact of its requested FCM on ratepayers. When asked to compare the cost of the FCM to the hypothetical increase in borrowing costs due to uncompensated imputed debt for PPAs, Consumers indicated that it has not performed such an analysis.[67] Consumers has asked for an FCM without giving the MPSC the projected rate impacts of its proposal.

It should also be noted that Consumers is seeking to be paid a higher margin on PPAs, which require Consumers to do only a minimal amount of administrative work (for which they are already able to recover an administrative fee) and to take no risk, than they receive on major capital investments that require Consumers to expend funds and incur some degree of risk. Consumers further seeks to recover substantially greater returns for doing nothing than what third-party developers will likely realize for taking considerable development and operational risk in connection with their generation facilities.

[66] 8 Tr. 1999.
[67] 8 Tr. 2000.

6. *CONSUMERS' THREAT TO ABANDON ITS PCA ABSENT APPROVAL OF ITS FCM DEMONSTRATES CONSUMERS' PRIORITIZATION OF SHAREHOLDERS OVER RATEPAYERS AND THE URGENT NEEDS FOR FAIR AND EQUITABLE QF ACCESS.*

Throughout the course of this proceeding, Consumers claimed that it will not proceed with its PCA absent approval of a FCM. Thus, signatories to the settlement agreement may have felt compelled to agree to the FCM in exchange for other benefits of the PCA (e.g. coal plant retirements, competitive procurement, etc.) despite the overwhelming evidence in this case against the FCM. Consumers' assertions made clear that it is concerned more with the interests of its investors than its customers. SEIA's witness Mr. Lucas explained why Consumers' conduct is precisely why fair and equitable access by QFs is needed to protect ratepayers.

a. Consumers is putting its shareholders above its customers**.**

Consumers threatened to abandon the entire competitive procurement process for acquiring capacity and energy if it is not awarded the FCM. In response to discovery, Consumers states, "Every part of the plan is interdependent with the other parts. If the FCM is not approved, Consumers Energy would be compelled to evaluate whether the PCA remained viable. We can only speculate as to the outcome of that evaluation."[68] It is deeply troubling that Consumers would deny ratepayers the substantial benefits of the PCA unless it receives unjustified compensation for transitioning to the least-cost model for the procurement of generation resources. Consumers seems to have forgotten that it works for the public and is obligated to do what the MPSC and the Legislature determine is in the public interest.

As SEIA witness Mr. Lucas explained, the primary beneficiary of the FCM is Consumers' shareholders.

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[68] 20165-SEIA-CE-197, admitted into evidence as Exhibit SEIA-13 (KML-13).

> CE has provided no analysis that its borrowing costs would increase as a result of the PCA, nor that its return on equity must be higher to attract equity investors. As such, any incremental revenue collected from its customers through the FCM tax would accrue directly to its bottom line. This represents a direct transfer from its customers to its shareholders.[69]

Consumers' own witness Mr. Torrey explained that Consumers seeks the FCM as payment to change its business model from constructing utility-owned generating assets to using competitive solicitations to acquire PPAs.

> A non-regulated business has an incentive to lower its cost of goods sold and increase its earnings by contracting with a lower cost supplier. That is not the case when a regulated utility chooses a lower cost PPA over a utility-owned supply asset. A regulated utility choosing to enter into a PPA versus constructing or acquiring an asset is foregoing potential earnings. One might argue that any IOU management decision to forego an earnings opportunity would violate their fiduciary obligation to the IOU's owners.[70]

While it may be true that IOU management has a fiduciary obligation to act in the interest of its shareholders rather than in the interest of ratepayers, the MPSC must put ratepayers first and Consumers is obligated to accept the MPSC determination of what approach to procurement best serves ratepayer interests and has no entitlement to a massive payoff as a condition of accepting that determination. The Commission should make clear that Consumers should not withhold the many benefits of the proposed PCA from ratepayers unless the MPSC approves an FCM for Consumers and its shareholders.[71]

[69] 8 Tr. 2029, ln. 4-8.
[70] 8 Tr. 1473, ln. 14-19.
[71] Consumers' assertion in fn. 18 on page 65 of its Exceptions that it has not insisted on a high FCM as a condition of proceeding with the PCA is inaccurate and disingenuous. Consumers could not have made it more clear that if it does not get an FCM that it finds acceptable, it is unwilling to proceed with the increased procurement of solar resources through competitive solicitation called for by the PCA.

b. Other utilities use competitive solicitations without an FCM.

In his testimony, Mr. Lucas provided examples of other utilities procuring distributed resources through competitive solicitations without receiving a financial incentive for doing so. Mr. Lucas testified,

> In a recent proceeding for its subsidiary Public Service Co. of Colorado, Xcel Energy agreed to close a large coal-fired power plant and issue a competitive solicitation for up to 1,000 MW of wind, 700 MW of solar, and 700 MW of natural gas or storage. The response from the RFP was very strong, resulting in more than 430 proposals for 238 individual projects. Most of the renewable energy proposals paired generation with storage to further increase the capacity value of these resources. Pricing for the proposals was extremely robust, with wind and solar farms bidding at a median price (meaning half of the bids were below this level) of $18.10/MWh and $29.50/MWh, respectively. Interestingly, the median incremental cost of storage on these bids was only $2.90/MWh and $6.50/MWh for wind and solar, respectively.[72]

As a result, Xcel Energy procured 1,131 MW of wind, 707 M of solar, and 275 MW of energy storage, along with two existing gas plants, at an estimated savings of $213 million to $374 million.[73] Xcel Energy did not receive a financial incentive for conducting the solicitation and will recover the costs of the PPAs as ordinary operating expenses.[74] Thus, the MPSC should not view a financial incentive to the utility as a necessary precondition to realizing savings for ratepayers.

c. Consumers' actions demonstrate the importance of PURPA QFs.

Consumers' ratepayers are largely captive customers.[75] There is considerable demand for alternative energy supply options, yet ratepayers are restricted from customer choice.[76] The

[72] 8 Tr. 2030, ln. 16-24.
[73] 8 Tr. 2031.
[74] *Id.*
[75] See, 8 Tr. 2034-35.
[76] *Id.*

benefits of competition, however, can be realized for Consumers' ratepayers by requiring Consumers to purchase the output of QFs at Commission-approved avoided costs rates.[77] Mr. Lucas explains that Consumers' QF purchases at avoided costs are an effective check on the power of monopoly utilities.[78] Mr. Lucas testified, as follows:

> As distributed, zero-carbon resources increasingly become the economic and least-risk solution for meeting CE's customers' future energy and capacity needs, and in the absence of meaningful PURPA implementation, Michigan's limitations on customer choice will put customers into a bind. Without access to market pricing, without CE availing itself to competitive procurements, and without a robust QF market, CE will likely build or purchase and rate base all future resources. Although CE's customers would benefit from the environmental improvements of these projects, as shown previously, they will be over-paying for the resources.
>
> Absent strong regulation, a monopoly will have every incentive to increase prices and extract more from its captive customers. This is a classic exercise in market power, and one that competitive industries do not face because customers can simply choose another provider. Until Michigan has a broader discussion about the merits of this regulatory approach, it will be critical for the Commission to protect equitable and fair access for QFs.[79]

Consumers' threat to withhold the benefits of its PCA absent approval of its FCM is a demonstration of the exercise of monopoly market power to the detriment of ratepayers. A robust QF market where independent power producers can sell their output to the utility at Commission-approved avoided cost rates determined through a competitive solicitation is good for ratepayers.

[77] 8 Tr. 2035.
[78] *Id.*
[79] 8 Tr. 2036, ln. 3-15.

D. <u>THE SETTLEMENT AGREEMENT PROPOSAL TO ALLOW CONSUMERS TO OWN UP TO 50% OF NEW CAPACITY WILL LIKELY RESULT IN HIGHER COSTS FOR CUSTOMER AS COMPARED TO PURPA QFS OR THIRD-PARTY PPAS</u>.

The proposed settlement agreement allows Consumers to own up to 50% of the new solar capacity procured through the PCA.[80] Consumers proposes to depreciate these assets over 25 years.[81] While this capacity will be procured through a competitive process, Consumers' depreciation schedule combined with earning a return on and return of capital will translate into higher costs for customers than if it pursued more QF projects or competitively bid third-party PPAs.

In its IRP filed on March 29, 2019, DTE Electric Company ("DTE") used recent capital cost estimates from the National Renewable Energy Laboratory's 2018 Annual Technology Baseline (ATB).[82] For 2019, ATB assumes an installed cost of \$1.04/W_{DC} for a single-axis tracker system,[83] a figure that is in line with market data.[84] Further, DTE modeled a 30-year economic life over which to recover its costs, a 20% increase from the 25 years assumed by Consumers.[85] With these inputs, DTE calculated a LCOE for its company-owned solar projects of \$69/MWh.[86] If one were to instead recover these costs over a 25-year period, the LCOE would be approximately \$80/MWh.[87]

[80] Settlement Agreement, ¶ 8.
[81] Settlement Agreement, ¶ 7.
[82] DTE Electric IRP, MPSC Case No. U-20471, Schroeder Direct, p 17.
[83] DTE Electric IRP, MPSC Case No. U-20471, Schroeder Direct, p 19.
[84] U.S. Solar Market Insight 2018 Year in Review, SEIA and Wood Mackenzie (reporting a national average EPC turnkey PV price of \$1.04/ W_{DC} for utility tracking systems.)
[85] DTE Electric IRP, MPSC Case No. U-20471, Exhibit A-4, p 99.
[86] DTE Electric IRP, MPSC Case No. U-20471, Exhibit A-3, p 117.
[87] While there are some non-linear effects in the LCOE calculation, shortening the duration from 30 to 25 years will increase the costs by roughly the reciprocal ratio (30 / 25 * \$69/MWh = \$82.80/MWh) less the additional five years of fixed O&M costs.

By comparison, the LCOE of the current-approved energy + MISO PRA rate for a 20-year QF PPA is approximately \$51/MWh.[88] While it is possible that a competitive solicitation will drive costs lower than ATB figures, it would require prices to fall more than 35% from where they are today for Consumers-owned projects to have the same cost per MWh as QFs. Simply put, the PV industry is not yet able to build projects at an installed cost of roughly \$0.65/W_{DC}, so it is almost assured that PV projects owned by Consumers will be more expensive for its customers than 20-year QF PPAs or third-party PPAs.[89]

This cost increase is a function of utility ownership. By allowing Consumers to earn a return on the asset (on top of profits already included in the project developer's bid price), customers are paying profits to two entities. Additionally, by recovering all capital costs and taxes through its rate base over 25 years rather than a longer period, the rate impact is further increased. Even if one were to grant an unjustified FCM on top of the avoided cost rates approved for Consumers in MPSC Case No. U-18090, Consumers' customers would be better served by increasing QF capacity or disallowing company-owned projects in favor of third-party PPAs.[90]

In addition to the higher costs that utility ownership imposes, allowing Consumers to own half of the new capacity also subjects its customers to performance risk. If approved, the solar projects will be in Consumers' rate base and will allow the utility to recover costs from its ratepayers independent of the actual production of the facility. There is little incentive for Consumers to spend money to maximize the output of the facility throughout the year (for instance, by actively monitoring generation and quickly performing maintenance when needed)

[88] Lucas Direct Testimony at 30, 8 Tr. 1980.
[89] QF rates were established in Case No. U-18090. Third-party PPAs would not be constrained to recovering all costs plus an addition amount for Consumer's profits and taxes in a 25-year period.
[90] This hypothetical in no way suggests that SEIA supports the FCM.

as its revenue from the solar system is not dependent on production. However, third-party PPAs receive payment for energy that is only actually generated, which creates a very strong incentive for developers to maximize the system's production. This in turn reduces risks that Consumers' customers will pay for an asset that is underperforming.

E. <u>THE COMPETITIVE PROCUREMENT PROPOSAL CONTAINED IN THE SETTLEMENT AGREEMENT IS VAGUE, UNFAIR AND LACKS TRANSPARENCY</u>.

In her PFD, the ALJ correctly determined that Consumers' proposed competitive procurement methodology is biased towards utility-owned assets and fails to create a level playing field for independent developers.[91] Additionally, the ALJ found that Consumers' proposals reduce the transparency of the competitive bidding process. In her PFD, the ALJ recommends that the Commission carefully supervise each competitive solicitation with stakeholder input, and/or develop rules to govern competitive bidding to ensure a fair and transparent process for the benefit of ratepayers.

Despite the ALJ's findings, the signatories to the settlement adopted a competitive procurement process for addressing Consumers' capacity needs and for establishing avoided cost rates.[92] Rather than determine, in detail, that competitive bidding process the signatories defer the development of that process to a future stakeholder workshop.[93] The process involves Consumers providing stakeholders with draft guidelines that stakeholders can comment on. Consumers will then provide a final set of procedures. There is no commitment that Consumers will heed any of the recommendations that it receives, nor is there any Commission oversight or input into this process. Consumers will then conduct its RFP using its own set of procedures

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[91] PFD, p. 202
[92] Proposed Settlement Agreement ¶ 7.
[93] Proposed Settlement Agreement, ¶ 7(k).

in a first solicitation to be conducted by September 30, 2019. This first solicitation will then set the avoided cost rates applicable to PURPA QFs until changed. The signatories to the settlement agreement afford a more robust stakeholder process with Commission oversight in 2020, but by then the harm to the development of PURPA QFs in Michigan from an unfair competitive solicitation process will be done.

SEIA recommends several changes to the procurement process to reduce or eliminate biases to ensure that Consumers' ratepayers will be able to benefit from low-cost third-party projects.

1. THE PROPOSED COMPETITIVE SOLICITATION PROCESS IS INCOMPLETE AND REQUIRES MODIFICATIONS TO INCREASE TRANSPARENCY.

Despite a careful review of competitive bidding procedures included in the settlement agreement, key aspects of the proposed competitive procurement methodology remain unclear. Several aspects of the competitive solicitation proposal give cause for concern. First, the settlement agreement appears to require that the FCM be applied to all third-party PPAs, but it is not clear whether the FCM will be applied prior to the bid evaluation and ranking or after. If the FCM is applied prior to the bid selection process, then the application of the FCM may bias the bid results. Second, the proposed competitive bidding process will allow Consumers to define the evaluation process and selection criteria itself, as opposed to that being done by the independent administrator. Third, while not clear from the settlement agreement, if the proposal is that participants be paid based on their bid and not a single clearing price may distort the price that participants offer into the solicitation.

In short, the competitive bidding procedures included in the settlement allow Consumers to define the RFP, establish the rules of the solicitation, and define the evaluation criteria. To address these concerns, SEIA recommends that the Commission establish a fair and transparent competitive solicitation process.

2. *SEIA's PROPOSAL FOR A FAIR AND TRANSPARENT COMPETITIVE SOLICITATION PROCESS.*

SEIA supports the use of a fair and transparent competitive solicitation process for procuring future generation resources. SEIA recommends that the Commission establish an expedited stakeholder process led by the MPSC Staff, rather than Consumers, to establish competitive bidding procedures to be used going forward. The Commission's 2008 "Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy" approved by the Commission as Attachment D of the Commission's December 4, 2008 Order in MPSC Case no. U-15800 are a good baseline for competitive solicitations, but they do not address all the procedures that would be necessary to ensure an open and transparent process for all parties. The new procedures should include the following:

1) Establishment of an independent administrator ("IA") who is the primary entity responsible for planning, evaluating, and managing the bidding process. The procedures should specify how the IA will be selected and minimum IA qualifications. The procedures should mandate IA disclosures of any financial or personal interests involving the utility or bidders. The procedures should also specify how the IA will be compensated and IA responsibilities. IA responsibilities should include establishing the bidding process, fees, and bonding requirements, the bid evaluation criteria (both quantitative and non-quantitative characteristics), commercially reasonable contract terms, and ultimately a rank-order of the bids based on bidder eligibility and bids using the evaluation criteria.

2) Any FCM or other incentive mechanism should not have an impact on the results of the procurement.

3) Clear bid evaluation criteria and a defined selection process to be used by an IA should be approved by the MPSC.

4) To aid in the evaluation of any RECs included in bids, the MPSC Staff should develop a standard renewable energy credit price forecast to be provided as part of the RFP to be used in the financial evaluation process.

5) Establish a single clearing price auction methodology for the capacity price to remove the incentive for bidders to bid based on the expectations of other projects and to focus instead of offering their most competitive price.

6) Prohibit negative capacity prices to be bid. If too many developers bid in with negative capacity prices, and the RFP cleared under the avoided energy costs, developers would be incented to switch to a QF contract at the avoided energy cost. Prohibiting negative capacity bids would set an effective floor price at the avoided energy cost.

7) Include other procedures set forth in Attachment A to SEIA's Initial Brief.

With these parameters, SEIA believes that the Commission can establish a robust competitive bid process to capture the benefits of competitive bidding for the benefit of ratepayers, Consumers, and third-party developers. SEIA looks forward to working with the Commission and its Staff to develop a fair and transparent competitive bidding process for use by Consumers.

F. THE SETTLEMENT AGREEMENT ADOPTS A FIVE-YEAR CAPACITY DEMONSTRATION PERIOD FOR CONSUMERS. THE COMMISSION SHOULD MAINTAIN ITS EXISTING TEN-YEAR CAPACITY DEMONSTRATION PERIOD.

In paragraph 7 of the proposed settlement agreement, the signatories declared, "The Company shall use a five-year outlook for determining capacity needs."

The MPSC spent two-and-a-half years conducting a review of Consumers' PURPA implementation and carefully developing new policies governing such implementation. During this time, the MPSC made several important rulings in MPSC Case Nos. U-18090, U-18491, and U-20095, and decided many PURPA issues. Despite these recent rulings, Consumers seeks to alter those PURPA rulings with which it disagrees.

Consumers proposed to shorten the capacity demonstration period from ten years to three years "because the three year forecast of capacity resources and demand better aligns with the reasonable and prudent determination related to cost recovery requested by the Company to implement the PCA in this IRP."[94] It also requested that only a "persistent need" in which there is a capacity need in every year of the capacity demonstration period should trigger the payment of full capacity avoided costs.[95]

Consumers' position on this issue has changed over time. In its May 31, 2017 order, the Commission noted "Consumers agreed with the Staff that the company's capacity needs should be determined based on a 10-year planning horizon".[96] In its March 19, 2018 comments in Case No. U-20095, Consumers' position evolved to: "A 5-year capacity outlook, as described above, is appropriate for determining persistent capacity needs due to the rapidly changing

[94] 8 Tr. 1263.
[95] 8 Tr. 1266.
[96] Order dated May 31, 2017, MPSC Case No. U-18090 at 8.

nature of utility capacity position."[97] Finally, in this proceeding, Consumers changed its position yet again, arguing for an even shorter three-year outlook, but later conceded that five-year horizon would be appropriate.

In the context of Consumers' PCA, this issue essentially becomes moot because any capacity needs will be met through a competitive solicitation process. If the identified need is met, Consumers will have no obligation to pay QFs full avoided capacity costs; if, on the other hand, the identified needs are not met, then QFs would be able to meet such need and be paid the RFP clearing price. Thus, under the PCA the PURPA capacity planning horizon serves no purpose and becomes irrelevant unless Consumers fails to conduct a competitive solicitation called for in its approved IRP. In that unlikely event, use of a ten-year planning horizon remains appropriate.

Similarly, if the Commission rejects Consumers' IRP, or approves with modifications that Consumers' may subsequently reject, then the Commission should make clear that the existing ten-year capacity demonstration horizon remains in effect. The Commission should also clearly reject Consumers' proposal for a finding of a persistent need during that planning horizon. Under PURPA, any capacity need during the planning horizon should trigger an obligation for Consumers to pay QFs full avoided capacity costs until that capacity need has been fulfilled.

G. THE SETTLEMENT AGREEMENT'S PROPOSED PURPA CHANGES ARE UNREASONABLE OR UNLAWFUL AND MUST BE REJECTED.

The MPSC spent two-and-a-half years conducting a review of Consumers' PURPA implementation and carefully developing new policies governing such implementation. During this time, the MPSC has make several important rulings in MPSC Case Nos. U-18090,

[97] Consumers' Comments dated March 19, 2018, MPSC Case No. U-20095 at 5.

U-18491, and U-20095, and decided many PURPA issues. Despite these recent rulings, Consumers submitted testimony in this case attempting to re-litigate many of those PURPA rulings with which it disagrees and incorporated PURPA changes into the settlement agreement with signatories not directly affected by those changes. The ALJ found based on the record in this proceeding that Consumers' efforts to relitigate these issues were unpersuasive and did not find any persuasive reason to recommend changing the Commission's recent rulings. SEIA recommends that the Commission uphold and reaffirm its recent decisions by rejecting the PURPA changes included in the settlement agreement, as discussed further below.

1. The Proposed Settlement Agreement Bases Avoided Energy Costs on Forecasted Energy Prices Over Five Years or Actual Energy Prices Over 15 Years in Violation of PURPA.

The settlement agreement proposes to eliminate the 20-year fixed price PURPA PPA recently adopted by the MPSC and to give QFs two vastly inferior options. For projects that select firm (i.e. forecasted) energy price contracts, the settlement agreement proposes to limit the contract length to 10 years, with energy prices based on an LMP forecast over five years and years six through year 10 will be the energy price forecasted for year five.[98] For projects that select non-firm energy price contracts (i.e. LMP at delivery), the settlement agreement limits contracts to 15 years. The record in this proceeding provides no evidence that either of these options provide QFs a reasonable opportunity to attract capital, as required by PURPA and FERC,[99] and no such evidence exists.

The Commission has ruled on three occasions in the past nineteen months regarding the term of QF contracts. In its November 2017 order in MPSC Case No. U-18090, the

[98] Proposed Settlement Agreement, ¶ 7(h) & (j).
[99] See, *Windham Solar LLC*, 157 FERC 61,134, ¶ 8 ("[A] legally enforceable obligation should be long enough to allow QFs reasonable opportunities to attract capital from potential investors.")

Commission approved the requirement for Consumers to sign PURPA contracts up to 20 years.[100] This order reaffirmed a previous Commission order issued on May 31, 2017 requiring that standard offer contracts be offered for up to 20 years.[101] And its October 5 Order, the Commission approved a form standard offer PPA for use by Consumers with a 20-year term. This issue has been thoroughly litigated, and the Commission's decisions are based on a complete record of the pertinent issues.

Despite these recent decisions, Consumers proposed in this case to change the Standard Offer contract length again, relying on the same arguments that have been previously rejected. In its September 1, 2016 testimony filed in MPSC Case No. U-18090, Consumers introduced the concept of the five-year term length for forecasted prices and longer terms for market prices "The term length should be no more than five years... Longer terms could be appropriate if energy pricing were based on actual market prices and a reasonable approximation of the actual production cost of the avoided capacity resource."[102]

In its February 9, 2017 brief in MPSC Case No. U-18090, Consumers stated the following: "The Company is proposing that the term length of QF PPAs be limited to five years if a QF elects to be paid on the basis of forecasted energy prices for the term of the contract."[103]

In the current proceeding, Consumers states: "For QFs that request the MISO PRA and the actual LMP energy rates at time of delivery when the Company does not have a capacity need, the contract term length should not exceed 15 years… For QFs that request forecasted

[100] Order dated November 21, 2017, MPSC Case No. U-18090 at 32.
[101] Order dated May 31, 2017, MPSC Case No. U-18090 at 23.
[102] Devereaux Direct at 16, Consumers Energy Testimony dated September 1, 2016 in MPSC Case No. U-18090.
[103] Consumers Energy Reply Brief dated February 9, 2017 in MPSC Case No. U-18090 at 33.

energy market prices when no capacity need exists, the contract term length should not exceed five years".[104]

Consumers rehashed argument has been heard, considered, and rejected by the Commission on multiple occasions. The Commission should reject the proposals here for the same reasons it has consistently done so in the past.

Consumers' previous arguments on the contract term issue were related to the balance between the financeability of QFs and the exposure to market fluctuations that could render the forecasted price inaccurate.[105] Consumers reiterated this concern in this proceeding, highlighting the example of post-hoc energy prices being lower than ex-ante forecasts.[106] However, Consumers fails to acknowledge is that price changes can move in both directions. SEIA's witness explained:

> Locking in a fixed price through a QF contract acts as a hedge, and hedges have value in reducing volitively, regardless of the underlying asset increases or decreases in value. While it is true that 2009 forecasted prices for 2017 turned out to be higher than what materialized, one cannot use this example to prove that forecast error is strictly asymmetric. Sometimes, forecasted prices are too low, and sometimes, they are too high. A trader that locked in oil prices in 1972, when prices were in a steady decline in real terms, would have been heralded when prices spiked in 1973. Unless one can predict the future with certainty, there will remain value in the hedges that QFs can provide.[107]

FERC requires that PURPA PPAs be of sufficient length to give QFs a reasonable opportunity to attract capital.[108] There is no evidence that the PPA pricing terms included in the settlement

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[104] 8 Tr. 1269, ln. 15 – 1270, ln. 1-2.
[105] Consumers Energy Reply Brief dated February 9, 2017 in Docket No. U-18090 at 33-34.
[106] 8 Tr 1270.
[107] 8 Tr. 2020, ln. 23 – 2021, ln. 6.
[108] In *Windham Solar LLC and Allco Finance Ltd.*, 156 FERC ¶ 61,042 (2016), FERC ruled that a state commission cannot offer a competitive solicitation process as the only way in which a QF can obtain long-term avoided cost rates, citing *Winding Creek Solar LLC*, 151 FERC ¶ 61,103, at P 6 (2015), *reconsid. Denied*, 153 FERC ¶ 61,027 (2015).

agreement meet this test and requiring that assets that last for more than twenty years be required to find financing to recover costs in just ten is unreasonable.[109] At a minimum, if the Commission determines that a 10-year term is appropriate for PURPA PPAs, then the energy price forecast should be for the entire 10 years.

2. *The proposed settlement agreement does not resolve a confused and inconsistent description of how avoided energy costs would be determined under the PCA.*

At page 51, and again at page 55 of its exceptions, Consumers stated the following:

> The competitive solicitation process will also be used to set the energy portion of avoided costs. Through the solicitation, the Company will see both a capacity and energy price as part of the proposal requirements. In order to provide both a forecast and actual price at time of delivery energy rate, a QF has the option of using the energy price forecast based on the solicitation or the actual LMP rate at time of delivery. 8 TR 1255.

The foregoing statement is not consistent with SEIA's understanding of Consumers' proposal for establishing avoided energy costs in the future. SEIA has understood that those costs would be administratively established by the Commission based on actual or forecasted MISO LMPs. Moreover, SEIA has understood that Consumers doesn't propose that energy prices be competitively bid in the RFP process, but that they be defined in the RFP based on LMP values and that only the capacity portion of the purchase price be competitively bid.

[109] It should also be noted that the 20-year fixed price energy (plus MISO PRA capacity) rates approved by the Commission yields an average PPA price of approximately $53/MWh. This price should be compared to the cost of wind and solar resources Consumers has proposed to build to meet its RPS obligation. In Consumers' pending REP proceeding, MPSC Case No. U-18231, Consumers proposes to self-build 525 MW of wind energy at a levelized cost of energy of $57.75/MWh and two 50 MW solar facilities at a levelized cost of energy of $126.35/MWh and $126.71MWh, considering the effects of the federal Tax Cuts and Jobs Act of 2017. 4 Tr. 212-13, MPSC Case No. U-18231. For Consumers to assert that 20-year fixed-price PPAs at $53/MWh are not in ratepayers' interest is disingenuous at best.

SEIA's understanding is consistent with the following statement made by Consumers at pages 52-53 of its exceptions, which appears to be inconsistent with the Consumers statement quoted above:

> The PCA also proposes changes to the avoided cost energy price – providing both an actual and forecasted option for a QF – if no capacity need exists. The first option is an energy avoided cost based on actual MISO LMP for contract. The use of MISO LMPs is appropriate as the rate for energy at time of delivery since, absent the QF, the Company would purchase energy from the MISO market. The second option is a forecast energy avoided cost rate based on a five-year forecast of monthly on-peak and off-peak MISO LMP. A short-term forecast of the MISO LMP is appropriate to use as the rate for energy because, absent the QF, the Company would expect to purchase energy from the MISO market. (Citations omitted.)

SEIA conceptually supports this approach to establishing avoided energy costs in the future, but, as discussed above and like several other intervenors, believes that a five-year LMP forecast (and a ten-year PPA based on that price) is too short to provide QFs with a reasonable opportunity to attract capital, as required by FERC. SEIA therefore recommends that QFs have the option of obtaining PPAs with pricing based on a 15-year LMP forecast for energy and MISO's PRA price for capacity. If the Commission approves the settlement agreement, the Commission should make clear how avoided energy costs would be determined going forward.

V. **<u>THE SETTLEMENT AGREEMENT, IF APPROVED, HARMS SEIA AND ITS MEMBERS</u>.**

As noted above, the proposed settlement agreement is rife with proposals that, if implemented, would harm developers of PURPA QFs and Michigan's ratepayers. SEIA is interested in advancing the development of solar energy and its members are developers of PURPA QFs. The modifications to PURPA implementation proposed in the settlement agreement (ie. reduced contract length, modified avoided cost methodology resulting in lower contract pricing, not paying QFs for capacity unless they win a competitive solicitation, etc.) will make it significantly more difficult for QFs to develop solar facilities in Consumers' service area. The failure of the settlement agreement to address the PURPA rights of QF projects under development in Consumers service area could result in QFs being prevented from developing those projects and losing millions of dollars in sunk investment and future business opportunity. The problems identified above with the proposed competitive solicitation program will make it more difficult for QFs to compete effectively in future procurements. The failure to recognize Consumers' need for additional capacity reduces Consumers' current obligation to pay QFs for capacity under PURPA resulting in economic harm to QFs. The FCM on future PPAs, including PURPA PPAs, unnecessarily increase the cost of providing independent power to the grid, which is likely to create resistance in the future to that supply alternative. Finally, earmarking half of future solar procurements to Consumers-owned resources reduces the opportunity for QFs to complete and meet identified capacity needs. The harms that stem from the proposed settlement agreement to SEIA and its members are extensive.

VI. THE SETTLEMENT AGREEMENT APPEARS TO UNLAWFULLY SEEK TO BIND A FUTURE COMMISSION.

Paragraph 11 of the proposed settlement agreement states, in total, the following:

> If the Commission issues future PURPA-related orders in other proceedings, the impact of those orders on the Company's PCA, as approved pursuant to this Settlement Agreement, will be addressed in future proceedings, including the Company's next IRP, and will not be a basis for re-opening this Settlement Agreement.

Neither the scope nor intent of this provision is clear. If by approving this settlement agreement and procurement plan, then the Commission cannot or will not effectuate the rights of PURPA QFs in Consumers' existing interconnection queue, then the provision renders the settlement unlawful. As a matter of law, an existing Commission cannot bind a future Commission.[110] If that is the effect of this provision, then the settlement agreement cannot be approved.

At a minimum, the Commission should make clear that any approval of this settlement agreement will have no bearing on the Commission's future decisions regarding the rights of new PURPA QFs in Consumers' interconnection queue, including if the result of both approving this settlement agreement and recognizing the rights of PURPA QFs will result in an over-procurement of capacity. If the Commission cannot provide that assurance, then it should resolve the rights of existing QFs before deciding whether the settlement agreement PCA, which assumes that there will be no new QF capacity, should be approved. It is not in the public interest, nor is it a fair and reasonable resolution of this case, for ratepayers to be bound to a PCA that requires annual competitive solicitations for 6,500 MW of new capacity while Consumers is simultaneously required to purchase QF capacity and energy under federal law.

VII. THE PUBLIC INTEREST WAS NOT ADEQUATELY REPRESENTED BY THE PARTIES TO THE SETTLEMENT.

As noted above, the proposed settlement agreement was joined by less than half of the parties to this proceeding. Importantly, not a single entity seeking to develop new PURPA QFs in Michigan joined the settlement. The signatories to the settlement include utilities, ratepayer advocates, environmental groups, and entities that include existing QFs among their members (ie. IPPC). Existing QFs, however, are in a decidedly different position than developers of new

[110] See, *In the matter of the application of Midland Cogeneration Venture Limited Partnership for approval of capacity charges contained in a power purchase agreement with Consumers Power Company*, MPSC Case No. U-8871, March 30, 1989, p. 7 (ruling, "this Commission cannot bind the decisions of future commissions"); see also, *In the matter of the application of Consumers Power Company for authority to change its method of accounting for the electric fuel and purchased and net interchange adjustment clause revenues*, MPSC Case No. U-5609, May 1, 1978, pp. 7-8 (finding that "it is doubtful whether the present Commission can bind a future Commission" and ruling that "all Commission-establish accounting procedures and rules and regulations are subject to continuing re-examination and modification or recission, where change is deemed to be in the public interest following notice and opportunity for hearing for all affected parties as provided by law.").

QFs. The Commission has made clear that existing QFs are entitled to have their contracts renewed at Consumers' full avoided costs rates, and the proposed settlement agreement further ensures that existing QFs will receive new PPAs at Consumers' full avoided cost rates regardless of Consumers' capacity need.[111]

In contrast, SEIA is the national trade association for the United States solar industry.[112] "SEIA works with its 1,000 member organizations to advance solar power through education and advocacy."[113] SEIA advocates "the use of clean, affordable solar in America by expanding markets, removing market barriers, strengthening the industry, and educating the public on the benefits of solar energy."[114] SEIA's members consist of developers of new PURPA QFs, who are actively seeking to develop new generation projects on Consumers' system pursuant to PURPA. As a result, SEIA can provide the Commission with important information about Consumers' proposals generally, and the settlement specifically, in this IRP proceeding.

The settlement agreement put forth by Consumers does not represent a consensus proposal among the varied parties and interests in this proceeding. The interest of new PURPA QFs are not represented among the signatories to the settlement, yet the proposed settlement, if approved, would fundamentally alter the implementation of PURPA in Michigan. The Commission should not change PURPA implementation by settlement fiat without the interests of new PURPA QFs being included and addressed.

111 Proposed Settlement Agreement, ¶ 7(g).
112 8 Tr. 1951.
113 *Id.*
114 *Id.*

VIII. <u>BEFORE IT CAN APPROVE THE PROPOSED SETTLEMENT AGREEMENT, THE COMMISSION MUST PROVIDE OBJECTING PARTIES WITH A REASONABLE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT</u>.

A Commission order based on the settlement alone will violate the Commission's rules, Michigan's IRP statute, MCL 460.6t, and the Administrative Procedures Act. To approve an IRP, the Commission must make several enumerated findings under MCL 460.6t, and to approve a settlement, the Commission must find that the settlement is supported by substantial evidence on the whole record. To provide objecting parties with an opportunity to present evidence and argument, SEIA recommends that the Commission adopt a contested case schedule that is no shorter than the following case schedule:

Objector's Testimony	April 17, 2019
Supporter's Testimony	April 24, 2019
Rebuttal Testimony	May 1, 2019
Motions to Strike	May 3, 2019
Cross-Exam	May 6-7, 2019
Briefs	May 17, 2019
Reply Briefs	May 24, 2019
Order on the Settlement / 300-Day Order	June 7, 2019

The Commission should further set the discovery turnaround time period at 3 business days due to the expedited natural of the schedule. While this is not SEIA's preferred schedule, this schedule would permit the Commission to review and consider the proposed settlement agreement and issue an order on the settlement or, if the Commission rejects the settlement, the

300-day order prescribed by the IRP statute within the 60-day schedule extension offered by Consumers and the Commission Staff in their motion filed March 25, 2019.[115]

IX. CONCLUSION AND PRAYER FOR RELIEF.

For all the reasons explained in the preceding sections of these objections, SEIA respectfully requests that the Commission reject the proposed settlement as a basis for granting the relief requested in this case. If the Commission does not reject the settlement agreement, then the Commission must set a contested case schedule to permit SEIA a reasonable opportunity to present evidence and argument on the proposed settlement. If the Commission approves the settlement, then SEIA requests that the Commission make the requested clarifications and adjustments noted above and add to its approval the condition that SEIA's proposal for addressing the existing PURPA QFs in Consumers' interconnection queue be implemented.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
ATTORNEYS FOR SOLAR ENERGY INDUSTRIES ASSOCIATION

Date: April 8, 2019

By: ______________________________

Jennifer U. Heston (P65202)

Business Address:
124 W. Allegan, Suite 1000
Lansing, MI 48933
Telephone: (517) 482-5800
E-mail: jheston@fraserlawfirm.com

Jennifer Utter Heston

Digitally signed by Jennifer Utter Heston
Date: 2019.04.08 15:28:01 -04'00'

[115] In presenting this case schedule, SEIA does not concede that the Commission has the authority to extend the statutory deadlines in MCL 460.6t(7), that the statutory IRP deadlines are waivable by the utility that files the required IRP, or that this case schedule would provide "a reasonable opportunity" for SEIA to present evidence and arguments in opposition to the settlement agreement. To the extent that the Commission deems it appropriate to extend the statutory deadlines, then it presumably could extend them for any length of time. The Commission should not feel compelled to perform its duties within the 60-day timeframe prescribed by Consumers and the MPSC Staff, particularly when 60 days does not afford objecting parties a reasonable opportunity to present evidence and argument in opposition to the settlement agreement, as required by Rule 431(5)(a), 2015 AACS R. 792.10431(5)(a).

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	Case No. U-20165
for approval of its integrated resource plan	)	
pursuant to MCL 460.6t and for other relief.	)	
	)	

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 8th day of April, 2019, she served the ***Objections of the Solar Energy Industries Association to the Proposed Settlement Agreement*** and this Certificate of Service on the persons identified on the attached service list via electronic mail.

Angela R. Babbitt

Angela R. Babbitt

Angela R. Babbitt

Digitally signed by Angela R. Babbitt
Date: 2019.04.08 15:28:17 -04'00'

Service List for U-20165

Administrative Law Judge
Hon. Sharon L. Feldman
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917
feldmans@michigan.gov
rogersd8@michigan.gov

Counsel for Consumers Energy Company
Robert W. Beach
Theresa A.G. Staley
Michael C. Rampe
Brett A. Totoraitis
Gary A. Gensch, Jr.
Anne M. Uitvlugt
Ian F. Burgess
One Energy Plaza
Jackson, MI 49201
robert.beach@cmsenergy.com
Theresa.staley@cmsenergy.com
michael.rampe@cmsenergy.com
bret.totoraitis@cmsenergy.com
gary.gensch@cmsenergy.com
Anne.uitvlugt@cmsenergy.com
Ian.burgess@cmsenergy.com
Mpsc.filings@cmsenergy.com

Counsel for Michigan Environmental Council (MEC), Sierra Club & Natural Resources Defense Council (NRDC)
Christopher Bzdok
Lydia Barbash-Riley
Olson, Bzdok & Howard
420 East Front St.
Traverse City, MI 49686
chris@envlaw.com
lydia@envlaw.com
kimberly@envlaw.com
karla@envlaw.com

Counsel for Sierra Club
Michael Soules – Earthjustice
1625 Massachusetts Ave., NW, Ste. 702
Washington, DC 20036
msoules@earthjustice.org

Counsel for Environmental Law Policy Center (ELPC)
Margarethe Kearney
Environmental Law & Policy Center
1514 Wealthy St., SE, Ste. 256
Grand Rapids, MI 49506
mkearney@elpc.org

Counsel for Energy Michigan
Timothy J. Lundgren
Laura A. Chappelle
Varnum Law Firm
201 N. Washington Sq., Ste. 910
Lansing, MI 48933
tjlundgren@varnumlaw.com
lachappelle@varnumlaw.com

Counsel for Michigan Energy Innovation Business Council, Institute for Energy Innovation & Independent Power Producers Coalition of Michigan
Toni L. Newell
Varnum Law Firm
333 Bridge St., NW
Grand Rapids, MI 49504
tlnewell@varnumlaw.com

Timothy J. Lundgren
Laura A. Chappelle
Varnum Law Firm
201 N. Washington Sq., Ste. 910
Lansing, MI 48933
tjlundgren@varnumlaw.com
lachappelle@varnumlaw.com

Counsel for Michigan Chemistry Council
Timothy J. Lundgren
Varnum Law Firm
201 N. Washington Sq., Ste. 910
Lansing, MI 48933
tjlundgren@varnumlaw.com

Justin K. Ooms
Varnum Law Firm
333 Bridge St., NW
Grand Rapids, MI 49504
jkooms@varnumlaw.com

Counsel for Attorney General
Celeste R. Gill
525 W. Ottawa St., Williams Bldg. 6th Fl.
Lansing, MI 48909
Gillc1@michigan.gov
AG-ENRA-Spec-Lit@michigan.gov

Counsel for BMPs
Thomas J. Waters
Fraser Trebilcock Davis & Dunlap, P.C.
124 W. Allegan, Ste. 1000
Lansing, MI 48933
twaters@fraserlawfirm.com

Counsel for MPSC Staff
Spencer Sattler
Heather Durian
Amit Singh
Daniel Sonneveldt
7109 W. Saginaw Hwy.
Lansing, MI 48917
sattlers@michigan.gov
durianh@michigan.gov
singha9@michigan.gov
sonneveldtd@michigan.gov

Counsel for Great Lakes Renewable Energy Association (GLREA) & Residential Customer Group
Don L. Keskey
Brian W. Coyer
Public Law Resource Center PLLC
University Office Place
333 Albert Ave., Ste. 425
East Lansing, MI 48823
donkeskey@publiclawresourcecenter.com
bwcoyer@publiclawresourcecenter.com

Counsel for Midland Cogeneration Venture Limited Partnership (MCV)
Jason Hanselman
John Janiszewski
Dykema Gossett, PLLC
201 Townsend, Ste. 900
Lansing, MI 48933
jhanselman@dykema.com
jjaniszewski@dykema.com

Counsel for ABATE
Bryan A. Brandenburg
Michael J. Pattwell
Clark Hill
212 E. Cesar E. Chavez Ave.
Lansing, MI 48906
bbrandenburg@clarkhill.com
mpattwell@clarkhill.com

Counsel for Michigan Electric Transmission Company (METC)
Richard J. Aaron
Courtney Kissell
Dykema Gossett, PLLC
201 Townsend, Ste. 900
Lansing, MI 48933
raaron@dykema.com
ckissel@dykema.com

Counsel for Invenergy Renewables LLC
Nolan J. Moody
Brandon C. Hubbard
Dickinson Wright
215 S. Washington Sq., Ste. 200
Lansing, MI 48933
nmoody@dickinsonwright.com
bhubbard@dickinsonwright.com

Fraser Trebilcock LAWYERS