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

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

At the June 7, 2019 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Daniel C. Scripps, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

I. Procedural History

On June 15, 2018, Consumers Energy Company (Consumers) filed an application, together with supporting testimony and exhibits, pursuant to 2016 PA 341 (Act 341); MCL 460.6t(3) and the Commission's December 20, 2017 and November 21, 2017 orders in Case Nos. U-15896 *et al.* and U-18418, requesting Commission approval of its integrated resource plan (IRP).[1]

A prehearing was held on July 16, 2018, before Administrative Law Judge Sharon L. Feldman (ALJ). The ALJ granted intervenor status to Michigan Environmental Council (MEC), the Sierra Club (SC), the Natural Resources Defense Council (NRDC), the Association of Businesses Advocating Tariff Equity (ABATE), Energy Michigan, Inc. (Energy Michigan), Michigan Energy

[1] MCL 460.6t is subsequently referred to as "Section 6t" throughout this order.

Innovation Business Council (MEIBC), Institute for Energy Innovation (IEI), the Independent Power Producers Coalition (IPPC), Solar Energy Industries Association, Inc. (SEIA), the Michigan Chemistry Council, the Michigan Electric Transmission Company, LLC (METC), Cypress Creek Renewables, LLC (Cypress Creek), the Residential Customer Group (RCG), the Great Lakes Renewable Energy Association (GLREA), the Michigan Department of the Attorney General (Attorney General), Midland Cogeneration Ventures, LP (MCV), the Environmental Law & Policy Center (ELPC), the Ecology Center, Vote Solar, the Union of Concerned Scientists, and a group of seven companies collectively referred to in this proceeding as the “Biomass Merchant Plants” or “BMPs” that includes: Cadillac Renewable Energy, LLC; Genesee Power Station, LP; Grayling Generating Station, LP; Hillman Power Company, LLC; TES Filer City Station, LP; Viking Energy of Lincoln, Inc.; and Viking Energy of McBain, Inc.[2] The Commission Staff (Staff) also participated in the proceeding.

On August 31, 2018, Invenergy Renewables LLC (Invenergy) filed a late petition for intervention and, during a September 18, 2018 hearing, the ALJ granted Invenergy intervenor status.

The ALJ issued a Proposal for Decision (PFD) on February 20, 2019. Consumers, the Staff, the Attorney General, MEC, NRDC, SC, GLREA, RCG, ABATE, SEIA, MCV, IPPC, Energy Michigan, ELPC, the Ecology Center, Vote Solar, and the Union of Concerned Scientists filed exceptions on March 4, 2019, and MEIBC, the Staff, SEIA, ELPC, the Ecology Center, Vote

[2] On April 5 and April 8, 2019, the Biomass Merchant Plants withdrew as parties to this proceeding.

Solar, the Union of Concerned Scientists, MEC, NRDC, SC, the Attorney General, Consumers, ABATE, RCG, and GLREA filed replies to exceptions on March 11, 2019.[3]

On March 23, 2019, Consumers entered into a settlement agreement with the following parties: the Staff, MEC, NRDC, SC, ABATE, Energy Michigan, IPPC, the Michigan Chemistry Council, METC, and the Attorney General. The settlement agreement recommends approval of Consumers' proposed course of action (PCA) with changes and covers issues such as: investments in conservation voltage reduction (CVR), demand response (DR), and energy waste reduction (EWR); retirement of certain coal-fired generation units; a financial compensation mechanism (FCM); avoided cost methodology under the Public Utility Regulatory Policies Act of 1978 (PURPA); and competitive bidding.

The following parties did not join the settlement, but offered a statement of non-objection: GLREA, RCG, MEIBC, IEI, ELPC, Invenergy, the Ecology Center, the Union of Concerned Scientists, and Vote Solar. MCV did not sign the settlement or indicate whether it would sign a statement of non-objection. On April 8, 2019, SEIA and Cypress Creek filed responses objecting to the settlement agreement.[4]

On March 25, 2019, Consumers and the Staff jointly filed a motion to extend the statutory deadlines found in Section 6t(7) of Act 341, MCL 460.6t(7). In its April 10 order, the Commission granted the joint motion and extended the deadlines for the Commission's 300-day

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[3] Because ELPC, the Ecology Center, the Union of Concerned Scientists, and Vote Solar have submitted testimony and various filings in this docket jointly, this group of parties is often referred to throughout this order as "ELPC *et al*." for ease of reference. Similarly, in describing the joint positions and arguments of MEC, NRDC, and SC in this order, these parties are often referred to collectively as "MEC/NRDC/SC."

[4] The arguments that SEIA and Cypress Creek presented in their objections are discussed in detail in the Commission's April 10, 2019 order in this docket (April 10 order) and are also summarized in the "initial briefs" section of this order.

and 360-day orders. In addition, the Commission imposed deadlines by which parties may submit direct and rebuttal testimony regarding the requested approval of the contested settlement agreement. The Commission also scheduled an evidentiary hearing on the contested settlement agreement and established deadlines by which parties may file initial and reply briefs. Because the Commission has decided to read the record for purposes of evaluating the settlement agreement, a summary of the evidentiary record related to the settlement agreement follows.

II. Evidentiary Record

The evidentiary record in this contested settlement proceeding consists of 173 pages of transcript and 2 exhibits.[5]

A. Direct Testimony

SEIA, ABATE, ELPC *et al*., and the Staff timely filed direct testimony on April 19, 2019.

1. Staff

In the Staff's direct testimony, Paul Proudfoot, the Director of the Energy Resources Division, asserts that Consumers' PCA, as modified by the settlement agreement, meets the statutory requirements of Act 341. 10 Tr 3021. For this reason, Mr. Proudfoot urges the Commission to approve the contested settlement agreement in its entirety and without recommending changes under Section 6t(7). Mr. Proudfoot also states that the contested settlement agreement meets the requirements of Mich Admin Code, R 762.10431 (Rule 431). *Id*.

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[5] The Commission notes that, in the original IRP proceeding that resulted in a PFD, the evidentiary record included 2929 transcript pages in nine volumes. It included the testimony of 62 witnesses and 363 exhibits, with certain transcript pages and exhibits designated as confidential. *See*, PFD, p. 4. The Commission references this evidence throughout this order.

2. <u>Solar Energy Industries Association, Inc.</u>

SEIA's direct testimony consists of the testimony of Kevin Lucas, SEIA's Director of Rate Design. Mr. Lucas testifies that, in the contested settlement agreement, Consumers fails to address the interconnection queue of projects at different stages of development under the PURPA regime from Case No. U-18090. 10 Tr 2942. Mr. Lucas explains that, although Consumers is "attempting to ignore and deflect" its obligations to qualifying facilities (QFs) under PURPA, the Commission has directed Consumers to move forward with contracting with QF projects in its queue. *Id*. Mr. Lucas also states that Consumers is delaying the interconnection of new QFs beyond the time periods prescribed in the Commission's generator interconnection rules by requesting a waiver of timelines in those rules. Mr. Lucas explains that Consumers has failed to interconnect a single new QF of late despite the fact that some QF projects have been in the utility's interconnection queue since 2017. 10 Tr 2944. Mr. Lucas asserts that the Commission's approval of Consumers' PCA, while the fate of the existing PURPA queue remains unresolved, has the potential to "result in the Company overprocuring capacity in the near term and incurring unnecessary costs to be borne by its customers" which Mr. Lucas views as contrary to the public interest. *Id*. Mr. Lucas states that the focus should not be on whether QFs can participate in future competitive solicitations, but on Consumers' obligation, under federal law, state law, and the Commission's direction, to contract with QFs in the queue. *Id*., p. 2945. Mr. Lucas recommends that the Commission reject the proposed settlement agreement because of the unnecessary additional costs to ratepayers that will result from the overprocurement of capacity if Consumers is required to contract with QFs in its interconnection queue. *Id*. Alternatively, SEIA has developed a proposal that, if included in the proposed settlement agreement, would address the QFs in

Consumers' interconnection queue and "would result in a fair and reasonable resolution to the proceeding that is in the public interest." *Id*.

In addition to Mr. Lucas' contention that the Commission should reject the settlement agreement because it fails to acknowledge the rights of QFs in the utility's interconnection queue, Mr. Lucas asserts that the Commission should also reject it because the stipulation in the settlement agreement that Consumers has no PURPA capacity need is inconsistent with the evidentiary record in this case. That stipulation fails to recognize that the projected need in Consumers' original PCA included 157 zonal resource credits (ZRCs) from the T.E.S. Filer City power purchase agreement (PPA) and 50 ZRCs of capacity related to the 100 MW of self-build solar from the utility's renewable energy plan (REP), both of which will no longer be available. Further, given the ALJ's finding that the 56 ZRCs associated with CVR were unreasonable and should not be approved, Mr. Lucas points out that Consumers has a PURPA capacity need rather than a capacity surplus. 10 Tr 2946. Although Consumers updated its capacity position in its rebuttal testimony to reflect the loss of 157 ZRCs from the T.E.S. Filer City PPA, Mr. Lucas explains that Consumers continues to assume that 50 ZRCs of self-build solar would have been built for its REP, and this 100 MW/50 ZRCs of solar remains in the utility's PCA. *Id*. Mr. Lucas argues that, if the Commission approves the proposed settlement agreement, Consumers' customers will be forced to substantially overpay for solar capacity and that this is contrary to the public interest. Mr. Lucas testifies that the proposed 100 MW of self-build solar is overpriced and should not be approved. Mr. Lucas further asserts that Consumers' capacity shortfall position could be exacerbated by: (1) the utility's reliance in its PCA on massive quantities of EWR and DR that may not materialize, and (2) the projected increase in transportation energy usage starting in the early 2020s due to an increasing number of electric vehicles in Michigan. Accordingly, Mr.

Lucas asks the Commission to reject the settlement agreement and determine that Consumers has a capacity shortfall of at least 80 ZRCs. *Id*., p. 2948.

Mr. Lucas likewise argues that the Commission should reject the FCM proposal set forth in the proposed settlement agreement because it is contrary to the public interest. Mr. Lucas agrees with the ALJ's reasoning in the PFD, which contains a detailed critique of the FCM. Mr. Lucas explains that there is also no policy justification to extend the FCM to PURPA contracts because, "[u]nlike its choice on how to meet its future load obligations through either PPAs or self-build projects, Consumers is required to purchase QF output." *Id*., p. 2954. Mr. Lucas continues that giving Consumers an incentive to do something the law already obligates the utility to do accomplishes nothing other than increasing costs to Consumers' customers, and is contrary to PURPA. *Id*.

Mr. Lucas also states that the proposed settlement agreement needlessly increases costs for Consumers' customers because it proposes to split future capacity procured through competitive solicitations 50/50 between third-party PPAs and company-owned projects. *Id*. Mr. Lucas explains that company-owned projects are going to be more expensive than third-party PPAs. Mr. Lucas discusses a Consumers' exhibit that shows the levelized cost of energy (LCOE) of Consumers-owned solar projects. Compared to the avoided costs in U-18090 or to the limits of the FCM in the settlement agreement's Attachment B, Consumers' projections exceed the avoided costs in U-18090 by 37% and exceed the value of Attachment B by 44%. Mr. Lucas contends that, even with up-to-date estimates on capital costs, the reduction to Consumers' LCOE would not be enough to reduce its prices by the 37-44% needed to be on par with third-party PPAs. *Id*., p. 2957. In addition, Mr. Lucas points out that Consumers will earn a return on the asset, on top of developer profit already included in the sales price. *Id*., p. 2956. And, Consumers will fully depreciate the project over 25 years despite the fact that the asset will retain its substantial value at the end of that 25-year period. Finally, Mr. Lucas explains that regulatory accounting requirements prevent Consumers from realizing federal investment tax credit savings the same way that third-party developers do. Therefore, company-owned systems are projected to be substantially more expensive for Consumers' customers than third-party PPAs. Therefore, Mr. Lucas recommends that the Commission require Consumers to eliminate the preference for company-owned projects or to "shift competitive procurement much more heavily towards third-party PPAs and away from Company-owned projects." *Id*., p. 2959.

In addition to all of these issues, Mr. Lucas states that the agreed-upon competitive solicitation process set forth in the settlement agreement still gives Consumers too much control over the solicitation, because Consumers gets to decide the evaluation process and the selection criteria. *Id*., p. 2960. Although Consumers will review the process with the Staff, the utility is not required to incorporate feedback. Mr. Lucas notes that the ALJ did not trust Consumers and instead found its process biased towards utility-owned assets and further determined that the proposed process did not create a level playing field for independent developers. *Id*. Mr. Lucas recommends that the Commission adopt SEIA's detailed list of procedures in its objections and in Attachment A to its initial brief as the starting point for the first competitive solicitation. *Id*., p. 2961.

Next, Mr. Lucas discusses the changes that the proposed settlement agreement makes to PURPA. Because the change in the term of the Standard Offer contract from 20 years to 10 years does not present any information regarding whether this shorter term will allow developers a reasonable opportunity to attract capital, Mr. Lucas asserts that the Commission should remain consistent with its current rulings on this issue favoring a 20-year contract term. *Id*., p. 2962. Mr. Lucas maintains that all of the contract term options the settlement agreement offers QFs are flawed. With respect to the 15-year contract option that is based on locational marginal price (LMP) with a Midcontinent Independent System Operator, Inc. (MISO) planning resource auction (PRA) price that resets each year, Mr. Lucas argues it does not provide any long-term price assurance and results in the developer bearing all the risk. In addition, he asserts that this option makes it impossible for QFs to secure required financing. *Id*. Mr. Lucas asserts that a second option that offers QFs a contract term of 10 years of known pricing will be even more inaccurate than the first option, because this option freezes forecasted prices at year 5 prices in years 6 through 10. *Id*., p. 2963. Regarding the capacity outlook period, Mr. Lucas agrees that it would be moot as long as Consumers' PCA is followed. *Id*., p. 2964. However, in the event that the PCA is not followed or if the Commission rejects the settlement agreement or Consumers' IRP, Mr. Lucas proposes that the Commission remain consistent with its past orders and retain the 10-year capacity horizon outlook. *Id*.

According to Mr. Lucas, another reason the proposed settlement agreement should be rejected is because the public interest "was not adequately represented" and the settlement agreement will cause SEIA's members material harm. Mr. Lucas asserts that, although 11 parties signed the settlement agreement, 19 did not. He believes that a settlement agreement that lacks a solar QF developer as a signatory cannot represent the public interest given that nearly 3,500 MW of solar QFs are currently in Consumers' interconnection queue. *Id*., p. 2966. Mr. Lucas continues that the cost savings that could be realized by leveraging QF projects instead of company-owned solar support this conclusion.

Mr. Lucas also identifies the following harm to SEIA's members if the Commission approves the proposed settlement agreement. He explains that "SEIA reached out to QF developers who collectively represented more than 90% of the QF MW in [Consumers'] interconnection queue."

According to Mr. Lucas, developers spent “millions of dollars” for predevelopment work on “more than 3,000 MW” of solar projects. *Id*., p. 2967. Mr. Lucas continues that SEIA’s proposal described in its objections to the settlement agreement, to resolve the issue of existing QF projects in Consumers’ interconnection queue, presents a fair and reasonable resolution of the matter. Mr. Lucas explains that the proposal would interconnect, under current Case No. U-18090 rules and rates, 800 MW of QF projects (in addition to the 150 MW the Commission already ordered in that case) from the existing queue that have met threshold eligibility requirements. *Id*., pp. 2967-2968. Mr. Lucas emphasizes that, if the Commission approves the contested settlement agreement without resolving the interconnection issue, the approved settlement agreement does not supersede the legal rights of projects in the queue. Therefore, project developers are likely to file individual complaints against Consumers regarding the utility’s failure to interconnect their QF projects. *Id*., p. 2969. Mr. Lucas asserts that this protracted litigation will use up limited Commission and Staff time and resources and will hinder Consumers’ ability to transition to its new capacity procurement methodology. *Id*. He also explains that this will negatively affect investment in Michigan. Therefore, Mr. Lucas recommends that the Commission condition its approval of the proposed settlement agreement on inclusion of SEIA’s QF proposal.

3. <u>Association of Businesses Advocating Tariff Equity</u>

ABATE presented the testimony of Jeffry Pollock, an energy advisor and President of J. Pollock, Inc., who testified that ABATE supports the settlement agreement because it resolves ABATE’s initial concerns over Consumers’ proposed PCA, is supported by parties that represent Michigan ratepayers, and was the result of substantial negotiations between active participants reflecting numerous compromises from their litigated positions. 10 Tr 3000. According to Mr. Pollock, a primary concern of ABATE’s in the IRP proceeding was Consumers’ recovery of the unamortized costs of the early retirement of Units 1 and 2 of the D.E. Karn coal-fired generation plant, which the settlement agreement satisfactorily resolves by allowing Consumers to securitize the remaining net book value of the two units.[6] Mr. Pollock explains that securitization both minimizes the cost of financing the recovery on the remaining investment in the units and prevents the utility from earning a return on an investment that is no longer used and useful.

ABATE also supports the proposed settlement agreement because it authorizes competitive solicitation for all new resources, including capacity obtained from PPAs and capacity that Consumers will include in rate base. Mr. Pollock further explains that the results of the competitive solicitations will define the PURPA avoided cost for any PURPA-based PPAs. Mr. Pollock asserts that adoption of competitive solicitation ensures that all new capacity additions are priced competitively with current market conditions. Mr. Pollock expounds on this issue by explaining that, although Consumers' full avoided cost ranges from $95-$110 per megawatt-hour (MWh), the current LCOE for a 20-year QF solar PPA is only $50.86 per MWh. He emphasizes that ratepayers cannot afford to pay the higher avoided cost for new capacity under long-term PURPA PPAs when the same resources can be acquired competitively for half the cost. *Id*., p. 3002.

The settlement agreement also addresses ABATE's concern about Consumers' heavy reliance on DR as a resource. Although Consumers' PCA will result in DR resources supplying the utility's entire reserve margin, Mr. Pollock notes that the settlement agreement requires Consumers "to conduct additional studies to determine best practices on the amount of reserves that could be provided by DR and to assess the potential changes in either the frequency or

[6] D.E. Karn Units 1 and 2 refer to two coal-fired generation units currently owned and operated by Consumers. These coal-fired generation units are also referred to as "Karn 1 and 2" interchangeably throughout this order.

duration of curtailments and the role of DR in meeting peak demand." *Id*., p. 3001. Mr. Pollock next discusses SEIA's concern that allowing Consumers to provide up to 50% of new capacity additions through company-owned projects will be more expensive for the utility's customers. He disagrees with SEIA on this point because Consumers will acquire this capacity through "build-own-transfer" agreements that permit the project developer to fully utilize any applicable investment tax credits before the project is transferred to Consumers. Mr. Pollock explains that this allows owned projects to be included in rate base "at a much lower value than if Consumers had self-built the new capacity." *Id*., p. 3002.

Further, despite ABATE's initial opposition to an FCM, Mr. Pollock explains that credit rating agencies do consider fixed obligations under PPAs when evaluating a utility's financial strength and that the inclusion of an FCM ensures the additional cost of any third-party PPAs is reflected in the competitive solicitation process. Further, Mr. Pollock points out that the settlement agreement provides the Commission can consider the FCM in determining Consumers' overall cost of capital in future rate cases. Mr. Pollock notes that this provision ensures future rates are more just and reasonable. *Id*., p. 3003.

Last, Mr. Pollock explains that the settlement agreement is in the public interest because its signatories include parties that represent ratepayers, its competitive solicitation process ensures electricity rates will remain affordable, and its terms were negotiated at arm's length with diligence and with significant give-and-take among the parties.

4. Environmental Law & Policy Center *et al*.

ELPC *et al*. presented the direct testimony of James P. Gignac, Lead Midwest Energy Analyst employed by the Union of Concerned Scientists, who identified several improvements to Consumers' filed IRP that are presented in the proposed settlement agreement. 10 Tr 3008. Mr.

Gignac states that the proposed settlement agreement is in the public interest. However, Mr. Gignac also agrees with SEIA that the QF projects in Consumers' interconnection queue need to be addressed in a timely manner and notes many benefits that can be achieved in reaching a timely resolution on this issue. *Id*., p. 3011. Mr. Gignac explains that addressing the existing PURPA queue would enable ELPC *et al*. to become signatories to the settlement agreement.

B. Rebuttal Testimony

The Staff, SEIA, and Consumers each filed rebuttal testimony regarding Commission approval of the contested settlement agreement.

1. Staff

Mr. Proudfoot testified on behalf of the Staff that the Staff supports the proposed FCM in the settlement agreement because it falls within the acceptable range that the Staff presented when it calculated alternative FCM methodologies in the underlying IRP proceeding in this docket. 10 Tr 3025. Mr. Proudfoot further explains that the reasonable FCM proposed in the settlement agreement "will help to facilitate these potential cost reductions for future projects by reducing risk to the Company and making it more impartial to decisions between Company-owned assets and PPAs." *Id*., p. 3026.

In addition, Mr. Proudfoot maintains that allowing Consumers to own 50% of its future capacity needs is reasonable and can lead to cost reductions rather than increased customer costs as Mr. Lucas asserts. *Id*. Mr. Proudfoot explains that state law requires electric providers to enter into PPAs for at least 50% of their required renewable assets needed to meet renewable standards and that this competition led to impressive cost reductions for wind assets. Mr. Proudfoot notes that, on a weighted average basis, company-owned wind assets are less costly than PPA wind assets, and further explains that Consumers "is likely to see very similar results for solar assets." *Id*., p. 3027.

Mr. Proudfoot disagrees with SEIA that the changes to PURPA set forth in the settlement agreement are not supported by the record. Rather, according to Mr. Proudfoot, the settlement agreement "does not waver" from Consumers' initial proposal in this case, which the Staff supports. *Id*. Further, Mr. Proudfoot explains that the Staff disagrees with SEIA that this IRP case should resolve Consumers' interconnection queue because he believes that, to resolve it, the Commission must make determinations "outside of the IRP process with more of a focused review." *Id*., p. 3028. Mr. Proudfoot recommends that the Commission define a legally enforceable obligation (LEO) and explain how to manage queue projects in a separate proceeding. *Id*.

Mr. Proudfoot disagrees with SEIA's contention that PURPA-related decisions determined in this agreement could bind a future Commission. According to Mr. Proudfoot, the settlement agreement clearly states that, although Consumers' PCA is the most reasonable and prudent means of meeting Consumers' capacity and energy needs right now, the Commission will reevaluate Consumers' PCA in future IRP proceedings. *Id*. Mr. Proudfoot also disagrees with SEIA's assessment that its members are harmed by the PURPA changes proposed in the settlement agreement regarding PURPA contract length and modified avoided cost methodology. According to Mr. Proudfoot, the harm SEIA mentions is both "unknown and highly speculative." *Id*., p. 3029. He further clarifies that there is no guarantee that any SEIA members would qualify for PURPA contracts because the Commission has not established an LEO determination methodology, and because neither the Commission nor the Federal Energy Regulatory Commission (FERC) has made any LEO determinations on a case-by-case basis. *Id*. Moreover, Mr. Proudfoot points out that the Commission-designated stakeholder process to establish rules regarding an LEO is still ongoing. Mr. Proudfoot also identifies an additional unknown variable, i.e., whether "the distribution grid is robust enough to support electric connections without extensive and costly upgrades." Without more information regarding whether interconnection queue projects would qualify for an LEO and be economical from an interconnection cost perspective, Mr. Proudfoot explains that the Staff believes "the same speculative risk of harm exists" for SEIA members under this settlement agreement as for Michigan ratepayers who would have to pay higher avoided costs rates if Consumers were to enter into PURPA contracts with SEIA members. *Id*., p. 3030. Mr. Proudfoot further clarifies that other PURPA projects are available besides those in Consumers' interconnection queue. *Id*. Finally, Mr. Proudfoot asserts that all parties were given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement, that the proposed settlement agreement is representative of most if not all of Michigan's sectors concerned with the future of energy-related issues, and that the settlement agreement is supported by substantial evidence on the record as a whole. *Id*., pp. 3030-3032.

2. <u>Consumers Energy Company</u>

Consumers' rebuttal testimony consists of testimony from witnesses Richard T. Blumenstock, Consumers' Executive Director of Electric Supply; Srikanth Maddipati, Consumers' Treasurer and Vice President of Investor Relations; Michael A. Torrey, Consumers' Vice President, Rates and Regulation; and Keith G. Troyer, Consumers' Manager of Supply Contracts in the Transactions and Wholesale Settlements, Electric Contract Strategy Section of the Electric Supply Department.

Mr. Blumenstock provides an overview of the settlement agreement. 10 Tr 3037-3039. He also lists the parties that signed the agreement, those who signed a statement of non-objection, those who remained silent, and those who opposed it. Mr. Blumenstock agrees with Staff witness Paul Proudfoot that the settlement agreement meets the statutory requirements of MCL 460.6t. Mr. Blumenstock provides a detailed explanation of why the settlement agreement satisfies the planning objectives that the Commission set forth pursuant to Section 6t(8), how it ensures resource adequacy and capacity that is sufficient to serve anticipated peak electric load plus the applicable planning resource margin requirement and local clearing requirement, and how it ensures compliance with applicable state and federal environmental regulations. *Id*., pp. 3041-3042. Mr. Blumenstock explains that the settlement agreement ensures competitive pricing by maintaining a strategy of modular deployment of new generation sources, allowing for phase-in of associated costs, and limiting rate impact on a year-to-year basis. *Id*., p. 3043. In addition, because the PCA avoids large capital investments tied up in one project and provides for competitive bidding of all new supply-side generation, Mr. Blumenstock asserts that the settlement agreement limits the costs to the ratepayer. *Id*. Mr. Blumenstock lauds the company's PCA as providing the requisite flexibility to adjust to changes in cost, electric demand, or the business environment. He explains that the features of a modular approach insulate the company and its ratepayers from commodity price risks and protects against high customer rates. *Id*., p. 3044. Mr. Blumenstock also describes how the settlement agreement ensures diversity of generation supply. *Id*.

Regarding the proposed levels of peak load reduction which include DR, CVR and EWR, Mr. Blumenstock states these levels are reasonable and cost-effective. He also lists other benefits of the settlement agreement, including the competitive bid procurement process, the significant amount of collaboration envisioned between stakeholders on future competitive bidding guidelines, a new capacity procurement process in each annual solicitation that is competitively bid and that consists of 50% new capacity from PPAs and 50% of new capacity owned by Consumers as acquired through a competitive bidding process, and an FCM on PPA payments. Mr. Blumenstock views a provision in the settlement agreement that requires Consumers to file its next IRP by June 2021 to be a positive benefit that allows stakeholders an opportunity to more closely track and assess Consumers' implementation of the PCA to ensure that it remains reasonable and prudent. Further, Mr. Blumenstock views the testimony submitted in this case to support approval of Consumers' PCA and the settlement agreement. *Id*., p. 3047.

Mr. Blumenstock next addresses SEIA's argument that the settlement agreement fails to acknowledge Consumers' obligation to contract with PURPA QFs. Mr. Blumenstock counters that the settlement agreement does not "completely ignore" PURPA rights or obligations. *Id*., p. 3048. Rather, Mr. Blumenstock alludes to paragraph 12 of the agreement as providing that the agreement is not intended to affect or waive the PURPA rights or positions of any party that existed before the Commission's approval of the settlement agreement. *Id*. According to Mr. Blumenstock, this provision means that the agreement will not impair the ability of Consumers, ratepayers, QFs, or any other stakeholders to raise PURPA issues related to any QFs currently seeking rates set forth in Case No. U-18090 in other proceedings. *Id*. Further, Mr. Blumenstock agrees with Mr. Troyer that, although the settlement agreement does not address issues related to the QFs in the company's interconnection queue and the rates these projects could receive, those issues are complex and not in the record in this case and should not be decided here. *Id*. He asserts that resolution of those issues differs greatly for each developer in the interconnection queue. *Id*. Mr. Blumenstock also notes that SEIA's proposal to resolve issues related to the QFs in Consumers' interconnection queue was first presented in SEIA's objections to the settlement agreement, and that this proposal does not provide sufficient grounds for rejecting that agreement.

Id. Mr. Blumenstock claims that the settlement agreement does not impair the PURPA rights of QFs in Consumers' interconnection queue. *Id*. He believes that PURPA QFs have the ability to advocate for their perceived rights under PURPA outside of this IRP case as Cypress Creek has done.

Regarding SEIA's assertion that Consumers has a capacity need, Mr. Blumenstock disagrees. *Id*., p. 3050. According to Mr. Blumenstock, Mr. Lucas' settlement direct testimony does not establish that the capacity sources cited in that testimony create a capacity need of 80 ZRCs. *Id*., p. 3051. Mr. Blumenstock explains that removal of the capacity provided by the T.E.S. Filer City plant will not result in a capacity shortfall until 2031 and 2032 and, by then, it would be a small shortfall that may never materialize. *Id.* Mr. Blumenstock further explains that it is premature for SEIA to assume that the 100 MW of self-build solar capacity results in a capacity need because the Commission has not denied it. *Id*., p. 3052. Moving on to the 56 ZRCs associated with the CVR in Consumers' PCA, the PCA is part of the settlement agreement and includes the ZRCs associated with CVR as well as preapproval of related capital investments in CVR that Consumers will incur in the next three years. *Id*. The ALJ's contrary recommendation that the CVR proposal be rejected is not grounds for rejecting the settlement agreement, Mr. Blumenstock continues. *Id*., p. 3053. Similarly, Mr. Blumenstock asserts that the Commission should reject Mr. Lucas' arguments regarding the quantities of EWR and DR in the PCA as well as Consumers' EV forecast because those amounts have already been agreed upon in the settlement agreement. *Id*. Further, even if Consumers did have a capacity need, that need should be addressed through competitive bidding proposed in the settlement agreement. *Id*., p. 3051.

Addressing SEIA's claim that approval of the settlement agreement will harm its members, Mr. Blumenstock testifies that SEIA has failed to demonstrate any such harm. He opines that the settlement agreement preserves the PURPA rights of QFs. He suggests that the PURPA issues SEIA attempts to raise in its objections are complex issues that involve more parties than those involved in this case and those issues should be resolved in other PURPA-related cases. *Id*., p. 3054. Further, Mr. Blumenstock points out that the settlement agreement provides SEIA's members with significant opportunities to invest in Michigan.

Mr. Maddipati's rebuttal testimony focuses in part on the settlement agreement's inclusion of an FCM on PPAs for new capacity. Mr. Maddipati disagrees with SEIA's position that an FCM is against the public interest. He explains that Mr. Lucas' testimony criticizing the FCM repeats the same criticisms that were already refuted in this case. Mr. Maddipati further asserts that Mr. Lucas wrongly relies on the ALJ's proffered reasons for rejecting the FCM set forth in the PFD, because the FCM envisioned in the settlement agreement is different than the one Consumers initially proposed in this case. 10 Tr 3094. Further, Mr. Maddipati notes that the parties to the settlement agreement found that the agreed-upon FCM "would be reasonable and in the public interest." *Id*. Mr. Maddipati reiterates the company's rationale for an FCM by quoting his rebuttal testimony in Consumers' case-in-chief. Mr. Maddipati also notes the testimony of Paul Proudfoot acknowledging that, without such an incentive, it may be difficult to expect Consumers to enter into thousands of megawatts of PPAs for solar resources in part because the utility has little opportunity to earn a return on those PPAs. *Id*., p. 3095. Mr. Maddipati notes that ABATE offered testimony in support of an FCM and noted that an FCM can compensate the utility for the additional credit risk it faces when entering into a PPA for new capacity. *Id*. Mr. Maddipati also quotes the testimony of MEC/NRDC/SC that a rationale exists for an FCM to encourage the utility to consider PPAs where they make sense by compensating Consumers for the lost opportunity to increase share value. *Id*., p. 3096. Mr. Maddipati repeats that an FCM "would potentially mitigate some of the negative credit impacts of PPAs." *Id*., p. 3097. Additionally, Mr. Maddipati explains that the FCM agreed upon in the settlement agreement is significantly less than the incentive Consumers initially proposed and is not calculated using imputed debt but is based on a simple multiplication of Consumers' weighted average cost of capital (WACC) based on its total capital structure and PPA payment. *Id*. Mr. Maddipati states that there is no support for any contention that the agreed-upon FCM somehow disadvantages third-party developers because Consumers is required to procure at least 50% of its new capacity from PPAs through competitive solicitations. Mr. Maddipati further explains that Attachment B to the schedule represents a maximum which limits the potential FCM that could be earned and does not represent a minimum as Mr. Lucas implies. Mr. Maddipati points out that the agreed upon FCM is subject to ongoing Commission review in subsequent IRP cases. Mr. Maddipati disagrees with Mr. Lucas that it is not in the public interest to extend the FCM to PURPA contracts, explaining that the impact on credit that PPAs have exists whether those PPAs arise from competitive bidding or from obligations under PURPA. *Id*., p. 3099. Finally, Mr. Maddipati disagrees with Mr. Lucas that it will be highly unlikely that competitively-solicited Consumers-owned projects will be cost competitive with third-party projects, because competitive bidding addresses this concern and the company and its customers will benefit from utility ownership of solar assets.

Mr. Torrey's testimony focuses on why the settlement agreement is in the public interest, represents a fair and reasonable resolution of this proceeding, and is supported by substantial evidence on the record as a whole. Mr. Torrey explains that the 11 parties that signed the settlement agreement "overwhelmingly represent the public interest" because they represent the utility, the regulator, environmental groups, independent power producers including renewable generation companies, large customers, industrial customers, and residential customers. 10 Tr

3076. Mr. Torrey describes each of these 11 parties and their interests in detail. *Id*., pp. 3076-3082. According to Mr. Torrey, these 11 parties "represent a broad, diverse group of Michigan-focused parties advocating for the economic and environmental interests of Consumers Energy's electric customers and the state of Michigan." *Id*., p. 3082. Another focus of these parties, Mr. Torrey continues, is on ensuring that Consumers' customers are provided with reliable electricity. He further points out that no in-state constituencies opposed the settlement agreement. *Id*., p. 3083.

Mr. Torrey disagrees with Mr. Lucas' claim that 19 parties did not sign the settlement agreement and therefore that 2/3 of the parties did not support it. He explains that signing a statement of non-objection is not a statement in opposition to the settlement agreement and notes that nine parties signed a statement of non-objection. Mr. Torrey goes on to note that one party chose not to sign any statement in support or in objection to the settlement and that another party withdrew from the proceeding altogether. Mr. Torrey points out that only SEIA and Cypress Creek, a SEIA member, objected to the settlement agreement. Next, Mr. Torrey asks the Commission to consider the fact that "many" of the nine parties that signed the statement of non-objection actively participated in the settlement process and the settlement agreement addresses concerns and positions that these parties advanced. He further requests that the Commission consider the fact that, of the 23 parties remaining in this case, 20 have either signed the settlement agreement or indicated that they do not object to it. *Id*., p. 3084. Mr. Torrey also asserts that, because the settlement agreement represents a compromise reached by a substantial portion of the parties in this case, it represents a fair and reasonable resolution of this proceeding. He explains that testimony presented on behalf of Consumers, ABATE, and the Staff supports this assertion.

Mr. Torrey further notes that ELPC *et al*. filed testimony finding the settlement agreement to be in the public interest. He explains that a finding that the settlement agreement is in the public interest is all that Rule 431 requires for the Commission to approve it. He further states that it is unnecessary and inappropriate for the Commission to consider what additional terms could be added to the settlement agreement in order for ELPC *et al*. to sign it. *Id*., pp. 3086-3087. Adding terms or conditions to the settlement agreement deprives the parties of the benefit they bargained for in negotiating its terms, Mr. Torrey continues. He further points out the provision in the settlement agreement that states that if the Commission modifies it, it shall be deemed withdrawn. *Id*. Mr. Torrey therefore discourages the Commission from accepting any of SEIA's proposed modifications to the agreement. Mr. Torrey emphasizes that SEIA's members maintain the ability to advocate for their perceived rights to the avoided cost rates set forth in Case No. U-18090 in other proceedings. Finally, Mr. Torrey testifies that the settlement agreement is supported by substantial evidence on the whole record. *Id*., p. 3088. Mr. Torrey ends his testimony by concluding that because the public interest is adequately represented by the parties who entered into it, because the settlement agreement is in the public interest, and because it represents a fair and reasonable resolution of this proceeding and is supported by substantial evidence on the record as a whole, the Commission should approve it. *Id*., p. 3089.

The last witness to offer rebuttal testimony on behalf of Consumers, Keith Troyer, discusses SEIA's testimony about Consumers' obligations under PURPA, Consumers' REP, the cost impacts of competitive solicitations, PURPA capacity need demonstration, PURPA avoided cost issues, harm to SEIA, and SEIA's 800 MW proposal to allegedly resolve issues related to projects in Consumers' interconnection queue. To begin, Mr. Troyer disagrees with Mr. Lucas' assertion that the settlement agreement fails to acknowledge Consumers' obligation to contract with PURPA

QFs and is not in the public interest. Instead, Mr. Troyer explains that Consumers' obligation to purchase from QFs up to 20 MW in size is "a complex issue." 10 Tr 3058. He continues that, although a QF is entitled to a certain avoided cost rate based on the date that an LEO is established, this proceeding does not address whether or not a QF has established an LEO. *Id*. Because paragraph 12 of the settlement agreement preserves the legal right of any QF to file a claim with the Commission in a separate proceeding regarding its rights under PURPA, Mr. Troyer believes the assertion that the settlement agreement ignores QF obligations is incorrect. *Id.* He points out that Cypress Creek, SEIA's most vocal member in this case, has initiated such a claim by filing a complaint with the Commission on April 5, 2019.

Mr. Troyer notes that Consumers included 150 MW of PURPA contracts in its PCA. He states that Geronimo Energy (Geronimo) challenged the Commission's October 15, 2018 order in Case No. U-18090 where the Commission required Consumers to execute contracts at the full avoided cost rates for the first 150 MW in the interconnection queue. He further notes that Consumers submitted a filing asking the Commission to rescind its PURPA avoided cost rates in Case No. U-20469 and submitted a request in Case No. U-18090 to rescind the 20-year Standard Offer contract that it approved in Case No. U-18090. Despite these challenges, Mr. Troyer observes that the PCA agreed upon in the settlement agreement maintains the assumption that 150 MW will be purchased from QFs. Mr. Troyer continues that, just being within the first 150 MW of Consumers' interconnection queue does not, in and of itself, establish an LEO. He explains that, because Michigan does not have formal rules for establishing an LEO at this time, these issues are addressed on a case-by-case basis. *Id*., p. 3059. To illustrate the complexity of the issues that surround the establishment of LEOs, Mr. Troyer uses the Cypress Creek complaint in Case No. U-20516. He notes that Cypress Creek seeks contracts for 256 different limited liability companies and that the facts and circumstances pertaining to each company's project must be evaluated independently to determine if an LEO has been established. Mr. Troyer concludes that, because the record in this case does not specifically address these projects, or any other projects in the interconnection queue, these issues should be resolved in Case No. U-18090, Case No. U-20469, the complaint proceedings, or elsewhere. *Id*., p. 3060. It is therefore premature, in Mr. Troyer's opinion, to assert that Consumers must contract with QFs in the queue, because this depends on whether the Commission finds that the QFs in the interconnection queue have established an LEO.

Regarding Mr. Lucas' claims that Consumers has been intentionally impeding development of new QFs by delaying interconnection requests, Mr. Troyer contends that this issue is not relevant to Consumers' IRP and there is no evidence in the record pertaining to this issue. Rather, Consumers' request for a partial waiver of the interconnection standards is addressed in Case No. U-20444. *Id*., p. 3061. Mr. Troyer next responds to Mr. Lucas' assertion that the Commission's approval of Consumers' PCA before resolving outstanding PURPA queue issues can result in over-procurement of capacity, unnecessary costs, and that this is not in the public interest. Mr. Troyer states that Mr. Lucas assumes that QF projects in Consumers' interconnection queue are eligible for rates set forth in Case No. U-18090. But, Mr. Troyer points out that Consumers does not agree that these facilities have established an LEO. Mr. Troyer states that there is no evidence to support Mr. Lucas' assumptions. He continues by noting that, even if Mr. Lucas is correct and Consumers executes PURPA contracts, Consumers will have the flexibility to adjust the "solar glide path" in a future IRP filing. *Id*., pp. 3061-3062.

Mr. Troyer disagrees with Mr. Lucas that approval of the settlement agreement will result in Consumers customers paying more than is necessary for solar capacity. Mr. Troyer explains that

Mr. Lucas relies on data from the Commission's February 7, 2019 order in Case No. U-18231 to determine a LCOE up to $126 per megawatt hour (MWh) for 100 MW of company-owned solar. But, Mr. Troyer notes that a later competitive solicitation in 2018 resulted in an "average cost of economic projects at $74/MWh for Company-owned solar." *Id*., p. 6. According to Mr. Troyer, this demonstrates that the costs of solar are continuing to decline for company-owned projects. He further testifies that Consumers' 100 MW REP solar in the PCA will not cause ratepayers to overpay for solar capacity as Mr. Lucas claims because Consumers is pursuing a solar PPA to fill the 100 MW solar in 2021 that is included in the PCA. He continues that the weighted average cost of economic solar PPAs from the 2018 solicitation was $49/MWh and that Consumers is in final negotiations with a shortlist of bidders to execute a PPA at a cost less than $49/MWh. Thus, Mr. Troyer concludes that the 100 MW solar resource included in Consumers' PCA will cost the company's ratepayers less than a similar amount of capacity from PURPA-based contracts at the rates Mr. Lucas proposed. Accordingly, Mr. Troyer disagrees with Mr. Lucas' recommendation that the Commission should reject the 100 MW of REP solar.

Mr. Troyer next discusses Mr. Lucas' criticism of the 50/50 structure of the solicitation process for procurement of new supply-side resources. According to Mr. Troyer, Staff witness Paul Proudfoot proposed a capacity procurement approach in his direct testimony where 50% of new capacity would be procured from PPAs and 50% would be owned by Consumers. *Id*., pp. 3063-3064. Although SEIA had ample opportunity to voice concerns throughout this case, Mr. Troyer points out that it has remained silent until now and none of its concerns were presented in this case. He continues that the 50/50 structure was included in settlement negotiations and ensures that Consumers will not own all of assets procured through competitive solicitations.

Finally, Mr. Troyer considers it "speculative" to suggest that competitively-bid agreements will be more expensive than the Case No. U-18090 PRA capacity and energy rates. *Id*., p. 3064.

Regarding the proposed competitive solicitation process envisioned in the settlement agreement, Mr. Troyer disagrees with Mr. Lucas that the 2008 *Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy*, which the Commission adopted in Attachment D of its December 4, 2008 order in Case No. U-15800 for all competitively bid projects in an REP, are insufficient to address shortfalls and risks associated with the competitive solicitation process.[7] Instead he asserts that they provide an adequate starting point for these solicitations. Further Consumers will use an independent evaluator to conduct the issuance, evaluation, and ranking of the proposals for both the PPA and company-owned portions of the solicitation. Further, Consumers has agreed to solicit feedback from stakeholders both before and after the first solicitation. With respect to SEIA's proposed procedures found in Attachment A to SEIA's initial brief, Mr. Troyer states that these procedures were not provided as record evidence in this proceeding.

Mr. Troyer disagrees with Mr. Lucas' testimony that the proposed changes to PURPA are not supported by the record. Beginning with the five-year capacity demonstration period in the settlement agreement, Mr. Troyer states that a 10-year period undermines the competitive solicitation process and results in ineffective capacity planning. He further notes that there was evidentiary support for the five-year period in Staff witness Jesse Harlow's direct testimony. Mr. Troyer also disagrees with Mr. Lucas' statement that, if Consumers failed to conduct competitive

[7] The 2008 *Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy*, which the Commission adopted in Attachment D of its December 4, 2008 order in Case No. U-15800 for all competitively bid projects in an REP are often referred to throughout this order as the "guidelines approved in Case No. U-15800."

solicitations, the five-year period becomes effective. Mr. Troyer explains that the settlement agreement requires Consumers to immediately offer any capacity not filled through competitive solicitations to QFs, regardless of whether a capacity need exists. *Id*., p. 3066.

In addition, contrary to Mr. Lucas' claim that no information was presented to change the 20-year contract term to either a 10-year forecast or 15-year actual pricing, Mr. Troyer states that both he and Mr. Harlow supported a five-year contract term for forecasted pricing and a 15-year term for actual pricing in their direct testimony. The 10-year contract term was a concession that was reached during settlement negotiations. Mr. Troyer also points to language in paragraph 7 of the settlement agreement that gives QFs that receive PPAs at the full avoided rate the same contract term length as that in competitively-bid PPAs and that further provides the maximum term length of competitively bid contracts will be equal to the depreciation schedule of a similar company-owned asset, which, for solar projects, is currently 25 years. *Id*., p. 3067. Mr. Troyer also disagrees with Mr. Lucas that the Commission should require a full 10-year LMP forecast and notes that any modification will void the settlement agreement in its entirety. *Id*., p. 3068.

Mr. Troyer also disagrees with Mr. Lucas' assertion that the public interest cannot be represented through a settlement agreement that contains no solar QF developers or trade association for solar companies, pointing out that Consumers' PCA, as modified, adds 6,000 MW of new solar capacity over the next 20 years. Mr. Troyer asserts that this does not harm solar developers or their trade associations. Further, the settlement agreement gives any QF up to 20 MW in size the ability to participate in competitive solicitations regardless of what technology is being solicited. Further Mr. Troyer maintains that the economic benefits that will result from the settlement agreement will be provided regardless of the size of the solar generation facility. *Id*.,

p. 3069. Moreover, Mr. Troyer does not believe that the settlement agreement's failure to address the uncertainty of existing QF projects in the queue results in harm to SEIA's members, because their PURPA rights are preserved. In response to Mr. Lucas' point that QF developers have spent millions of dollars on pre-development efforts, Mr. Troyer points out that there are costs associated with determining the feasibility of solar projects and that Consumers should not be forced to enter into PPAs because QF developers have taken on speculative risks in the pursuit of finding viable projects. Mr. Troyer points out that PURPA establishes an avenue for solar developers to create an obligation for the utility through the formation of an LEO.

Mr. Troyer disagrees with SEIA's proposal to resolve the issue related to existing QF projects in Consumers' interconnection queue because he asserts that it is not supported by any evidence in the record. *Id*., p. 3071. According to Mr. Troyer, this is an attempt to dedicate an amount of capacity to benefit solar developers and will result in higher costs than the bids Consumers will receive through competitive solicitations as provided for in the settlement agreement. He again points out that any modification of the settlement agreement's terms would void the settlement agreement. Regarding Mr. Lucas' assertion that failure to address the rights of existing QFs will result in protracted litigation, Mr. Troyer explains that there is no evidence presented in the record to permit the Commission to rule on the establishment of an LEO by QFs in the interconnection queue. Further, because SEIA cannot bind its member companies, Mr. Troyer questions how its proposal could truly resolve the issues Mr. Lucas raises. Accordingly, Mr. Troyer disagrees with Mr. Lucas' arguments regarding the settlement agreement or that it should be modified in any way that Mr. Lucas proposes.

3. Solar Energy Industries Association, Inc.

SEIA responds to the direct testimony presented by ABATE and ELPC *et al*. First, Mr. Lucas points out that SEIA represents the interests of Michigan ratepayers because five of its member companies do business in Michigan, and these companies employ individuals who live in Michigan. Mr. Lucas explains that SEIA advocates for the interests of its member-companies in regulatory matters. Further, Mr. Lucas considers the concern to be irrelevant to the proceedings because there is no requirement that all the parties to the proceeding represent the interests of in-state ratepayers.

Next, Mr. Lucas addresses the claim that the settlement agreement requires all new resources to be competitively bid. He points out that DR, CVR, and EWR, which will provide peak load reductions, are costs not subject to future competitive bidding, and the magnitude of that reduction is not the result of available cost-effective bids. In addition, Mr. Lucas asserts that ABATE's statement that the results of competitive solicitations will define the avoided cost for any PURPA-based PPA is false. He continues that the settlement agreement does not require competitive bidding for existing QFs. 10 Tr 2981. Mr. Lucas further explains that the inclusion of a competitive solicitation process does not resolve the rights of existing QFs and does not account for any of the QF capacity that will be coming online in the future. And, Mr. Lucas further asserts that there is no basis for ABATE's claim that the settlement agreement requires that Consumers acquire capacity through "build-own-transfer agreements." Mr. Lucas further explains that with such a project, a third-party developer would typically own the project until the 6th year of operation in order to earn a fully-vested federal investment tax credit. He further testifies that, including a three-year timeline between competitive solicitation and commercial operation, such a project will not enable Consumers to place the asset into its rate base (and begin earning a return) until nine years after the competitive solicitation took place. Mr. Lucas also discusses Consumers' testimony where it states an intention to enter into build-transfer agreements where the developer builds the project and then sells it to Consumers. Mr. Lucas further states that, at no point in its testimony did Consumers indicate it would actively pursue "build-own-transfer" projects. Mr. Lucas recommends that the Commission require Consumers to either eliminate an arbitrary preference for company-owned projects altogether or shift competitive procurement much more heavily towards third-party PPAs and away from company-owned projects. *Id*., p. 2985. Mr. Lucas testifies that there is no basis for the claim that Consumers' customers could be paying between $95 and $110/MWh for new capacity under long-term PURPA PPAs. He further asserts that ABATE's support for the settlement agreement also supports above-market payments and other additional unnecessary costs that Consumers' ratepayers will have to pay.

Regarding the FCM, Mr. Lucas argues that there is no basis for ABATE's claims regarding the FCM's impact on Consumers' financial strength. Mr. Lucas reviews ABATE's early arguments against the inclusion of an FCM and notes that the ALJ addressed several of the issues that ABATE discussed in its testimony. Mr. Lucas does not believe ABATE's concession on this issue in reaching a compromise that permits the Commission to take the FCM into account in determining the utility's overall cost of capital in future rate cases will ensure that future rates are more just and reasonable. *Id*., p. 2989. Rather, he asserts that the plain language of the settlement agreement limits the Commission's ability to consider the impact of the FCM to only imputed debt matters. *Id*. Mr. Lucas restates the ALJ's finding that the risk of imputed debt was massively overstated and reasons that allowing the Commission to consider the FCM in the context of imputed debt provides little actual benefit. Regarding ELPC *et al*.'s direct testimony, Mr. Lucas agrees with ELPC *et al*. that the settlement agreement contains some beneficial provisions and that a solar-focused approach to meeting future needs is in the public interest. He also agrees with ELPC *et al*. that the PURPA-related issues are "a key missing piece to the settlement agreement" and that any path forward must include a satisfactory resolution of those issues. Mr. Lucas concludes by stating that no party presented compelling evidence that the settlement agreement is in the public interest and that it represents a fair and reasonable resolution to this proceeding. Therefore, he urges the Commission to reject it unless the Commission includes as a condition of approval that the settlement agreement be modified to include SEIA's proposal to direct Consumers to contract with 800 MW of new QF projects in Consumers existing interconnection queue at the currently-in-effect U-18090 avoided cost rates. *Id*., p. 2993.

III. <u>Initial Briefs</u>

A. <u>Solar Energy Industries Association, Inc.</u>

SEIA argues that 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. Specifically, SEIA points out that the settlement agreement fails to address the rights of QFs under PURPA to contract with Consumers at the Commission's established energy plus MISO PRA rate where Consumers does not have a current capacity need. It also does not consider how capacity provided by these QFs will be treated. According to SEIA, these unresolved issues must be addressed because the Commission included PURPA implementation issues in this proceeding. SEIA requests that the Commission "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." SEIA's initial settlement brief, p. 12.

SEIA argues that the Commission's past directive in its October 5, 2018 order in Case No. U-18090 requires Consumers to begin contracting with QFs immediately and that "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." *Id*., pp. 13-14. SEIA explains that, "[a]lthough 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." *Id*., p. 16. SEIA continues that, under PURPA, in the absence of a need for capacity, Consumers is obligated to contract at the "energy + MISO PRA rate" with any QFs that form LEOs before any changes are made to the Commission's implementation of PURPA. *Id*., pp. 16-17.

SEIA asserts that the settlement agreement fails to address the rights of QFs with existing projects in Consumers' interconnection queue to contract at the current "energy + PRA avoided cost rate" and that "[a]ny transition to a new PURPA regime must recognize the rights of projects formed under the existing PURPA regime." *Id*., pp. 17-18.

SEIA disagrees with the settlement agreement that Consumers' PCA is the most reasonable and prudent means of meeting the utility's energy and capacity needs over the next 15 years because, despite the utility's plans to acquire over 6,500 MW of new capacity, Consumers' PCA assumes that no more than the 150 MW mandated in Case No. U-18090 will be acquired through PURPA. SEIA explains that, if Consumers is later found to have violated PURPA and is required to acquire the PURPA capacity pending in its existing interconnection queue, the utility will "dramatically over-procure capacity to the detriment of ratepayers." *Id*., p. 18. In addition, SEIA asks that the Commission condition any approval of the settlement agreement on implementation of SEIA's proposal for addressing PURPA QFs in Consumers' interconnection queue, which is described in detail in its filed objections to the settlement. According to SEIA, its proposal "would ensure that 800 [MW] of eligible QFs with projects in Consumers' interconnection queue as of a date certain would receive PPAs at the existing energy + MISO PRA rate, and that these projects would be reflected in Consumers' PCA." *Id*., p. 19. This 800 MW would be in addition to the 150 MW of QFs already included in Consumers' PCA. SEIA lauds this approach as eliminating the need for the Commission to determine the rights of every QF in Consumers' interconnection queue on a case-by-case basis. SEIA further claims that its approach will limit the amount of QF capacity that would move forward under PURPA and will ensure that Consumers engages in competitive bidding in the near future to acquire additional needed capacity. *Id*., p. 20.

SEIA also criticizes the settlement agreement for asserting that Consumers does not have a capacity need, contrary to the evidentiary record in this case, which it asserts demonstrates otherwise. Because the T.E.S. Filer City plant PPA amendment, that would have provided additional capacity, will now not be realized, because the Commission did not approve Consumers' proposed 100 MW of self-build solar facilities included in Consumers' REP proceeding in Case No. U-18231, and because the ALJ determined that Consumers' reliance on CVR was unreasonable, SEIA asks the Commission to find that Consumers has a capacity need in the amount of 80 ZRCs that obligates it to make full capacity payments to QFs beyond the 150 MW that the Commission previously required. *Id*., pp. 29-30. SEIA further points out that this capacity need would be even greater if the Commission were to require Consumers to use the industry standard for its electric vehicle growth forecast. *Id*., p. 22.

SEIA maintains that the settlement agreement wrongly provides Consumers with an unnecessary FCM to the detriment of ratepayers and QFs. It argues that "[t]he FCM is not in the public interest, is unwarranted and unreasonable, and is set at the highest level permitted by law."

Id., p. 31. SEIA explains that, 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." *Id*., p. 32. SEIA agrees with the ALJ that the record does not demonstrate that Consumers needs an incentive to pursue a least-cost strategy of supply acquisition and that the law requires Consumers to consider alternate sources of generation to utility-built resources. *Id*., p. 33. According to SEIA, the ALJ also correctly noted that utility-owned resources only make up 70% of Consumers' portfolio and that the law requires Consumers to consider alternate sources of generation to utility-built resources. *Id*. SEIA explains that PURPA already requires Consumers to pay QFs for capacity regardless of whether an FCM is approved. *Id*., p. 34.

SEIA argues that an FCM is not necessary to offset credit rating agencies' negative treatment of long-term PPAs. SEIA points to testimony by Mr. Lucas that "Mr. Maddipati exaggerates the effects of PPAs on the utility's imputed debt by credit rating agencies and misapplies [Standard & Poor's (S&P)] methodology." *Id*., p. 35. In addition, SEIA contends that Consumers dramatically overstated the risks of being a party to a PPA because it misapplied S&P's imputed debt methodology and asks that ratepayers pay twice for portions of the same product. *Id*., p. 35. SEIA points out that the utility does not currently have an FCM for its existing PPAs and yet, the utility's debt ratings have improved between 2010 and 2017. *Id*., p. 36.

In addition, SEIA suggests that Consumers has not quantified the rate impact of the utility's FCM proposal and is putting the interests of its shareholders above its customers. *Id*., pp. 39-40. SEIA asserts that an FCM would result in Consumers' ratepayers "providing far too much compensation to Consumers for alleged risks for which the utility is already compensated." *Id*.,

p. 38. SEIA cites Mr. Lucas' testimony that other utilities use competitive solicitations without an FCM and urges the Commission not to "view a financial incentive as a necessary precondition to realizing savings for ratepayers." *Id*., pp. 41-42. Moreover, SEIA disagrees with claims that ratepayers are protected because the Commission can reconsider the FCM in future years. It notes Mr. Lucas' testimony that the settlement agreement "only allows the Commission to consider the FCM in determining the overall cost of capital as it relates to imputed debt" and "does not provide the Commission authority of the existence of the FCM generally." *Id*., pp. 43-44. SEIA asks the Commission to either deny the FCM altogether, or alternatively to deny the application of an FCM to PURPA PPAs. *Id*., p. 34. Further, SEIA requests that, if the Commission determines that an FCM is warranted, the FCM should be applied only to the capacity portion of the PPA payments, and not to the total payments as included in the settlement agreement. *Id*., p. 38.

SEIA claims that the proposal to allow Consumers to own up to 50% of new capacity will likely result in higher costs for customers than if the utility pursued more PURPA QF projects or competitively-bid third-party PPAs. SEIA explains "it is almost assured that [photovoltaic] projects owned by Consumers will be more expensive for its customers than 20-year QF PPAs or third-party PPAs." *Id*., p. 46. In addition, SEIA notes that this proposal also subjects its customers to performance risk.

Turning to the competitive solicitation proposal contained in the settlement agreement, SEIA argues that Consumers will provide a set of guidelines for stakeholders to comment on, but there is no commitment that Consumers will heed any recommendations it receives and there is no Commission oversight or input into the process. *Id*., p. 47. SEIA explains that Consumers will then conduct its request for proposals (RFP) using the utility's own set of procedures in a first solicitation that will set the avoided cost rates applicable to PURPA QFs until they are changed.

Id., p. 47. Dissatisfied with this approach, SEIA proposes several changes to the procurement process to establish a "fair and transparent" competitive solicitation process. *Id*., pp. 48-49. These changes include an expedited stakeholder process led by the Staff, rather than the utility, that: (1) includes the establishment of an independent administrator who is the primary entity responsible for planning, evaluating, and managing the bidding process; (2) precludes any impact of an FCM or other incentive mechanism on the results of the procurement; (3) includes clear bid evaluation criteria and a defined selection process; (4) requires the Staff to 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) establishes a single clearing price auction methodology of the capacity price; (6) prohibits negative capacity prices to be bid; and (7) includes other procedures set forth in Attachment A to SEIA's initial brief in this case. *Id*., pp. 49-50.

SEIA is also opposed to the settlement agreement's adoption of a five-year capacity demonstration period for Consumers and instead argues that the Commission should maintain its existing 10-year capacity demonstration period. SEIA urges the Commission to reject Consumers' proposals for a shortened Standard Offer contract term as it has consistently done in the past. SEIA maintains that, 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. *Id*., p. 56. SEIA also argues that a five-year LMP forecast (and a 10-year PPA based on that price) is "too short to provide QFs with a reasonable opportunity to attract capacity as required by FERC." *Id*., p. 57. SEIA explains that it favors QFs having the option of obtaining PPAs with pricing based on a 15-year LMP forecast for energy and MISO's PRA price for capacity. *Id*. Further, if the Commission approves the settlement agreement, SEIA asks the Commission to make clear how avoided energy costs would be determined going forward.

SEIA states that it and its members are harmed by the settlement agreement because the settlement agreement makes it significantly more difficult for QFs to develop solar facilities in Consumers' service area. SEIA also argues that the settlement agreement's "failure 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." *Id*. This, in turn will make it more difficult for QFs to compete effectively in future procurements. SEIA further explains that adding the FCM on future PPAs, including PURPA PPAs, unnecessarily increases the cost of providing independent power to the grid, which it argues will likely create resistance to that supply alternative in the future. And, SEIA continues, earmarking half of future solar procurements to Consumers-owned resources reduces the opportunity for QFs to compete and meet identified capacity needs. Further, SEIA repeats that the settlement agreement's failure to address the rights of QFs with projects pending in Consumers' interconnection queue harms QFs. *Id*., p. 58.

SEIA states that many PURPA issues "have gone unresolved at the MPSC for months" during this IRP proceeding. *Id*. It suggests that the Commission may have been holding off on issuing those PURPA orders waiting for the PURPA issues to be resolved in this case. Indeed, SEIA explains that QFs were "focused on the resolution of this IRP proceeding to address their concerns." *Id*. It notes that Consumers has failed to timely process interconnection applications and has refused to execute PPAs. When it became clear that this settlement agreement would not resolve the issues that impede QFs from advancing with projects in the queue, QFs began filing complaints at the Commission. SEIA expresses some bewilderment that parties are now advocating that the rights of PURPA QFs in the queue to sell their capacity and energy to Consumers are not integral to Consumers' IRP and should be resolved in another proceeding, when in fact, Consumers and the Commission found PURPA issues to be "integral" to the PCA. SEIA observes that postponing the resolution of the level of QF capacity and energy Consumers must contract for under PURPA to a future proceeding "further delays the development of PURPA QFs." SEIA asserts that, with the federal investment tax credit declining, further delay "greatly reduces the likelihood that QFs projects will be developed" at all. *Id*., p. 59.

In addition, SEIA takes aim at specific language in the settlement agreement contained in Paragraph 11, which states as follows:

> 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.

According to SEIA, the scope and intent of this provision is unclear. To the extent that it seeks to prohibit the Commission from determining the rights of PURPA QFs in Consumers' existing interconnection queue, SEIA contends the provision is unlawful. And, SEIA points out that an existing Commission cannot bind a future Commission. It continues that, if this is the effect of the provision, then the Commission cannot approve the settlement agreement. SEIA therefore asks that the Commission "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. . . ." SEIA states that the settlement agreement is not in the public interest and does not represent a consensus proposal among the varied parties and interests in this proceeding. SEIA points out that new PURPA QFs are not represented among the settlement agreement's signatories, even though the proposed settlement would alter the implementation of PURPA in Michigan. It asserts that the Commission should not change PURPA implementation by settlement fiat without the interests of new PURPA QFs being included and addressed. SEIA therefore requests that the Commission reject the proposed settlement agreement, or, in the alternative, make the requested clarifications and adjustments SEIA notes in its brief. It further requests that the Commission condition its approval of the settlement agreement on inclusion of SEIA's proposal for addressing the existing QFs in Consumers' interconnection queue.

B. Consumers Energy Company

Consumers requests that the Commission approve the settlement agreement because it meets the requirements for approval under Rule 431. Consumers argues that the parties that signed the settlement agreement adequately represent the public interest. Consumers disputes the testimony of Mr. Lucas that 19 parties, or two-thirds of the parties in this case, did not support the settlement agreement. Consumers notes that 11 parties signed the agreement and that nine parties signed statements indicating they do not object to the settlement agreement. Consumers clarifies that only MCV failed to sign the agreement, sign the statement of non-objection, or object. It clarifies that only two parties objected to the agreement, specifically SEIA and Cypress Creek, a SEIA member. According to the utility, this support shows the settlement agreement adequately represents the public interest. Consumers' initial settlement brief, p. 11.

Consumers further notes that this conclusion is consistent with the Staff's and Consumers' testimony. Consumers also points out that ABATE's witness Pollock explained that the settlement agreement is supported by in-state constituencies and by parties that represent Michigan ratepayers. Consumers states that, in the past, the Commission has concluded that a utility's and the Staff's involvement in settlement alone may be sufficient to ensure that the parties adequately represent the public interests, and cites various cases before the Commission. It also references a Michigan Court of Appeals opinion where it claims the Court reaches the same conclusion. *Id*.,

p. 15. Consumers disagrees with SEIA's argument that the settlement agreement must include solar QFs to represent the public interest. Rather, it contends that the Staff can ensure that the interests of any underrepresented parties are represented in settlement.

Consumers argues that the Commission should approve the agreement because it represents a significant compromise, negotiated in good faith, that resolves the pending matter, and that meets the requirements for approval of an IRP under MCL 460.6t. *Id*., p. 17. Consumers references testimony that the settlement agreement is the most reasonable and prudent means of meeting Consumers' short- and long-term energy and capacity needs. It points to the agreement's main benefits, such as: the retirement of Karn 1 and 2 by 2023, a competitive bidding procurement process for capacity and for determining avoided costs that Consumers must provide to QFs under PURPA, a capacity procurement approach which provides that 50% of new capacity will be acquired through PPAs and 50% owned by Consumers, an FCM on PPA payments, numerous actions that Consumers must implement and items it must evaluate and consider in its next IRP, and the filing of Consumers' next IRP in June 2021. *Id*., pp. 17-18.

Further, the utility maintains that, because SEIA has not shown that the settlement agreement fails to meet the requirements of Section 6t, the Commission has no legal basis to reject it under Section 6t. *Id*., p. 19. Consumers states that the settlement agreement is supported by substantial evidence in the record. The utility further argues that SEIA's proposed modifications to the settlement agreement and SEIA's request that the Commission condition its approval of the settlement agreement on SEIA's proposal that Consumers purchase 800 MW of new QF projects from the interconnection queue are beyond the scope of the case. *Id*., p. 20. Consumers cautions the Commission that picking and choosing which provisions of the settlement agreement it agrees with and which it rejects would deprive the parties that agreed to it of the benefit they bargained for. *Id*., p. 21. And, Consumers refers the Commission to the language of paragraph 16 in the settlement agreement, which states that "[i]f the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed withdrawn." *Id*. The utility asserts that SEIA's requests to modify the settlement agreement would make it void.

Consumers also addresses Mr. Lucas' claims that the settlement agreement's failure to address the PURPA rights of QFs in Consumers' interconnection queue results in an unfair and unreasonable resolution of this proceeding that is not in the public interest. The utility cites testimony that paragraph 12 of the settlement agreement preserves the PURPA rights of QFs who are currently seeking rates set forth in Case No. U-18090. *Id*., p. 22. Consumers further asserts that the flexibility of the PCA also ensures that the utility will not over-procure capacity as Mr. Lucas suggests. *Id*., p. 23. Consumers points out that it is inappropriate to use the IRP process to litigate the PURPA rights of QFs in the interconnection queue because this is a complex area not developed in the record in this case. *Id*., pp. 23-24. The utility maintains that these issues should be resolved in other proceedings not related to the IRP and further notes that the Staff agrees.

Consumers disagrees with SEIA that the utility has a capacity need. The utility explains that approval of the PCA in the settlement agreement means that it does not have a capacity need. *Id*., p. 28. Further, even if a need did exist, Consumers argues that it should be addressed through competitive bidding. With respect to the loss of capacity from the T.E.S. Filer City PPA, Consumers points out that it will not have a capacity shortfall until 2031, that this shortfall is projected to be minimal, and that it may never materialize. *Id*., p. 29. Regarding the 100 MW of self-build solar that Consumers had requested in its REP case, the utility notes that it is actively pursuing a solar PPA to fill that 100 MW of REP solar. *Id*., p. 30. Consumers argues that this capacity will be acquired at a cost less than a similar amount of capacity of PURPA-based contracts at rates SEIA proposed. *Id*. Regarding the capacity associated with CVR, Consumers notes that the PFD's recommendation regarding CVR is not binding on the Commission and does not provide a basis to invalidate the settlement agreement. *Id*., pp. 30-31. Further, because CVR assumptions included in the settlement agreement are based on substantial evidence and are the product of a reasonable compromise reached by the parties, Consumers asserts that the Commission should reject SEIA's argument about a capacity need.

Regarding the FCM included in the settlement agreement, Consumers asserts that it is also supported by substantial record evidence and represents a reasonable compromise based on the parties' FCM positions in the record. *Id*., p. 32. The utility notes that Mr. Lucas' arguments against the FCM are based on criticism of Consumers' initial proposal and do not discredit the FCM provided for in the settlement agreement. *Id*. For example, Consumers notes that it is not calculated using imputed debt but is based on a simple multiplication of the utility's WACC. Consumers further argues that the ALJ's recommendations in the PFD regarding the FCM addressed a different FCM and do not provide grounds for rejecting the settlement agreement. *Id*., p. 33. The utility also asserts that the credit impacts of PPAs were extensively supported by numerous parties in the record and that therefore there is a policy rationale for the FCM. *Id*. Consumers cites to testimony that it claims clarifies the purpose of Attachment B to the settlement agreement and further asserts that the actual FCM will be based on actual contracts received from the proposed competitive bidding process. *Id*., p. 34. It notes that the weighted average cost of economic solar PPAs from the company's 2018 solicitation, which was $49/MWh, serves as a reasonable proxy price for competitively bid PPAs in the near term, and these prices are expected to decline. Consumers also notes that the Commission will revisit the FCM in the company's next

IRP filing and can consider the impact of the FCM on imputed debt in future rate cases. The utility indicates that there is no support for Mr. Lucas' claim that the FCM will provide a windfall for the company. *Id*., pp. 35-36. Consumers also observes that testimony by the Staff and ABATE supports approval of the settlement agreement FCM.

Next, Consumers addresses SEIA's criticism of the 50/50 capacity procurement structure whereby Consumers may own 50% of future capacity. The utility argues that Mr. Lucas' claim that company-owned capacity will be more expensive than third-party PPAs is speculative, not based on fact, and not supported by the record. It points to a 41% reduction in solar resource LCOE between 2017 and 2018. Consumers asserts it is reasonable to expect this trend of declining solar costs to continue. The company also discusses other ancillary benefits of utility ownership of solar assets, noted in the Staff's testimony, that remain even if the cost of company-owned projects happens to exceed the price of third-party PPAs. *Id*., pp. 39-40. Consumers additionally suggests it is not procedurally appropriate for SEIA to wait until this stage in the case to object to the 50/50 capacity procurement approach.

With respect to SEIA's objections to the settlement agreement's competitive solicitation process, Consumers chides SEIA for relying on testimony that addressed the utility's initially-proposed competitive bidding approach and states that the competitive bidding process adopted in the settlement agreement is different and represents a compromise reached by the parties to the settlement agreement. *Id*., pp. 41-42. The utility argues that its commitment to use the guidelines approved in Case No. U-15800 is an adequate starting point for future competitive solicitations. *Id*., p. 42. Consumers also points out the role of the independent evaluator and the amount of stakeholder collaboration included in the settlement agreement's competitive bidding process.

And, it states that SEIA's alternative competitive bidding procedures were not included in the record in this case and are beyond the scope of this limited proceeding.

The company also dismisses Mr. Lucas' challenges to four PURPA-related issues in the settlement agreement. According to Consumers, these complaints do not refute the utility's contention that the settlement agreement is in the public interest and represents a reasonable resolution to this proceeding. The utility urges the Commission to reject Mr. Lucas' claim that the FCM should not apply to PURPA-based PPAs. Consumers alludes to testimony that shows PPAs affect the company's credit and asserts that this is the case regardless of whether the PPAs are entered into through competitive bidding or because of PURPA obligations.

Consumers further asks the Commission to reject Mr. Lucas' criticisms of the Standard Offer tariff length and the contract terms available to QFs when the company does not have a capacity need. The utility states that Mr. Lucas wrongly suggests that the Standard Offer contract term is limited to 10 years. *Id*., p. 46. Rather, the settlement agreement presents QFs with opportunities to secure PPAs with Consumers for longer terms. *Id*., p. 47. Consumers suggests that Mr. Lucas' complaints about the terms and rates available to QFs when Consumers does not have a capacity need were refuted by company and Staff testimony. The utility urges the Commission to reject Mr. Lucas' alternative proposal that would change the forecasted energy rate option to "a full 10 year forecast" because it is not supported by the record and would undermine the compromise the parties reached. *Id*., pp. 48-49. In addition, Consumers asks the Commission to reject Mr. Lucas' final PURPA-related argument that the five-year capacity demonstration period provided in the settlement agreement should be extended to 10 years, as the record demonstrates that a 10-year period would undermine the competitive solicitation process and result in ineffective capacity planning. *Id*., p. 49.

Consumers argues that SEIA has failed to establish that any harm would result from the Commission's approval of the settlement agreement. Because paragraph 12 preserves the PURPA rights of QFs, Consumers argues that there is no support for the argument that approval of the settlement agreement will harm SEIA's members. Moreover, the utility contends that it is impossible to resolve the uncertainty of existing projects in this case based on the evidentiary record presented. *Id.*, p. 51. Consumers criticizes SEIA for suggesting that five of its members do business in Michigan without revealing the identity of those members in the record. *Id.*, p. 51. Even if SEIA's members were harmed, the utility continues, it is questionable whether SEIA could actually remedy that harm in this proceeding. *Id.*, p. 52. Finally, Consumers points to the benefits that the settlement agreement provides to SEIA's members, such as its plan to acquire approximately 6,000 MW of solar resources through 2040. Because SEIA has failed to establish harm as Rule 431 requires, Consumers urges the Commission to reject SEIA's objections and approve the settlement agreement presented in this case.

C. Michigan Environmental Council/Natural Resources Defense Council/Sierra Club

MEC/NRDC/SC argue that the settlement agreement satisfies each of the requirements under Rule 431 because it advances the public interest, is supported by substantial evidence on the whole record, and represents a fair and reasonable resolution of this IRP proceeding. MEC/NRDC/SC further assert that the settlement agreement satisfies Rule 431 because the parties who entered into the settlement agreement represent the public interest, and those who objected to it have been provided a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement.

MEC/NRDC/SC assert that the settlement agreement preserves many of the beneficial aspects of Consumers' PCA, such as the retirement of Karn 1 and 2 and the replacement of their capacity with cost-effective demand-side resources such as EWR, DR, and CVR. According to MEC/NRDC/SC, under the Commission's three planning scenarios, retiring those units in 2023 is projected to save Consumers' customers between $54 million and $611 million on a net present value (NPV) basis. MEC/NRDC/SC's initial settlement brief, p. 4. Other estimates from Consumers show a savings of between $451 million and $1.06 billion under the Commission's planning scenarios. This shows that the settlement agreements' implementation of this aspect of the PCA is in the public interest and supported by the record. *Id*., p. 5.

MEC/NRDC/SC also laud the ramp-up of solar capacity in the 2020s that is a hallmark of the settlement agreement and notes that the utility would develop approximately 5,000 MW of solar during the 2020s, procuring this capacity through an annual competitive bidding process with at least 50% of newly developed capacity coming from PPAs. *Id*. MEC/NRDC/SC argue that this plan will likely reduce energy costs, significantly benefitting Consumers' customers. They continue that "[b]ecause solar, demand response, and other renewable and demand-side resources can provide, reliable, cost-effective energy and capacity for the Company's customers, Consumers' plan to develop these resources will benefit the public interest." *Id*., p.6. MEC/NRDC/SC contend that this strategy of selecting renewable and demand-side resources will help the utility avoid the "substantial market risks" associated with additional gas capacity. *Id*., p.7. Specifically, these kinds of resources insulate Consumers from volatility related to relying on fuel costs outside of the company's control and from the regulatory risks of fossil generation. *Id*. MEC/NRDC/SC also state that this strategy adopts a modular approach that reduces the financial risks associated with the construction or acquisition of a large power plant. *Id*., p. 8.

MEC/NRDC/SC state that the settlement agreement addresses the most critical flaws of Consumers' proposed FCM. MEC/NRDC/SC explain how the FCM Consumers proposed in its

IRP violated Section 6t because it exceeded the WACC and was too high. MEC/NRDC/SC assert that the FCM included in the settlement agreement is "fair and reasonable, in the public interest, and consistent with the IRP statute's requirement that a financial incentive 'not exceed the utility's weighted average cost of capital.'" According to MEC/NRDC/SC, the revised FCM in the settlement agreement is less expensive and more transparent than the FCM that Consumers initially proposed. *Id*., p. 13. MEC/NRDC/SC like that the settlement agreement FCM is a simple calculation that multiplies the WACC by the PPA payment, and that the settlement agreement provides for ongoing Commission review and adjustment of the FCM in the future. *Id*., p. 14. MEC/NRDC/SC explain that the settlement agreement FCM balances fairness to customers with incentivizing Consumers to meet its capacity need through PPAs, which will minimize costs and benefit the utility's customers.

Turning to the competitive bidding process outlined in the settlement agreement, MEC/NRDC/SC assert that it is fair and reasonable, in the public interest, and supported by substantial evidence on the whole record. The parameters set for the competitive bidding process in the settlement agreement are similar or identical to the improvements that MEC/NRDC/SC have advocated for throughout this proceeding. *Id*., p. 18. They include: (1) providing the contract terms in the RFP, (2) setting the maximum term length of competitively-bid contracts so it is equal to the depreciation schedule of a similar company-owned asset, and (3) using annual solicitation technologies specified in the PCA, including solar. *Id*. Consumers also addressed MEC/NRDC/SC's concerns by agreeing to hold two competitive bidding stakeholder workshops that permit drafting, review, and editing of competitive bidding guidelines, standards, and best practices, as well as the sharing of information about the impact of the FCM on PPA bids. *Id*., p. 19. The competitive bidding terms also reflect the input from multiple stakeholders that represent the public interest. *Id*., p. 20. Examples of this include Consumers' agreement to use a five-year period to determine capacity need (as opposed to a three-year period) and the use of a third-party independent evaluator to administer the competitive bid process. *Id*., pp. 20-21.

MEC/NRDC/SC find the 50/50 capacity procurement structure between capacity owned by Consumers and PPAs to be a reasonable compromise. They further assert that the agreement to prohibit company affiliates from bidding on the portion of Consumers' new capacity acquired from PPAs ensures that at least 50% of the new capacity will actually be from sources independent from Consumers. *Id*., p. 20. MEC/NRDC/SC suggest that the settlement agreement's competitive bidding process reflects compromise and input from various parties, such as the use of an independent evaluator and a five-year period to determine capacity need. MEC/NRDC/SC view this process as likely to result in lower costs for customers and the most efficient way to procure the necessary solar resources planned for the utility's solar ramp-up. *Id*., p. 21.

MEC/NRDC/SC argue that the settlement agreement is in the public interest because it requires Consumers to submit a revised retirement analysis of the J.H. Campbell Units 1 and 2 in the next IRP, which will be filed in June 2021.[8] This analysis will evaluate a range of potential retirement dates beginning with the year 2024, requires the utility to explain its capital expenditure and major maintenance cost projections for each retirement scenario and how its forecasted unit heat rates are consistent with cost projections. It also requires the company to 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. MEC/NRDC/SC further explain that this analysis will also include different capacity price assumptions and cost-effective resource

[8] J.H. Campbell Units 1 and 2 refers to two coal-fired generation units currently owned and operated by Consumers. These units are also referred to as "Campbell 1 and 2" interchangeably throughout this order.

options excluded from its last retirement analysis such as Michigan and out-of-state wind. In addition, MEC/NRDC/SC note that Consumers has revised its four-year time lag position regarding Campbell 1 and 2. According to MEC/NRDC/SC, the revised analysis will help ensure a robust and fair evaluation of the retirement of these coal units and advances the public interest.

MEC/NRDC/SC further assert that the settlement agreement's securitization of Karn 1 and 2 is a reasonable compromise and an improvement over the regulatory asset treatment that the company proposed initially. *Id*., p. 30. MEC/NRDC/SC point out that this allows the utility to recover the Karn 1 and 2 book balance in a way that maximizes potential savings for customers.

MEC/NRDC/SC also view the settlement agreement's resolution of certain PURPA issues in this proceeding to be a fair and reasonable resolution of those issues. MEC/NRDC/SC additionally point out that the public interest is adequately represented by the parties who entered into the settlement agreement and that the Commission's April 10 order satisfies the procedural requirements of Rule 431. MEC/NRDC/SC therefore conclude that the settlement agreement satisfies the Rule 431 standards and urges the Commission to approve it. *Id*., p. 35.

D. Staff

Like MEC/NRDC/SC and Consumers, the Staff argues that the settlement agreement meets Rule 431's requirements. The Staff points out that the Commission allowed parties to submit evidence and arguments about the agreement satisfying one criterion of Rule 431. The Staff argues that the settlement agreement satisfies Rule 431's remaining requirements because its signatories represent a broad cross section of customers and suppliers, the settlement agreement is in the public interest, fairly resolves the proceeding, and is supported by competent, material, and substantial evidence. Moreover, the Staff contends that the objecting parties failed to meet a threshold requirement of Rule 431 because they failed to state their objections with particularity and demonstrate how the settlement agreement would adversely affect them. Pointing out that the settlement agreement does not affect or waive preexisting PURPA rights, the Staff asserts that QF projects in Consumers' interconnection queue are unharmed. Staff's initial settlement brief, p. 4.

Regarding its claim that the settlement agreement is in the public interest, the Staff argues that reducing energy waste and increasing utilization of DR and CVR will serve the public's interest in clean and affordable energy. *Id*., p. 9. The Staff points out that the settlement agreement's DR, CVR, and EWR provisions enable these carbon-neutral, low-cost, and cost-effective resources to offset lost capacity from Consumers' plans to retire Karn 1 and 2 in 2023. The Staff continues that the settlement agreement's provisions regarding the retirements of Karn 1 and 2 and Campbell 1 and 2 will advance the public's interest in clean and reliable energy. According to the Staff, retiring Karn 1 and 2 in 2023 is in the public interest. The settlement agreement also appropriately defers the question of how Consumers should recover the unrecovered book value of Karn 1 and 2 until a later case, where Consumers agreed to seek a financing order on this issue. The Staff also praises the settlement agreement's requirement that Consumers conduct a retirement analysis of Campbell 1 and 2 in its next IRP using several assumptions outlined in the settlement. The Staff views this required compromise as a fair resolution of the issue that benefits the public by establishing parameters for a retirement analysis. *Id*., p. 13.

The Staff next argues that the competitive bidding process and 50-50 ownership split envisioned in the settlement agreement will benefit the public. The Staff calls the proposed competitive bidding process the "hallmark" of Consumers' plan and the "centerpiece" of the settlement agreement. *Id*., p. 14. According to the Staff, the company's plan to use competitive bidding to procure solar generation in small increments allows it to take advantage of declining costs of solar generation. The Staff supports the guidelines that it believes ensures the solicitation process is “inclusive, unbiased, and transparent.” *Id*., p. 15. The Staff continues that annual solicitations ensure that Consumers uses the most up-to-date costs for IRP modeling and setting avoided costs. *Id*. This allows developers to bid on large projects that allow for greater economies of scale and interconnection at the transmission level and reduces the complexity and costs of interconnection in comparison to large PURPA contracts interconnecting at the distribution level. *Id*. The Staff also specifies the many requirements of the solicitation process, such as the use of an independent evaluator, informing all bidders of the evaluation criteria and process, following RFP parameters that the Commission approved in Case No. U-15800, timely issuing an RFP through public notice, and including the terms of the contract in the RFP. The Staff additionally notes that the settlement agreement requires Consumers to follow these same procedures for future solicitations and all new company-owned supply-side resources. The stakeholder process after Consumers’ first competitive solicitation and again in its first IRP review also gives the Commission an opportunity to adopt uniform standards on best practices for competitive bidding and RFPs that all utilities can use, the Staff explains. *Id*., p. 17.

The Staff also views the 50/50 resource split to be in the public interest as it continues a 50% limitation on company-owned resources that was included in 2008 PA 295 and that led to increased competition and reduced prices for Michigan customers. *Id*., p. 18. The Staff also observes that, under the terms of the settlement agreement, Consumers’ affiliates are prohibited from bidding on the portion of new capacity to be acquired from PPAs. The Staff points out that 50% resource ownership permits Consumers to have greater control over the maintenance and operation of the equipment, greater insight into the performance of the equipment, and better equips the utility to forecast the output from solar resources. *Id*., p. 19. Knowledge about the location of such company-owned resources also allows Consumers to better coordinate generation and transmission planning going forward. *Id*., p. 20. The Staff continues that, by adopting a 50/50 capacity procurement structure, the parties receive the benefits of competitive solicitation and the benefits of coordinated generation and transmission planning.

The Staff asserts that the five-year planning horizon for determining a capacity need is a compromise that serves the public's interest in administrative efficiency because it aligns this horizon with the IRP filing requirements in Section 6t, which require an IRP to be filed every five years. *Id*., p. 21. Turning to the FCM included in the settlement agreement, the Staff asserts that the FCM benefits the public because it helped to facilitate settlement. Although the Staff opposed Consumers' initial FCM that it presented in its IRP, the Staff supports approval of the settlement agreement and points out that the current FCM included in the settlement agreement's terms is not tied to imputed debt, is far lower than what Consumers initially proposed, and fosters competition by making the competitive bidding process in the settlement agreement possible. The Staff notes that a 5.88% WACC FCM falls squarely in the middle of the range that Staff witness Jesse Harlow recommended in his proposed alternative incentive. The Staff asserts that approval of a financial incentive was pivotal for Consumers' agreement to change its business model and purchase at least half of new generation from third parties. For these reasons, the Staff asserts that the incentive benefits the public. *Id*., p. 25.

Regarding SEIA's criticisms of the settlement agreement, the Staff points to the testimony of Staff witness Paul Proudfoot, who on the issue of PURPA, testified that, although this was the right case to address PURPA avoided costs, it is the wrong forum to resolve QF claims about projects in Consumers' interconnection queue. The Staff explains that, unlike PURPA avoided costs, queue issues depend on determinations made in other cases. For example, the Staff points out that they depend on the Commission's definition of an LEO and guidance on how to manage queue projects in Case No. U-20344. The Staff suggests that SEIA's members also need to know if the distribution grid is robust enough to support electric connections without extensive and costly upgrades, which they may not know. *Id*., p. 26. And, the Staff opines that requiring Consumers to purchase power from projects in the interconnection queue at this time would pose a risk to ratepayers. *Id*. Therefore, the Staff believes the parties to the settlement agreement properly declined to address PURPA queue issues. It continues that the parties were also right to clarify in the settlement agreement that the settlement does not waive PURPA rights that existed before the settlement agreement. *Id*., p. 27.

Regarding SEIA's position that Consumers has a capacity need, the Staff disagrees. According to the Staff, it is premature to remove most of the ZRCs that SEIA recommends be removed from Consumers' capacity outlook for the same reasons that Consumers provided in its rebuttal testimony and initial brief. Therefore, the Staff argues that there is no basis to conclude Consumers will have a capacity need before 2031, and, if it does, that need will be short-lived. *Id*. For all of these reasons, the Staff urges the Commission to approve the settlement agreement.

E. <u>Independent Power Producers Coalition</u>

In its initial brief, IPPC expresses its support for the settlement agreement stating that it resolves IPPC's concerns with Consumers' IRP, and Consumers' accompanying PCA, as applied to IPPC members. IPPC also supports Commission approval because the settlement agreement will lead to the use of third-party, independently-owned renewable energy resources including IPPC members' existing QFs. This, in turn, resolves IPPC's involvement in several other Commission cases, including Case No. U-18090; Consumers' February 4, 2019 application to rescind Case No. U-18090's established avoided costs in Case No. U-20469, and the complaint case that IPPC filed against Consumers pursuant to PURPA in November 2015, in Case No. U-17981. IPPC's initial settlement brief, p. 2.

IPPC next addresses SEIA's criticism that the FCM is unreasonable and should be rejected. IPPC disagrees with SEIA's position on this issue and asserts that the FCM appropriately complies with the statutory requirements for such an incentive, is necessary for QFs and, as structured in the settlement agreement, represents sound policy. To start, IPPC reasons that, just because the law requires Consumers to enter into certain PURPA PPAs "does not mean that those agreements will seamlessly occur." *Id*., p. 3. Without such an incentive in place, IPPC suggests that utilities like Consumers will resist entering into 20-year long-term contracts with PURPA QFs. IPPC explains that, despite the fact that SEIA claims Consumers is obligated and required under federal and state law to enter into PURPA PPAs with IPPC's members, IPPC's member QFs have been seeking new or renewed PURPA PPAs with Consumers for six years. Consumers' reluctance to enter into reasonable PPAs with IPPC's member QFs is the reason IPPC filed a complaint against Consumers in 2015 and suggested to the state Legislature that utilities be allowed to earn a reasonable incentive on PPAs. IPPC further notes that its suggestions led the legislature to adopt such incentives as set forth in Section 6t(15). IPPC emphasizes that, in enacting this statutory provision, the Legislature placed no restrictions on PURPA PPAs. Thus, IPPC reasons, the Legislature clearly considered the fact that the Commission may approve a reasonable financial incentive for PURPA PPAs and found that such incentives would be in the public interest. IPPC asserts that the FCM as proposed in the settlement agreement is reasonable and prudent and should be adopted.

Next, IPPC disagrees with SEIA's assertion that the public interest was not adequately represented by the parties to the settlement agreement and that the settlement agreement will cause material harm to SEIA's members. IPPC states that paragraph 7g of the settlement agreement is not a new avoided cost provision but simply restates what the Commission already ordered in its May 31, 2017 order in Case No. U-18090, and favors the renewal of existing QF contracts. According to IPPC, paragraph 7g of the settlement agreement is neither discriminatory nor "harmful" to SEIA's members because the Commission found that the same opportunities for contracts at full avoided costs, regardless of Consumers' capacity needs, apply to the first 150 MWs of new QF capacity in Consumers' interconnection queue. *Id.*, p. 6. IPPC explains that the Commission determined in that case that the 150 MW limit only applies to new QFs and not to existing facilities that are out-of-contract. IPPC observes that paragraph 7g of the settlement agreement is consistent with the Commission's previous directives in Case No. U-18090 and is not more generous to existing QFs than to a significant number of new QFs and should not be construed as a limiting factor for new QFs. Nevertheless, IPPC states that if SEIA had serious concerns about the limitation on the 150 MW of contract capacity being available for new QFs or the Commission's determination that existing QF contracts should be renewed at full avoided cost, it should have raised those issues on appeal or rehearing of the orders in Case No. U-18090. *Id.*, p. 8. IPPC views paragraph 7g to be fair and reasonable to both existing and new QFs and recommends its adoption as part of the full settlement agreement in this case. Last, IPPC argues that its member QFs represent the hallmarks of a public interest standard envisioned in both the Commission's Rules of Practice and Procedure and PURPA's public interest requirements, that it was properly a signatory party to the settlement agreement, and that its support of the settlement agreement ensures that it meets the requisite public interest standards needed for Commission approval. *Id.*, p. 14. Because the settlement agreement represents a fair and reasonable resolution of this proceeding, because IPPC member QFs reflect the public interest of the state, and because the settlement agreement will ensure continuation of these vital renewable energy QFs in this state, IPPC contends the settlement agreement is in the public interest and should be approved. *Id*.

F. Attorney General

The Attorney General first summarizes the major components of Consumers' PCA as initially filed as part of its IRP. Next, the Attorney General summarizes the settlement agreement's provisions. The Attorney General argues that the Commission should approve the proposed settlement because it represents a reasonable and prudent outcome. The Attorney General notes that, although the settlement agreement represents a divergence from Consumers' traditional approach to providing energy, it allows for further review and has safeguards built in to protect ratepayers. For example, the Attorney General points out that Consumers agrees to file another IRP in approximately two years, which will provide interested parties with an opportunity to review Consumers' resource mix and plans. The Attorney General additionally notes that Consumers has committed to addressing a number of issues in the next IRP that will further inform the parties of the reasonableness of this and future plans. Moreover, the Attorney General points out that any IRP-related expenditures sought in future rate cases will still be subject to a reasonableness and prudence review. Accordingly, the Attorney General urges the Commission to approve the settlement agreement. Attorney General's initial settlement brief, p. 10.

G. Association of Businesses Advocating Tariff Equity

ABATE urges the Commission to approve the settlement agreement because it satisfactorily resolves many of ABATE's initial concerns with Consumers' IRP and PCA, is the result of substantial negotiations and reflects numerous compromises, is in the public interest, and meets the criteria set forth in Rule 431. ABATE's initial settlement brief, p. 2. ABATE asserts that the language of the settlement agreement does not substantiate SEIA's claim of harm to its members.

Further, ABATE notes that QFs feeling aggrieved by the settlement's provisions may still seek appropriate redress by initiating formal complaints. *Id*., p. 6. According to ABATE, Mr. Lucas' claim that the settlement agreement "kicks the can further down the road on the existing projects" does not establish harm. *Id*. ABATE also points out that the issues SEIA wants addressed in this proceeding are complex, involve non-parties to this case, and should be resolved on a case-by-case basis in other proceedings. ABATE also disputes SEIA's assertion that, in order for the settlement agreement to represent the public interest, solar QF developers or the national trade association of the United States solar energy industry must be included as signatories, noting that those entities do not represent the interests of ratepayers living and working in Michigan. *Id*., pp. 6-7.

ABATE points to Consumers' rebuttal testimony that explains why the millions of dollars QFs may have spent on pre-development efforts should not result in the utility or ratepayers being forced to enter into PPAs. ABATE also disputes SEIA's point that allowing Consumers to own up to 50% of its future capacity additions will be more expensive for Consumers' customers. *Id*., p. 7. In addition, ABATE takes issue with SEIA's statement that "nearly 2/3 of all parties did not support the settlement agreement," pointing out that this incorrectly leads the reader to believe that more parties opposed the settlement agreement than supported it. *Id*., pp. 7-8. With respect the requirement in Rule 431 that parties opposing settlement be given an opportunity to present evidence and argument, ABATE notes that parties were given this opportunity as required by the rule. Regarding the rule's requirement that the public interest be represented by the settling parties, ABATE asserts that both the Staff and the Attorney General represent the public interest and that this requirement set forth in Rule 431(5)(b) has been satisfied. Further, ABATE states that the settling parties expressly agreed that Commission approval of the settlement agreement would be reasonable and in the public interest. Also, ABATE argues that because the settlement agreement was a compromise reached by a substantial portion of the parties in the case, it is a fair and reasonable resolution of the case. *Id*., p. 10. It is also the most reasonable and prudent plan to meet Consumers' future energy and capacity needs.

ABATE claims that securitizing the unrecovered book balance of Karn 1 and 2 is better for ratepayers and allows Consumers to immediately recover the unamortized book value without earning a return. *Id*. It is also a low-cost method of financing that uses 100% debt with no equity or associated income taxes. *Id*., p. 11. Regarding the competitive bidding process included in the settlement agreement, ABATE contends that the lower costs resulting from competition in this process will benefit all ratepayers in Consumers' service territory. ABATE describes various aspects of the process that benefit customers, including: the stakeholder process, the use of an independent evaluator, the use of guidelines for RFPs approved in Case No. U-15800, and various action items that Consumers must complete before filing its next IRP. *Id*., pp. 11-12.

ABATE also points out that updating the avoided cost methodology to incorporate competitive bidding will result in ratepayer savings. It explains that the PURPA determinations made in Case No. U-18090 are outdated and in need of updating. ABATE considers the fact that competitive solicitations will define avoided cost for any new PURPA-based PPAs to be significant, because this ensures all future capacity additions are competitively priced based on current market conditions. *Id*., p. 12. ABATE suggests that the settlement agreement can keep electricity rates affordable and benefits both Consumers and its customers.

Turning to Consumers' reliance in the PCA on DR as a resource, ABATE indicates that its concerns about reliability are satisfied by the additional studies that the settlement agreement requires Consumers to conduct. ABATE praises the modular, flexible nature of the settlement agreement's supply plan. Therefore, it asks the Commission to find that the proposed levels of peak load reduction in the settlement agreement are reasonable and cost-effective. *Id*., p. 14.

Regarding the settlement agreement's FCM, ABATE explains that, although it initially opposed Consumers' FCM in the utility's IRP filing, it supports the settlement agreement's inclusion of the current proposed FCM because it compensates Consumers for the additional cost associated with third-party PPAs, the Commission can consider the FCM in determining overall cost of capital in future rate cases, and it provides a sufficient incentive for Consumers to proceed with its plan to secure future capacity additions through competitive solicitations. *Id*., pp. 14-15. Because ABATE believes that the Commission should find the settlement agreement is in the public interest, is supported by substantial evidence on the record, and represents a fair and reasonable resolution to this proceeding, ABATE requests that the Commission approve it. *Id*., p. 16.

H. <u>Environmental Law & Policy Center *et al*.</u>

ELPC *et al*. argues that the settlement agreement is in the public interest because it improves on Consumers' PCA, reduces risk for Michigan customers, enhances the quality of the company's next IRP, and more effectively addresses adverse environmental impacts of carbon emissions. ELPC *et al*.'s initial settlement brief, p. 4. ELPC *et al*. recaps the testimony of Mr. Gignac describing the various ways that the settlement agreement improves on Consumers' initially-filed PCA. *Id*., pp. 4-5. It also references Mr. Gignac's testimony about the flexible nature of the utility's resource plan that accommodates variable energy resources and ensures reliability at low cost. ELPC *et al*. also notes Mr. Gignac's testimony that the phasing out of fossil fuel resources and their replacement with clean energy technologies reduces risk to customers by limiting exposure to fuel price increases and regulation of emissions. *Id*., p. 5. ELPC *et al*. further asserts that the settlement agreement benefits the public interest by establishing modeling and process improvements for the next IRP and by accelerating retirement analyses for coal units whose carbon emissions currently contribute to climate change and whose operation adversely affects public health and the environment in many ways.

Regarding the settlement agreement's FCM, ELPC *et al*. considers this compromise acceptable given the fact that it is subject to Commission review in 2021, capped at clearly-defined amounts, and is significantly reduced from Consumers' initial proposal. *Id*., p. 6. ELPC *et al*. points out that, if Consumers cannot show over the next three years that the FCM reduces costs for Michigan customers, the Commission has the authority in Consumers' next IRP to discontinue the FCM for new contracts. It asks the Commission to clarify that its approval of an FCM as part of the settlement agreement is based only on the facts of this case, including a plan to replace virtually all of its fossil-fuel based generation with demand-side management and competitive third-party PPAs for renewable energy.

Regarding the unresolved matter of existing projects within Consumers' interconnection queue, ELPC *et al*. urges the Commission to promptly address the existing PURPA queue, well before the Commission has defined an LEO in a stakeholder process, because ELPC *et al*. believes that a failure to move projects forward will adversely affect the renewable energy market in Michigan. ELPC *et al*. does not propose a specific procedure for addressing the existing queue and does not oppose the Staff's recommendation that the Commission initiate a separate proceeding to address the existing PURPA queue. ELPC *et al*. points out that prompt resolution of this issue reduces concerns that Consumers will procure unreasonable amounts of unneeded capacity at the expense of customers. *Id*., p. 8. Additionally, ELPC *et al*. notes that the sooner this issue is addressed, the more lead time Consumers will have to adjust the solar glide path in its next

IRP filing. To conclude, ELPC *et al*. requests that the Commission find the settlement agreement is in the public interest. Instead of making changes to the settlement agreement, ELPC *et al*. argues that the Commission move swiftly to resolve issues related to Consumers' interconnection queue.

IV. Reply Briefs

A. Solar Energy Industries Association, Inc.

SEIA argues in reply that Consumers inappropriately shifts the burden of proof on the objecting parties in this case to show that the settlement agreement should not be approved, when in fact, Rule 431 makes clear that it is the settling parties who must demonstrate that the Commission should approve the settlement agreement. SEIA's settlement reply brief, pp. 3-5. SEIA reiterates its argument that resolution of the rights of QFs in Consumers' interconnection queue is inconsistent with the Commission's October 5, 2018 order in this case where the Commission decided PURPA-related issues must be decided on a "holistic" basis and further determined that PURPA issues are integral to the Commission's required determinations under Section 6t. *Id*., p. 6. SEIA asserts that PURPA issues have gone unresolved at the Commission for months, QFs held off filing complaints pending resolution of the IRP proceeding, and both Consumers and the Commission found PURPA issues to be integral to the PCA in this case. SEIA maintains that further delaying the development of PURPA QFs, with the federal investment tax credit being reduced at the end of the year, greatly reduces the likelihood that QF projects will be developed. SEIA again urges the Commission not to approve Consumers' PCA without knowing what level of PURPA PPAs Consumers is obligated to enter into with QFs in Consumers' interconnection queue as this level will affect Consumers' capacity plans. SEIA repeats that Consumers has an obligation to contract with existing QFs in its queue at the MISO PRA rate for capacity. PURPA contracts combined with competitive solicitations will allow Consumers to immediately plan for and replace capacity lost from retiring Karn 1 and 2. SEIA further argues that, to the extent that the Commission elects in this proceeding to modify its PURPA implementation regime, those changes may not be made retroactive to QFs that had a right to PURPA PPAs with Consumers prior to such action.

SEIA also reiterates that its proposal for addressing the PURPA QFs in Consumers' interconnection queue is reasonable, supported by substantial evidence on the whole record, and has widespread support among developers with projects in Consumers' interconnection queue, and if approved, will avoid further litigation. *Id*., p. 8. SEIA again asks the Commission to condition any approval of a settlement agreement in this case on implementation of this proposal. SEIA additionally argues the proposal is supported by the record because Mr. Lucas described the proposal in testimony presented regarding the settlement agreement and it was presented in SEIA's objections. SEIA claims that the Commission can condition approval of the settlement agreement in this case on SEIA's proposal. *Id*., p. 11. SEIA continues that the proposal has the support of more than 90% of the MW in Consumers' interconnection queue. *Id*., p. 12. SEIA further describes as "unfounded and unsupported" certain claims by other parties that ratepayers will be harmed by SEIA's proposal because they will have to pay higher avoided cost rates than the rates that will result from competitive bidding. *Id*., p. 13. It contends this assertion is speculative because rates from future competitive solicitations are "unknown and unknowable." *Id*., p. 14.

Regarding the dispute over whether Consumers has a capacity need under PURPA, SEIA asserts this is a question of federal law and not a fact to be deemed true by virtue of a settlement agreement in this IRP proceeding. *Id*. SEIA further asserts that Consumers admits it is actively pursuing 100 MW of solar to fill the 100 MW included in its REP. SEIA continues that, where Consumers has a need for 100 MW of additional solar capacity, the company has an obligation under PURPA to procure it from QFs. This, according to SEIA, is another example of how Consumers is actively procuring capacity while delaying the development of PURPA QFs. *Id*. Therefore, SEIA argues that, even if the Commission approves the settlement agreement, it should still find that Consumers has a capacity need and should quantify that need. *Id*., p. 15.

SEIA repeats that the settlement agreement provides Consumers with an unnecessary and unwarranted FCM to the detriment of ratepayers and QFs. SEIA asserts that the FCM is set at the highest level permitted by law and is not in the public interest. *Id.*, p. 16. In response to IPPC's support for applying the FCM to PURPA PPAs, SEIA asserts that Consumers' refusal to comply with PURPA and IPPC's lack of confidence in the Commission's willingness or ability to enforce the law with Consumers in a timely manner are poor policy justifications for an FCM. *Id*., p. 17. SEIA continues that awarding utilities an incentive to comply with the law just encourages those companies not to comply with the law to begin with. *Id*. SEIA stands by its position that Consumers should not be entitled to receive an FCM for complying with its obligations under federal law. Regarding the Staff's position that agreeing to an FCM was essential to achieve a settlement agreement in this case, SEIA responds that it is unclear why the signatories to the settlement agreement placed such a premium on achieving a settlement so as to agree to the FCM. *Id*., p. 18. SEIA further disagrees with the ELPC that the FCM is subject to Commission's continued review and that the Commission may discontinue it in the future. Instead, SEIA warns that the FCM terms of the settlement agreement are "carefully crafted" and restrict the Commission's future consideration of the FCM. *Id*., p. 19.

Regarding the 50/50 capacity procurement structure, SEIA maintains that the Staff presented the proposed structure in this case as an *alternative* to an FCM. SEIA continues that there is no justification to both permit Consumers to own up to 50% of new capacity additions and also receive an FCM when the reason for the FCM was to provide an incentive for Consumers to change its business model from one where the utility owned most of its generation resources to a model based on acquiring capacity and energy from third parties via PPAs. *Id*., p. 19. SEIA suggests that this 50/50 structure will not become a reality for quite some time and that, by then, ratepayers will have paid a hefty price for an increase that may only be 20% of Consumers' portfolio. *Id*., p. 20. SEIA also argues that there is no evidence to support the Staff's claim that the 50/50 structure would drive down prices. SEIA asserts that the Staff's chart presented to show the declining costs of renewable energy from 2009 to 2016 does not show that the costs declined due to utility ownership of renewable resources. *Id*. In addition, SEIA maintains that this structure subjects Consumers' customers to performance risk.

SEIA once again argues that the Commission should maintain the existing 10-year capacity planning horizon rather than approve the settlement agreement's shorter five-year period. SEIA points out that the IRP planning horizon is 15 years. *Id*., p. 21. Last, SEIA explained that its initial brief explains how the proposed settlement agreement is full of proposals that, if implemented, would harm developers of PURPA QFs and Michigan's ratepayers. *Id*., p. 22. Therefore, SEIA asks the Commission to reject the settlement agreement. Further, if the Commission approves it, SEIA requests that the Commission include the requested clarifications and adjustments noted in SEIA's initial settlement brief and add to its approval the condition that SEIA's proposal for dealing with existing QFs in Consumers' interconnection queue be implemented. *Id*., p. 23.

B. Consumers Energy Company

Consumers argues that the briefs filed by the Staff, the Attorney General, ABATE, and MEC/NRDC/SC show that the settlement agreement meets the requirements of Rule 431. Consumers further contends that both the Staff and ABATE established that SEIA was afforded a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement as required by Rule 431. In addition, the utility notes that the Staff, ABATE, MEC/NRDC/SC, and IPPC also showed that the parties who entered into the settlement agreement adequately represented the public interest as Rule 431 requires. Additionally, Consumers asserts that initial settlement briefs that the Staff, the Attorney General, ABATE, IPPC, and MEC/NRDC/SC filed further show that the settlement agreement is in the public interest, represents a fair and reasonable resolution of this proceeding, and is supported by substantial evidence on the record as a whole. Consumers' settlement reply brief, p. 7. Consumers agrees with these parties for the reasons presented in its initial settlement brief, and urges the Commission to approve the settlement agreement. *Id.*, p. 10.

With respect to ELPC *et al*.'s arguments in its initial settlement brief, Consumers agrees with ELPC *et al*.'s conclusion that the settlement agreement is in the public interest, but disagrees with ELPC *et al*. to the extent that it supports SEIA's positions regarding Consumers' alleged PURPA obligation and the manner in which the projects in the queue should be resolved. *Id*. However, Consumers explains it does not oppose a resolution of these issues in a future proceeding. The utility asks the Commission to consider ELPC *et al*.'s significant involvement in the settlement and its support for the settlement agreement and suggests this shows the settlement agreement meets the criteria required in Rule 431(5). *Id*., p. 13.

Consumers asserts that SEIA's initial settlement brief fails to provide sufficient grounds for rejecting the settlement agreement. *Id*. The utility contends that SEIA's arguments are flawed because they are based on Consumers' initially-filed positions in this proceeding and not on the settlement agreement's provisions. *Id*. According to Consumers, the company already refuted these arguments in its evidence, briefs, exceptions, and replies to exceptions. *Id*. The utility also claims that SEIA's reliance on the ALJ's recommendations in the PFD was in error because the PFD does not speak for the Commission or provide a basis to invalidate the settlement agreement. *Id*. According to Consumers, SEIA failed to address any of the evidence that Consumers, the Staff, or ABATE provided in this proceeding to refute SEIA's updated positions. *Id*., p. 14. Further, the utility maintains that SEIA's proposed modifications to the settlement agreement and proposed condition that approval of the settlement agreement include the purchase of 800 MW of new QF projects from the interconnection queue are beyond the scope of this case. *Id*. Consumers further contends that SEIA's proposed modifications and condition also undermine the compromises reached in the settlement process. *Id*., p. 15. The utility suggests SEIA's positions are unreasonable, self-serving, and contrary to the terms of the settlement agreement. *Id*., pp. 15-16. Consumers restates its argument that modification of the terms of the settlement agreement render it withdrawn pursuant to paragraph 16. Because the settlement agreement meets the requirements of Rule 431, Consumers requests that the Commission approve it.

Regarding the unresolved issue of QF projects in Consumers' interconnection queue, Consumers stands by its arguments presented in its initial settlement brief. Again, the utility notes that that the settlement agreement does not impair PURPA QFs' rights and that SEIA's objections are complex and should not be considered in this IRP case. *Id*., p. 18. The utility notes that Staff and ELPC *et al*. similarly agree that this is not the appropriate forum to consider these issues. *Id*.

The utility again argues that SEIA's alternative proposal to resolve this issue is not in the record and is otherwise unreasonable because it will result in higher costs than what Consumers will receive through competitive bidding. *Id*., p. 20. And, Consumers agrees with the Staff that because neither FERC nor the Commission has established a standard for LEOs under PURPA, it is speculative to assume that any of SEIA's members have established an LEO.

Consumers stands by its arguments in its initial settlement brief regarding why the Commission should reject SEIA's position that the utility has a capacity need. *Id*., p. 21. The utility restates that approval of the settlement agreement means Consumers does not have a capacity need. Consumers continues that the Commission's review of the company's next IRP in 2021 ensures that Consumers' PCA continues to represent the most reasonable and prudent means to meet the utility's energy and capacity needs. *Id*. Consumers responds to SEIA's analysis about the need for 80 ZRCs by restating the arguments in its initial settlement brief and settlement agreement testimony. *Id*., pp. 21-23.

Turning to SEIA's criticism of the settlement agreement FCM, Consumers makes many of the same arguments that it did in its initial settlement brief. The utility states that SEIA's arguments are based on the initially-proposed FCM and not on the one that is proposed in the settlement agreement. *Id*., p. 24. Consumers again notes that the settlement agreement's FCM is substantially less than the initially-proposed FCM and is not calculated using imputed debt. *Id*., p. 25. The utility again explains that SEIA erroneously relies on the ALJ's reasoning in the PFD. Consumers argues that the company's, the Staff's, MEC/NRDC/SC's, and ABATE's testimony refutes SEIA's claims that the FCM is unnecessary and unwarranted. The company urges the Commission to reject SEIA's assertion that the FCM should not apply to PURPA-based PPAs.

Consumers also disputes SEIA's claim that the settlement agreement limits Commission review of the FCM in future proceedings.

For the reasons set forth in the company's initial settlement brief, Consumers disagrees with SEIA's assertion that permitting Consumers to own up to 50% of new capacity acquisitions will result in higher customer costs. *Id*., p. 31. Consumers further contends that the Commission should reject SEIA's attempt to rely on solar costs provided in other recently filed IRP cases because these costs are not in the record. *Id*., p. 32. Consumers explains the benefits of utility ownership of generation and asks the Commission to reject SEIA's criticism of this approach.

Consumers stands by the settlement agreement's competitive bidding process arguing that it is reasonable and the result of a compromise reached by the parties. *Id*., p. 34. The utility claims that SEIA misrepresents the stakeholder collaboration provided for in the settlement agreement. In addition, Consumers asks the Commission to reject SEIA's proposed alternative competitive bidding procedures arguing that they are not in the record. *Id*., p. 36. And, the utility points out that, in SEIA's initial brief in the IRP, SEIA argued that the guidelines approved in Case No. U-15800 should be applied to the competitive bidding procedure and the settlement agreement accomplishes this. *Id*., p. 36. The company requests that the Commission approve the settlement agreement's competitive bidding process.

Regarding SEIA's criticism of the PURPA issues resolved by the settlement agreement, Consumers urges the Commission to reject SEIA's various criticisms for the reasons set forth on pages 45 through 50 of the company's initial settlement brief. *Id*., p. 38. Consumers argues that SEIA misconstrues some of the PURPA provisions in the settlement agreement. *Id*., p. 39. For example, Consumers disagrees with SEIA's suggestion that the settlement agreement eliminates the 20-year fixed price PURPA PPA that the Commission recently adopted and replaces it with two inferior options. The utility explains that contract terms of 25 years are still an option for QFs of a certain size. Consumers claims that it and the Staff both presented testimony refuting SEIA's arguments regarding the rates and terms available to QFs when Consumers does not have a capacity need. *Id*., p. 40. Consumers also identifies certain concessions it made in this area, such as forecasted energy rates of five years in length and the applicability of a Standard Offer contract. Moreover, Consumers argues that FERC positions on PURPA issues do not provide grounds for rejecting the settlement agreement as the resolution of many PURPA issues has been left to states. *Id*., p. 41. Consumers notes that the Staff and MEC/NRDC/SC supported the settlement agreement's PURPA avoided cost construct in this case.

Consumers urges the Commission to reject SEIA's claim of harm for the reasons discussed in the utility's initial settlement brief. *Id*., p. 44. According to the utility, SEIA has failed to establish how the settlement agreement harms its members. Further, Consumers argues that SEIA's alleged harm is based on the speculative assumption that its members qualify for rates based on the avoided cost rates set forth in Case No. U-18090. And, the utility argues that both paragraph 11 and paragraph 12 of the settlement agreement establish that Commission approval of the settlement agreement will not harm QFs. Last, Consumers disagrees with SEIA that the public interest was not adequately represented by those parties who signed the settlement agreement. The utility refers the Commission to its initial settlement brief for the reasons why the Commission should reject this claim.

C. Association of Businesses Advocating Tariff Equity

ABATE argues that the settlement agreement is fair, reasonable, in the public interest, and should be approved. Regarding SEIA's criticism of the settlement agreement's competitive solicitation process, ABATE asserts that SEIA erroneously relies on testimony directed towards

Consumers' original competitive bidding approach and not the competitive solicitation process provided for in the settlement agreement. ABATE describes in detail the three phases of stakeholder engagement designed to ensure fairness, transparency, and uniformity in future competitive solicitations. ABATE further observes that, if, as a result of the competitive bidding process put in place pursuant to the settlement agreement, the final costs are found to be significantly higher than the initially-approved costs, the Commission shall review and approve only those costs that the Commission determines are reasonable and prudent in accordance with Section 6t(12)(c). ABATE's settlement reply brief, p. 6.

ABATE further argues that SEIA fails to state its objections with particularity and in a way that demonstrates how SEIA's members would be adversely affected by the settlement agreement as Rule 431(3). In a footnote, ABATE claims that, in past Commission cases, the Commission has found that if an opposing party fails to state how its members are adversely affected by a settlement agreement, this is grounds for rejecting that party's objections. *Id*., fn. 1. ABATE notes that paragraph 12 preserves the PURPA rights of QFs and states that this shows SEIA's members were not adversely affected by the settlement agreement. ABATE further explains that it agrees with the Staff that it is speculative to assume any of SEIA's members have established an LEO. *Id*., p. 8. Because ABATE claims that SEIA has not demonstrated how the settlement agreement adversely affected its members, ABATE urges the Commission to reject SEIA's objections. *Id*. ABATE urges the Commission to reject SEIA's proposal to incorporate the 100 MW of solar from its REP into the Commission's determination of Consumers' capacity need in this proceeding. *Id*., p. 10. Instead, ABATE asserts that the Commission should find the inclusion of 100 MW of new solar resources for meeting its renewable portfolio standard (RPS) to be reasonable and prudent. *Id*., p. 11. ABATE disagrees with SEIA that the 50/50 capacity procurement approach will result in increased costs to customers and reminds the Commission that it lacks the statutory authority to require utilities to contract with QFs in its interconnection queue because the Commission cannot make general management decisions for the utility. *Id*., pp. 11-12. ABATE notes that, in Case No. U-18231, the Commission found Consumers' REP to be reasonable and prudent, except for the new 100 MW of solar.

ABATE also urges the Commission to endorse competitive bidding as the preferred method to set avoided costs rates and procure future capacity. *Id*., p. 13. This bidding plan and capacity procurement structure will, according to ABATE, drive down capacity and energy prices and facilitate transmission planning. *Id*., p. 14. This competitive bidding proposal satisfies Section 6t's requirement that the Commission consider "competitive pricing" in determining if the plan is the most reasonable and prudent means of meeting energy and capacity needs. *Id*.

Last, ABATE addresses SEIA's criticism of the settlement agreement's FCM. Like other parties, ABATE explains that the Commission should reject Mr. Lucas' testimony or give it little weight because his testimony concerned the originally-filed FCM proposed in the utility's IRP and not the FCM included in the settlement agreement. Further, ABATE reiterates that the settlement agreement FCM will ensure that the additional cost of any third-party PPAs are reflected in the competitive solicitation process. *Id*., p. 16. Although ABATE recognizes that customer groups oppose allowing a utility to earn a return on an expense, ABATE continues that, if earning a reasonable return on new PPAs results in Consumers foregoing the construction of more costly new capacity, ratepayers win. ABATE contends that the Commission should find that the settlement agreement is in the public interest, complies with Rule 431, and should approve it. *Id*., p. 17.

D. Staff

The Staff responds to SEIA's arguments about the settlement agreement's failure to resolve the PURPA rights of existing QFs in Consumers' interconnection queue by pointing out that the Commission's October 5, 2018 order in Case No. U-18090 did not determine whether Consumers has an obligation to purchase capacity in its interconnection queue. The Staff notes that the Commission has not yet defined an LEO or said when it begins. Staff's settlement reply brief, p. 5. In addition, the Staff explains that a utility's obligation to purchase power from a QF is a fact-intensive inquiry that requires consideration of the company's capacity need and the price it is paying. *Id.*, p. 7. The Staff repeats its position that the evidence needed to make fact-specific determinations for each QF project in Consumers' interconnection queue is missing in this case and that this matter should therefore be resolved in another forum. *Id*., p. 8. The Staff considered case law that SEIA relies on and points out that SEIA's cited case law shows LEO determinations often depend on the facts of the case. The Staff further asserts that the settlement agreement as a whole is consistent with PURPA and PURPA regulations and preserves the rights of parties to address PURPA issues in other forums. *Id*. The Staff states that SEIA's alternative proposal that resolves outstanding PURPA queue issues "should not be used to derail the settlement in this case." *Id*., p. 11.

Moreover, the Staff contends that SEIA has not demonstrated that its members are harmed by the settlement agreement because the settlement agreement preserves their right to pursue individual complaints in other cases. The Staff suggests that the competitive solicitation process benefits solar developers more than it hurts them, by opening the market to more competition. Further, according to the Staff, SEIA lacks a property interest that is a vested right, which the Staff claims is required to be afforded due process. Instead, the Staff maintains that SEIA merely has a speculative competitive interest rather than a vested right. The Staff continues that whether QFs have vested rights in projects they have started varies from case to case and urges the Commission to wait until it has more information before deciding whether QFs have vested rights in projects they have started. *Id*., p. 14.

Regarding future Commission review of the settlement agreement's FCM, the Staff agrees with ELPC *et al*. that the FCM is more of a pilot, and that the Commission has the statutory authority to discontinue the FCM for new contracts in Consumers' next IRP case. With respect to SEIA's proposed changes to the competitive solicitation guidelines, the Staff agrees that SEIA's seven suggestions merit review and recommends that, if the Commission approves of the settlement agreement, the stakeholder process provided for in the settlement agreement should serve as the opportunity to consider SEIA's proposed changes to the Case No. U-15800 guidelines. *Id*., p. 16. Finally, the Staff asserts that the settlement agreement's terms provide for reasonable contract terms for QFs entitled to the MISO PRA capacity rate and one of two energy rate options. *Id*.

E. Michigan Environmental Council/Natural Resources Defense Council/Sierra Club

MEC/NRDC/SC repeat their positions and arguments presented in its initial settlement brief, noting their view that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, is supported by substantial evidence on the whole record, and should be approved. MEC/NRDC/SC enumerate the ways in which the settlement agreement improves upon Consumers' original PCA and how the settlement agreement furthers the public interest. Turning to SEIA's objection to the settlement agreement that it leaves PURPA interconnection queue issues unresolved, MEC/NRDC/SC point out that the settlement agreement requires Consumers to renew contracts with existing QFs. And, the settlement agreement PCA includes the Commission-directed 150 MW of PPAs from the Commission's past orders in Case No. U-18090. MEC/NRDC/SC's settlement reply brief, pp. 5-6, referencing the Commission's February 22, 2018 order and October 5, 2018 order in Case No. U-18090.

MEC/NRDC/SC agree with SEIA that the Commission indicated, when it granted Consumers' appeal of a motion to strike testimony regarding PURPA, that PURPA issues are integral to the Commission's required determinations under Section 6t and should be addressed in this IRP proceeding. Nevertheless, MEC/NRDC/SC clarify that these statements were not about the status of QF projects in the queue. *Id*., p. 7. Instead, MEC/NRDC/SC explain, the PURPA issues that the Commission found integral to this case concerned the implementation of PURPA going forward. *Id*. MEC/NRDC/SC observe that issues regarding projects in the queue were not a subject of the motion to strike, and therefore, the Commission made no determination that resolving the status of QF projects in the queue is integral to resolving this IRP case. MEC/NRDC/SC additionally note that the rights of all QF projects in the queue can be decided in other proceedings as provided in the settlement agreement. MEC/NRDC/SC also agree with the Staff's testimony that other determinations, such as defining an LEO and explaining how to manage queue projects, are necessary before the queue can be addressed. Regarding SEIA's proposal for the 800 MW of additional PURPA contracts, MEC/NRDC/SC contend that SEIA has no authority to bind its individual members and that the proposal will not resolve the issue. MEC/NRDC/SC argue that the settlement agreement is reasonable, but also concur with ELPC *et al*. and solar advocates in this case that the Commission should address the existing PURPA queue expeditiously outside of this contested settlement proceeding.

Regarding SEIA's argument that Consumers has a capacity need, MEC/NRDC/SC rely on the initial settlement briefs of Consumers and the Staff, which they contend "convincingly rebutted

SEIA's arguments based on record evidence." *Id.*, p. 9. Regarding SEIA's criticisms of the settlement agreement's FCM, MEC/NRDC/SC stand on the arguments they made in their initial settlement brief. MEC/NRDC/SC repeat that the FCM is authorized by statute, provides an incentive for a regulated utility to retire dirty fossil-fueled plants, and has been substantially reduced from Consumers' initial proposal. MEC/NRDC/SC consider the FCM to be a reasonable compromise that balances competing interests.

In response to SEIA's concerns about the significance of paragraph 11 of the settlement agreement and its potential to bind future Commissions, MEC/NRDC/SC explain that paragraph 11 was added at its request, does not purport to bind the Commission, and simply prohibits Consumers from reopening the settlement agreement if the utility receives an adverse ruling in a future PURPA case that reduces the value of this settlement to Consumers. *Id*., p. 11. MEC/NRDC/SC further discredit SEIA's warning about Consumers potentially overprocuring 6,500 MW of capacity through competitive bidding in addition to the full suite of QF projects in the interconnection queue, noting that the ramp-up of 6,500 MW of capacity will occur over a long timespan and that the settlement agreement will be reopened in the next IRP case to be filed two years from now. *Id*. MEC/NRDC/SC additionally observe that Consumers has alluded to the fact that it can modulate the PCA to address however much capacity comes online from PURPA QFs. Last, MEC/NRDC/SC disagree with SEIA that the public interest was not adequately represented by the parties to the settlement agreement. *Id*., p. 12.

V. <u>Discussion</u>

The Commission finds that the contested settlement agreement at issue here should be approved. The settlement agreement represents a significant change to the traditional utility business model and transitions the utility and its customers from fossil-fuel based generation to a mix of cost-effective demand-side resources and competitively-bid renewable energy.

Pursuant to Rule 431(5)(a)-(c), Commission approval of a contested settlement agreement is appropriate where the Commission determines: (1) that the objecting parties have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement, (2) the public interest is adequately represented by the parties who entered into the settlement agreement, (3) the settlement agreement is in 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.

The Commission finds that all of these requirements have been met.[9] Regarding the first requirement, the Commission has provided a reasonable opportunity to those parties that did not sign the settlement agreement to present evidence and argument in opposition to the settlement agreement. Several of the parties submitted direct and rebuttal testimony, filed initial and reply briefs, and appeared at an evidentiary hearing regarding the contested settlement agreement.

With respect to the second criterion, the Commission finds that the parties who entered into the settlement agreement adequately represent the public interest. SEIA argues in this contested

[9] Many of the parties that filed briefs regarding the settlement agreement raise the issue of whether SEIA adequately established that its members would be harmed by Commission approval of the settlement agreement. Although the Commission is aware that Rule 431(3) requires an objecting party to state its objections with particularity and to specify how it would be adversely affected by the settlement agreement, the Commission does not believe this issue is dispositive under the circumstances presented here. To begin, SEIA did file objections that were sufficiently detailed so as to provide the Commission with enough information to allow for consideration of those objections. Likewise, SEIA specified why it believes the settlement agreement would adversely affect its members. For those reasons, the Commission believes that the requirements of Rule 431(3) were met. Yet, merely establishing potential harm is only the first step. The more relevant inquiry is whether the criteria set forth in Rule 431(5)(a) through (c) were met so that the Commission may approve the settlement agreement. The Commission finds that they were.

settlement proceeding that a settlement agreement that both: (1) makes specific determinations regarding PURPA issues that will affect solar QF developers, and (2) has no solar QF represented as a signatory, cannot be deemed to adequately represent the public interest. The Commission disagrees. The signatories to the settlement agreement represent a broad cross section of interests and include the utility and the Staff, as well as environmental organizations, QFs, an association that represents commercial and industrial interests, and the Attorney General, who is charged with representing Michigan ratepayers. The Commission also notes that the Michigan Court of Appeals has, in the past, affirmed a Commission determination that the public interest was adequately represented by the Staff when the Staff was party to a contested settlement agreement. *Attorney General v Mich Pub Serv Comm*, 237 Mich App 82, 93-94; 602 NW2d 225 (1999). Accordingly, the Commission finds that those who signed the settlement agreement adequately represent the public interest.

In addition, the Commission believes that the settlement agreement is in the public interest. The Commission finds persuasive the testimony and arguments of Consumers and others that the settlement agreement was the result of ongoing arms-length negotiations that resulted in significant compromises by all involved. This is evident when comparing the details of Consumers' initial IRP filing with the terms of the proposed settlement agreement. The various compromises reached in this settlement agreement that the Commission views to be in the public interest include all of the following:

- An agreement that Consumers retire Karn 1 and 2 in 2023, which will result in significant savings to ratepayers, reduces pollution, and advances the utility's clean energy goals and the public's interest in clean and reliable energy.

- An agreement that provides potential customer savings by Consumers agreeing to seek recovery of the unrecovered book value and decommissioning costs of Karn 1 and 2 through low-cost debt financing in a separate proceeding, rather than continued recovery through traditional ratemaking which includes a return on these assets.
- An agreement to continue to evaluate the cost-effectiveness of existing coal plants by requiring Consumers to conduct a retirement analysis of Campbell 1 and 2 in its next IRP that will use several assumptions set forth in the settlement agreement, as well as an agreement that, based on the results of this forthcoming analysis, Consumers may retire those units in 2025 or earlier, much sooner than the four-year lag time that the utility originally deemed necessary in order to retire them.
- An agreement that includes $29,952,957 in identified capital costs for expanded DR and CVR programs over the next three years, limits risk to ratepayers by not preapproving O&M costs associated with Consumers' CVR, DR, and EWR programs, and further provides that the capital costs associated with these resources will be subject to annual reporting requirements, and requires Consumers to conduct additional studies to determine best practices regarding the amount of reserves that could be provided by DR and to assess the potential changes in the frequency or duration of curtailments and the role of DR in meeting peak demand.
- A significantly-reduced and transparent FCM on PPA payments that complies with Section 6t(15) and removes the disincentive for Consumers to enter into long-term PPAs with third parties, including renewal of long-term PPAs with existing QFs.

- An agreement that Consumers will use annual competitive solicitations for future capacity additions, hold a stakeholder process to develop competitive solicitation best practices, use an independent evaluator during the process, inform all bidders of the evaluation criteria and process, follow RFP parameters that the Commission approved in Case No. U-15800, timely issue an RFP through public notice, include the terms of the contract in the RFP, use these solicitations to set future PURPA avoided cost rates, and contract with PURPA QFs for any capacity need not filled by an RFP.
- An agreement that Consumers will utilize a 50/50 capacity procurement structure whereby Consumers may own up to a maximum of 50% of all future capacity additions procured through competitive solicitations and must purchase the remaining 50% of its future capacity need through PPAs with third parties that exclude Consumers' affiliates. The Commission finds persuasive the Staff's testimony and arguments that this structure, and the competitive solicitation process Consumers agrees to adhere to, should drive prices down and will also result in the benefit of coordinated generation, distribution, and transmission planning.
- An agreement that Consumers will employ a five-year planning horizon when determining whether the company requires additional capacity, which aligns well with the IRP filing requirements in Section 6t(20) and allows the utility to better adjust to market conditions in arranging its energy resource portfolio.

SEIA disagrees with the conclusion that the settlement agreement is in the public interest and represents a reasonable resolution of the proceeding. Specifically, SEIA argues that the settlement agreement: (1) does not resolve the PURPA rights of existing QFs in Consumers' interconnection queue, (2) incorrectly concludes that there is no capacity need, (3) proposes an FCM that is unnecessary and unreasonable, (4) includes a competitive bidding process that is less than fair and transparent, (5) provides for a 50/50 capacity procurement approach that will result in increased costs to ratepayers, and (6) results in reduced PURPA PPA contract lengths and a capacity planning horizon that are detrimental to SEIA's members. Each of these concerns are addressed in turn.

1. PURPA Rights of Existing QF Projects in Consumers' Interconnection Queue

SEIA claims that the settlement agreement does not address the rights of existing QFs in Consumers' interconnection queue. That, of course, is not the purpose of an IRP, which is to provide a plan to meet the utility's "5-year, 10-year, and 15-year . . . load obligations, to meet the utility's requirements to provide generation reliability, . . . and to meet all applicable state and federal reliability and environmental regulations over the ensuing term of the plan." MCL 460.6t(3). In addition, the Commission finds compelling Consumers' arguments that the evidentiary record in this proceeding is insufficient to permit the Commission to consider the PURPA rights of any or all QFs in this proceeding. Further, the Commission is persuaded by the arguments of Consumers, ABATE, and the Staff that these outstanding issues should be resolved in other proceedings.

To that end, the Commission agrees with several of the parties participating in the contested settlement agreement that the PURPA rights of QF projects in the interconnection queue are preserved by the language of the settlement agreement. Paragraph 12 of the settlement agreement provides, "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." The Commission believes that this provision adequately protects the rights of QFs to use other forums to resolve matters related to Consumers' interconnection queue.

Moreover, the Commission finds persuasive MEC/NRDC/SC's discussion in its reply brief regarding the limited scope of certain Commission directives in this case. SEIA argued that the existing interconnection queue issues must be resolved in this proceeding because the Commission, in granting Consumers' appeal of a motion to strike, called various PURPA issues "integral" to its required IRP determinations and directed that these issues be addressed in the IRP. As MEC/NRDC/SC points out, the PURPA issues that the Commission was referring to did not include resolving the matter of the PURPA rights of existing QFs in Consumers' interconnection queue. Rather, the motion to strike related to testimony that discussed the PURPA avoided cost methodology, requests to change the size of QFs eligible for the Standard Offer tariff, the term length of the Standard Offer tariff, and the length of the PURPA capacity planning horizon. Accordingly, the Commission did not intend for its past directive to include PURPA issues in this case to also include the unresolved matter of existing QF projects in Consumers' interconnection queue.[10] In addition, the Commission also agrees with MEC/NRDC/SC that the settlement agreement PCA includes the Commission-directed 150 MW of capacity supplied from PURPA QFs that originated from the Commission's February 22, 2018 order in Case No. U-18090. *See*, Consumers' Exhibit A-2, p. 89. In summary, because such

[10] The Commission concludes that, even if it were possible to resolve these complex, fact-intensive matters regarding the existence of an LEO for QFs currently in Consumers' interconnection queue in this case, it would violate Michigan's Administrative Procedures Act of 1969, 1969 PA 306; MCL 24.201 *et seq*. (APA), to do so based on the evidentiary record in this case. The APA provides that the Commission's decisions must be supported by competent, material, and substantial evidence on the whole record. MCL 24.285. Here, the evidentiary record developed in this case does not support a determination of these issues.

issues are outside the parameters of an IRP, because the Commission is unable to decide LEO matters in this case based on the record before it, and because the Commission agrees with the parties to the settlement that such issues should be addressed in other forums outside of this IRP proceeding, the Commission finds SEIA's concern lacks merit.

In this contested settlement proceeding, SEIA requests that the Commission make its approval of the settlement agreement contingent on inclusion of SEIA's proposal that requires Consumers to purchase 800 MW of capacity from existing QFs in the interconnection queue. The Commission agrees with Consumers that SEIA's proposal is outside the scope of this contested settlement agreement. The issue to be decided in this case is whether the criteria set forth in Rule 431(5)(a) through (c) have been satisfied so that the Commission may approve of the settlement agreement at issue here. Other proposed versions of settlements not adopted by the parties who signed the settlement agreement are not properly before the Commission. Further, the Commission agrees with the Staff that SEIA's proposal should not be used to derail the settlement agreement in this case. Accordingly, the Commission rejects SEIA's recommendation to make approval of the settlement agreement contingent on SEIA's proposal.

2. Capacity Need

With respect to SEIA's argument that the settlement agreement incorrectly provides that there is no capacity need, the Commission disagrees that a capacity need exists upon approval of the PCA as amended by the settlement agreement. The Commission finds that both the Staff and Consumers presented persuasive evidence refuting SEIA's assertions that the utility has a capacity need. The Commission relies on the testimony of Mr. Blumenstock that removal of the capacity provided by the T.E.S. Filer City plant will not result in a capacity shortfall until 2031 and 2032 and, by then, it would be a small shortfall that may never materialize. 10 Tr 3051.

The Commission also agrees with Mr. Blumenstock's testimony that the 56 ZRCs associated with the CVR in Consumers' PCA is part of the settlement agreement that the Commission is approving in this order. 10 Tr 3052. The Commission notes that, in paragraph 2 of the settlement agreement, the parties agree to approval of the capacity value provided by CVR. In that same paragraph, Consumers is required to file an annual reporting template with the Commission that addresses the implementation of the approved DR, CVR, and EWR resources. Also, in that same paragraph, the parties agree that Consumers shall communicate any significant changes or anticipated changes to the expected cost, timing, or size of these resource additions to the Staff. The Commission further agrees with Mr. Blumenstock that the ALJ's recommendation that the Commission reject Consumers' proposal to rely on CVR is not binding on the Commission and is not grounds for rejecting the settlement agreement. *Id*., p. 3053. The Commission finds that there is substantial evidence to support the CVR as proposed in the settlement agreement. *Id*.

The Commission also notes that, under paragraph 7(i) of the settlement agreement, the parties agree that Consumers has no PURPA capacity need so long as the utility is implementing the Commission-approved PCA, including use of the competitive bidding process for all future capacity needs. Because of this language in the settlement agreement, the Commission finds that the 100 MW of solar that SEIA claims is another capacity shortfall will be competitively bid, and as such, will be part of the resources used to meet Consumers' capacity needs. Accordingly, pursuant to the terms of the settlement agreement, the testimony, and the arguments presented in this case, the Commission concludes that there is no capacity need upon approval of the PCA as amended by the settlement agreement. The Commission further notes that it will be reviewing Consumers' capacity need during the next IRP filing and that the PCA provides Consumers with some flexibility to address issues such as capacity need if and when they should arise.

3. FCM

Turning to the settlement agreement's FCM, the Commission finds that the proposed FCM provided for in the settlement agreement is in the public interest. The Commission finds compelling IPPC's arguments about why it supports an FCM in this case and why it signed the settlement agreement. The Commission is persuaded that, even when the law requires Consumers to enter into contracts with PURPA QFs, this may not happen seamlessly or without delay absent an incentive that compensates the utility for the costs of contracting with third parties for capacity through PPAs. IPPC explained that its members have experienced this hesitancy firsthand.

In addition, the Commission is persuaded by the testimony and arguments from the Staff, Consumers, ABATE, and MEC/NRDC/SC demonstrating that a reasonable FCM can safeguard Consumers' credit rating, address risk, and also benefit the public by making the competitive solicitation process and capacity procurement structure a certainty. Specifically, Mr. Maddipati explains how the settlement agreement's FCM incentivizes the policy objectives that Mr. Torrey outlined and corrects for certain financial impacts that Mr. Maddipati outlined in his direct testimony. 7 Tr 735; 10 Tr 3095. Staff witness Paul Proudfoot concluded that, without such an incentive, it may be difficult to expect Consumers to enter into thousands of megawatts of PPAs for solar resources in part because the utility has little opportunity to earn a return on those PPAs. 9 Tr 2365. ABATE witness Jeffry Pollock testified that an FCM can remove any incentive for a utility to prefer a self-build project over a lower-cost PPA and can compensate the utility to reflect the additional credit risk. 7 Tr 2137. And MEC/NRDC/SC's witness Douglas Jester testified that there are costs associated with PPAs that reduce growth in the company's rate base and its earnings and dividends, diminishing the utility's total equity, which can result in current shareholders losing an opportunity for increased share value as a result of the PPA. 8 Tr 1799-

1800; 10 Tr 3096. Therefore, Mr. Jester explained that it makes sense to provide an incentive to increase the use of PPAs to meet a company's capacity and energy needs. *Id*. The Commission further notes that permitting Consumers to earn a reasonable FCM on PPAs is a core element in the competitive solicitation process and capacity procurement approach in this settlement agreement, and which represents a significant change to the utility's business model. Further, MEC/NRDC/SC notes that Section 6t(15) specifically authorizes the Commission to consider such an incentive and that the FCM complies with the limits of this statutory provision as it does not exceed Consumers' WACC. And, ELPC *et al*. points out, and the Staff agrees, that the FCM is subject to Commission review in 2021 and that, if Consumers cannot show that the FCM reduces costs for Michigan customers, the Commission has the authority to discontinue the FCM for new contracts in Consumers' next IRP case. The Commission finds all of these points persuasive. Accordingly, the Commission concludes that the FCM provided for in the settlement agreement is necessary, reasonable, and in the public interest.

4. Capacity Procurement Approach

Regarding SEIA's criticism that the 50/50 capacity procurement approach presented in the settlement agreement will increase costs to Consumers' customers, the Commission agrees with Consumers that this assertion is speculative. The Commission finds persuasive Mr. Troyer's testimony pointing to a 41% reduction in solar resource LCOE between 2017 and 2018 and his assertion that it is reasonable to expect this trend of declining solar costs to continue. 10 Tr 3064. The Commission also finds compelling Mr. Proudfoot's testimony that, with regard to renewable energy cases in the past, competition has driven down costs associated with capacity procurement and that it is likely to do so in this case. 9 Tr 2565. The Commission also notes that Mr. Proudfoot testified about other ancillary benefits of such an approach, including the fact that allowing Consumers to own a portion of the new resources will give the company greater control over the maintenance and operation of the equipment, greater insight into the performance of the equipment, and better equip the utility to forecast output from solar resources. *Id*. Thus, although the Commission agrees that consideration of this issue is somewhat theoretical in nature given the difficulty in accurately projecting trends showing declining or increasing costs, the Commission further finds that an approach where 50% of new capacity additions must be procured through PPAs that exclude Consumers' affiliates benefits the utility's ratepayers, solar developers, and the environment. Therefore, the Commission concludes that this aspect of the settlement agreement is in the public interest and does not warrant a rejection of the settlement agreement.

5. <u>Competitive Bidding</u>

Regarding SEIA's criticism that the competitive bidding process included in the settlement agreement is not as fair and transparent as it needs to be and could be improved, the Commission has considered SEIA's arguments and finds that they should be rejected. First, the Commission notes that the process is vastly improved because it incorporates the guidelines from Case No. U-15800 and includes a robust stakeholder process that will ensure a transparent and open solicitation process as well as produce uniform standards for such a process. Consumers pointed out that SEIA originally recommended using the guidelines that the Commission approved for RFPs in Case No. U-15800 as a baseline for competitive solicitations. This settlement agreement does just that, by requiring Consumers to use those procedures until the Commission adopts competitive bidding guidelines or procedures as part of a future proceeding.

Although SEIA contends that nothing in the settlement agreement requires the utility to act on the feedback that it receives during the stakeholder process, both the Staff and Consumers disagreed with this interpretation. Paragraph 7(k) of the settlement agreement sets forth a multistep stakeholder process that begins with the requirement that Consumers provide its draft competitive bidding guidelines to stakeholders so that they may make recommendations to Consumers. After this process, Consumers must submit its final competitive bidding procedures to stakeholders. Then, by April 1, 2020, Consumers must "commence a second workshop to share 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 important." Interested parties will have an opportunity to discuss this information and ask questions. Consumers and interested parties then have an opportunity to file comments about the reasonableness of the competitive bidding procedures and to recommend changes and additions. The Commission will then issue an order adopting uniform standards on best practices for competitive bidding and RFPs. The Commission will further evaluate the reasonableness of Consumers' bidding procedures in its next IRP. The Commission finds this process to be in the public interest because it allows stakeholders to have input into procedures that will be employed both before and after the first annual solicitation.

The Staff observes that the annual nature of these solicitations ensures the process is evaluating up-to-date cost information for IRP modeling and setting avoided costs. 9 Tr 2721. Further the Staff notes that "[a]nnual solicitations also allow developers that would otherwise ask for PURPA contracts to bid on larger projects allowing for greater economies of scale and interconnection at the transmission level, reducing the complexity and costs of interconnection compared to large PURPA contracts interconnecting at the distribution level." Staff's initial brief, p. 15, citing 9 Tr 2722. Similarly, MEC/NRDC/SC notes that the process allows for annual solicitation of technologies set forth in the PCA , including solar, to be used in the bidding process.

The Commission agrees with the Staff that SEIA's seven additional recommendations regarding ways to improve this process should be considered as part of the stakeholder process associated with this settlement agreement. Moreover, the Commission agrees that the process overall benefits the public and ensures an unbiased, transparent, and open process because it provides for use of an independent evaluator, informs all bidders of the evaluation criteria and process, follows RFP parameters that the Commission approved in Case No. U-15800, requires timely issuance of an RFP through public notice, and requires that the terms of the contract be included in the RFP. With a phased-in process for bidding and opportunities for stakeholder input on bidding criteria and processes, the Commission also expects the public interest to be served as technologies evolve, such as consideration of solar combined with battery storage, in the bidding process.

6. Changes to Implementation of the Public Utility Regulatory Policies Act of 1978

Regarding the five-year capacity planning horizon, the Commission finds this aspect of the settlement agreement to be in the public interest. The Staff argues that this compromise serves the public's interest in administrative efficiency because it aligns this planning horizon with the IRP filing requirements in 6t, which require an IRP to be filed every five years. MEC/NRDC/SC likewise view this compromise to be a fair and reasonable resolution of this issue.

Finally, SEIA criticizes the settlement agreement provision that sets out PURPA contract length options with varying capacity and energy rates available under the Standard Offer or when Consumers does not have a capacity need. The Commission agrees with Consumers that SEIA misstates the provisions of the settlement agreement and further agrees that this issue does not warrant rejecting the settlement agreement. The Commission finds persuasive Consumers' explanation that Mr. Lucas wrongly asserts that the Standard Offer contract term is limited to 10 years. The settlement agreement clearly presents QFs with opportunities to secure PPAs with Consumers for longer periods. Specifically, paragraph 7(h) provides that QFs up to 20 MW in size can participate in the competitive solicitation process for a contract term up to 25 years. And, as Consumers observes, "if the company does not fill capacity in the PCA through the competitive solicitation process, the capacity becomes available to other QFs at the full avoided cost rate with an expected contract term of 25 years." Consumers' initial brief, p. 47. Consumers likewise notes that both Mr. Troyer and Mr. Harlow refuted SEIA's criticisms about the rates and terms available to QFs when Consumers does not have a capacity need. The testimony of these witnesses supported a 5-year contract term for forecasted pricing and a 15-year term for actual pricing in initially filed direct testimony. *See*, 8 Tr 1269-1270; 9 Tr 2721-2722. For these reasons, the Commission finds the proposed PURPA rates and terms and the Standard Offer contract term to be reasonable, in the public interest, and supported by the record.

Having addressed each of SEIA's arguments as to whether the settlement agreement is in the public interest and represents a fair and reasonable resolution of the proceeding, the Commission finds that, for all of the reasons set forth, the settlement agreement is in the public interest. The Commission also finds that the proposed settlement agreement is a fair and reasonable resolution of this proceeding. In addition, having read the record, the Commission likewise finds the settlement agreement to be supported by substantial evidence on the record as a whole. Moreover, as agreed to by the parties in paragraph 1 of the settlement agreement and supported by the record, the Commission finds that Consumers' PCA as amended by the settlement agreement is the most reasonable and prudent means of meeting Consumers' energy and capacity needs over the time horizon of this IRP.

The Commission observes that the terms of the settlement agreement will place Consumers' next IRP before the Commission in June 2021 and the Commission will then have an opportunity to revisit many of these same issues with the benefit of additional analysis and information about the accuracy of past projections. In this way, the settlement agreement adopted today provides an additional measure of flexibility and modularity allowing new information to further inform the utility's long-term plans. It also serves as an important foundation that can be built upon when the Commission revisits the IRP planning process in 2021. The Commission further agrees with the characterization of several parties to the settlement agreement that the settlement agreement is groundbreaking, transforms the way Consumers does business, represents a dramatic departure away from fossil fuel generation towards the use of clean energy, and incorporates a competitive bidding process that will reduce prices for Consumers' customers. With approval of this agreement, Consumers is dramatically departing from the traditional utility approach to resource planning and investment. Customer engagement and participation by third-party energy service providers will be integral to the success of this IRP. The Commission considers the proposed settlement agreement to benefit Consumers' ratepayers, solar developers, the environment, and the company.

Looking ahead to Consumers' filing of its next IRP in 2021, the Commission expects that Consumers will work in close collaboration with METC and will provide METC a thorough and timely retirement analysis of its aging generation units and new resource plans to allow for a more accurate and in-depth analysis of transmission issues in the next IRP. In addition, as many of the elements contained in the PCA as amended by the settlement agreement - including DR, EWR, CVR, and modular solar build - may be sited on the utility's distribution system, the Commission also directs Consumers to explore the possibility of integrating resource and distribution planning in the next IRP. A holistic review of energy infrastructure options and customer trends, such as adoption of renewable energy, EWR, and electric vehicles, is essential to optimize investments for the benefit of ratepayers.

The Commission has reviewed the settlement agreement and finds that the public interest is adequately represented by the parties who entered into the settlement agreement. The Commission further finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, is supported by substantial evidence on the whole record, and should be approved.

THEREFORE, IT IS ORDERED that**:**

A. The settlement agreement, attached as Exhibit A, is approved.

B. Unless otherwise provided in the settlement agreement, the terms of the approved settlement agreement shall take effect immediately upon issuance of this order.

C. In accordance with paragraph 7(h) of the settlement agreement, Consumers Energy Company shall file, within 30 days of this order, revised Standard Offer tariff sheets and a revised Standard Offer contract, to reflect the Standard Offer construct and rates approved as part of the approved settlement agreement. Also pursuant to paragraph 7(h), parties shall have 14 calendar days subsequent to these filings to provide comments to the Commission in this docket.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg

Sally A. Talberg, Chairman

Norman J. Saari

Norman J. Saari, Commissioner

Daniel C. Scripps, Commissioner

By its action of June 7, 2019.

Barbara S. Kunkel

Barbara S. Kunkel, Acting Executive Secretary

EXHIBIT A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 431 of the Michigan Administrative Hearing System's Rules of Practice and Procedure before the Michigan Public Service Commission ("MPSC" or the "Commission"), the undersigned parties agree as follows:

WHEREAS, on June 15, 2018 Consumers Energy Company ("Consumers Energy" or the "Company") filed an Application requesting approval of the Company's Integrated Resource Plan ("IRP") pursuant to Section 6t of 2016 PA 341, MCL 460.6t, the Commission's December 20, 2017 and November 21, 2017 Orders in Case Nos. U-15896, et al., and U-18418, respectively, and all other applicable law. The Company filed testimony and exhibits in support of its positions concurrently with its Application.

WHEREAS, the initial prehearing conference in this proceeding was held on July 16, 2018 before Administrative Law Judge Sharon L. Feldman. The Commission Staff ("Staff"); Michigan Environmental Council, the Sierra Club, and the Natural Resources Defense Council (collectively, "MEC"); the Association of Businesses Advocating Tariff Equity ("ABATE"); Energy Michigan, Inc.; Michigan Energy Innovation Business Council and Institute for Energy Innovation ("MEIBC"); the Independent Power Producers Coalition of Michigan ("IPPC"); Solar Energy Industries Association, Inc. ("SEIA"); the Michigan Chemistry Council; Michigan Electric Transmission Company, LLC ("METC"); Cypress Creek Renewables, LLC; Residential

Customer Group ("RCG"); Great Lakes Renewable Energy Association ("GLREA"); Attorney General Dana Nessel ("Attorney General"); Midland Cogeneration Ventures, LP ("MCV"); Environmental Law & Policy Center, The Ecology Center, Union of Concerned Scientists, and Vote Solar (collectively, "ELPC"); and the Biomass Merchant Plants ("BMPs") intervened in this proceeding. 1 TR 10.

WHEREAS, Consumers Energy filed testimony and exhibits requesting approval of the Company's IRP Proposed Course of Action ("PCA") in its entirety, as the most reasonable and prudent means of meeting the Company's energy and capacity needs through 2040. As part of its approval of the PCA, the Company specifically requested the Commission to make the following determinations:

(i) Approve as reasonable and prudent for cost recovery purposes the Company's proposed Energy Waste Reduction ("EWR"), Demand Response ("DR"), and Conservation Voltage Reduction ("CVR") costs which will be commenced by the Company within three years following the Commission's approval of the Company's IRP;

(ii) Approve the Company's proposal to recover the unrecovered book balance of D.E. Karn ("Karn") Units 1 and 2, including decommissioning costs, and proposed regulatory accounting treatment through 2031;

(iii) Approve the Company's proposed competitive-bid methodology for determining avoided costs rates and for determining and addressing the Company's capacity position pursuant to the Public Utility Regulatory Policies Act of 1978 ("PURPA");

(iv) Approve the utilization of a five-year period for the purpose of determining the Company's capacity position and related obligations pursuant to PURPA and find that the Company has no PURPA capacity need so long as the Company is implementing the PCA, as approved by the Commission; and

(v) Approve the Company's Financial Compensation Mechanism ("FCM") for any new Power Purchase Agreements ("PPAs") entered by the Company.

Staff and other intervening parties filed testimony and exhibits addressing various issues.

NOW THEREFORE, for purposes of settlement of Case No. U-20165, the undersigned parties agree as follows:

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 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.

14. This settlement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves

this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.

15. This Settlement Agreement is based on the facts and circumstances of this case and is intended for the final disposition of Case No. U-20165. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. Except as otherwise set forth herein, the parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or appeals related thereto.

16. This Settlement Agreement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.

17. The parties agree that approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.

18. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.

WHEREFORE, the undersigned parties respectfully request the Commission to approve this Settlement Agreement on an expeditious basis and to make it effective in accordance with its terms by final order.

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

By: Spencer Sattler Digitally signed by Spencer Sattler Date: 2019.03.23 15:24:37 -04'00' ______________________ Date: March 23, 2019

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CONSUMERS ENERGY COMPANY

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By: ________________________ Date: March 23, 2019

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ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

Bryan A. Brandenburg

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By: ________________________ Date: March 22, 2019

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ENERGY MICHIGAN, INC., THE INDEPENDENT POWER PRODUCERS COALITION OF MICHIGAN, AND MICHIGAN CHEMISTRY COUNCIL.

Timothy Lundgren

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MICHIGAN ENVIRONMENTAL COUNCIL

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ATTORNEY GENERAL DANA NESSEL

By: Celeste R. Gill Digitally signed by Celeste R. Gill Date: 2019.03.22 16:14:39 -04'00' Date: March 22, 2019

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Lansing, MI 48909

MICHIGAN ELECTRIC TRANSMISSION COMPANY

By: Richard J. Aaron/ With Permission MKH Date: March 22, 2019

Richard J. Aaron, Esq.
Dykema Gossett PLLC
201 Townsend Street, Suite 900
Lansing, MI 48933

The following parties do not wish to be signatories to this Settlement Agreement; however they have agreed to sign below to indicate non-objection to the Settlement Agreement:

ENVIRONMENTAL LAW AND POLICY CENTER, THE ECOLOGY CENTER, UNION OF CONCERNED SCIENTISTS, VOTE SOLAR

By: Margrethe K. Kearney Date: March 23, 2019

Margrethe Kearney, Esq.
Environmental Law & Policy Center
1514 Wealthy Street SE, Suite 256
Grand Rapids, MI 49506

The following parties do not wish to be signatories to this Settlement Agreement; however they have agreed to sign below only to indicate non-objection to the Settlement Agreement:

MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL AND INSTITUTE FOR ENERGY INNOVATION

By: Laura A. Chappelle

Laura A. Chappelle, Esq.
Varnum, LLP
The Victor Center, Suite 910
201 North Washington Square
Lansing, MI 48933

Date: March 22, 2019

ATTACHMENT A

Attachment A

The Parties agree that the following guidelines are intended to shape the competitive bidding process for Consumers Energy Company's ("Consumers Energy") Integrated Resource Plan ("IRP"). The guidelines are not intended to be a comprehensive methodology.

- To the extent applicable, Consumers Energy shall use the RFP parameters included in the 2008 *Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy*, as adopted in Attachment D of the Commission's December 4, 2008 Temporary Order in Case No. U-15800.

- Timely Issuance of RFP through Public Notice: The issuance of an RFP will be made through public notice to ensure parties interested in responding have an opportunity to learn of it.

- Terms of Contract Provided in RFP: In accordance with MCL 460.6t(6), Consumers Energy shall provide the terms of the contract in their RFP. Consumers Energy may accomplish this by developing standard form contracts along with credit terms and instruments to be included in the RFP.

- Independent Evaluator ("IE"): In the implementation of the Company's Proposed Course of Action, the Company will utilize an IE during the competitive solicitation of Power Purchase Agreements and the generating facilities that the Company may ultimately own, in the manner proposed by Company witness Keith G. Troyer at 8 TR 1285-1289 and Exhibit A-107 (KGT-4).

ATTACHMENT B

Contract Year	Total Rate ($/MWh)
2019	**55.54**
2020	**57.49**
2021	**59.38**
2022	**61.28**
2023	**63.25**
2024	**65.24**
2025	**67.24**

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-20165

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on June 7, 2019 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna J. Brown

Brianna Brown

Subscribed and sworn to before me
this 7th day of June 2019.

Angela P. Sanderson

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

Service List for Case: U-20165

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