

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY)	
for approval of the build transfer agreement)	Case No. U-21409
for the Sunfish Solar 2 project as a)	
voluntary green pricing program resource.)	
_____)	

At the September 28, 2023 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER APPROVING SETTLEMENT AGREEMENT

On April 28, 2023, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting approval of a build transfer agreement to acquire the Sunfish Solar 2 solar facility pursuant to Section 28(4) of Public Act 295 of 2008, as amended, MCL 460.1028(4).

A prehearing conference was held on August 3, 2023, before Administrative Law Judge Lesley C. Fairrow. Consumers and the Commission Staff participated in the proceeding. Subsequently, the parties submitted a settlement agreement resolving all issues in the case.

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, and should be approved.

THEREFORE, IT IS ORDERED that the settlement agreement, attached as Exhibit A, is approved.

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 Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of September 28, 2023.

Lisa Felice, Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for approval of the build transfer agreement)
for the Sunfish Solar 2 project as a)
Voluntary Green Pricing Program resource.)

Case No. U-21409

SETTLEMENT AGREEMENT

On April 28, 2023, Consumers Energy Company (“Consumers Energy” or the “Company”) filed an Application with the Michigan Public Service Commission (“MPSC” or the “Commission”) requesting approval of a Build Transfer Agreement (“BTA”) to acquire the Sunfish Solar 2 solar facility (“Sunfish Solar 2”) pursuant to Section 28(4) of 2008 PA 295, as amended (“Act 295”), MCL 460.1028(4). The Application was supported by the direct testimony and exhibits of Company witnesses Alexander E. Juhasz and Juan B. Tatis. Pursuant to the Notice of Hearing, an initial prehearing conference was held in this proceeding before Administrative Law Judge Lesley C. Fairrow on August 3, 2023. At the prehearing conference, the Commission Staff (“Staff”) entered its appearance. A second prehearing was scheduled for September 25, 2023. No other parties intervened.

The parties have discussed the issues in this case and, as a result, decided to resolve all issues by virtue of this Settlement Agreement (“Agreement”).

WHEREFORE, the parties agree to the following:

1. Pursuant to the Settlement Agreement approved by the Commission in its September 9, 2021 Order in Case No. U-20984 (“U-20984 Settlement Agreement”), Consumers Energy is authorized to add up to 1,000 MW of new wind and solar facilities to support the Large

Customer Renewable Energy Program (“LC-REP”). U-20984 Settlement Agreement, paragraph 1. Under the U-20984 Settlement Agreement, Consumers Energy “may solicit additional renewable energy resources to expand its LC-REP on an annual basis based on customer applications and add additional renewable energy resources based upon customers’ firm subscriptions.” U-20984 Settlement Agreement, paragraph 2. In addition, the U-20984 Settlement Agreement states that Consumers Energy will not add a “new renewable energy resource for the LC-REP until it has achieved firm subscriptions totaling 75% of the expected energy production for that resource.” *Id.*

2. MCL 460.1028(4) requires Commission approval of contracts entered into under the Company’s RE Plan.

3. In 2022, Consumers Energy conducted a Voluntary Green Pricing (“VGP”) solicitation through the Independent Administrator to acquire up to 1,000 MW of additional aggregate nameplate capacity projects. After receiving the blind evaluation results, Consumers Energy selected the Sunfish Solar 2 project.

4. On February 24, 2023, Consumers Energy entered into a BTA with Hecate Energy Sunfish Solar 2, LLC for the Sunfish Solar 2 project. Sunfish Solar 2 is a 309 MW solar facility located in Calhoun County, Michigan. The project will require approximately 2,900 acres, for which land rights have been secured. The Commercial Operation Date (“COD”) of the facility is expected to be on or before December 31, 2025.

5. The Sunfish Solar 2 BTA contains several customer protections, which include (1) liquidated damages should there be delays in achieving substantial completion, (2) a Milestone Progress Payment Schedule to ensure the Company pays only upon completion of certain activities or milestones and allow the Company to take ownership of certain project assets as payments are

made, and (3) sharing the risk of purchase price adjustments resulting from cost increases due to changes in import costs, changes in law causing delays, or Force Majeure events.

6. Consumers Energy estimated the total installed capital cost of the Sunfish Solar 2 project to be \$453 million or \$1.466 million per MW. The Sunfish Solar 2 BTA results in a \$52.68/MWh Levelized Cost of Energy (“LCOE”) over 30 years and \$51.21/MWh LCOE over 35 years. The \$52.68/MWh LCOE of the Sunfish Solar 2 project is approximately \$32/MWh less than the \$84.24/MWh LCOE of the proxy solar unit originally projected for 2026 in the Renewable Energy Plan (“RE Plan”) in Case No. U-20984.

7. Consumers Energy indicated in its filing that it has achieved firm LC-REP subscriptions totaling 93% of the expected MWh energy production of Sunfish Solar 2, and customers are continuing to express interest in subscribing to the program. Since the Company has achieved LC-REP subscriptions totaling more than 75% of the expected energy production of Sunfish Solar 2 prior to the COD of the project, the parties agree that the U-20984 Settlement Agreement subscription requirement has been met.


8. The parties agree that the Commission should approve the Sunfish Solar 2 BTA pursuant to Act 295 as consistent with the Company’s RE Plan and that the Company should recover the costs of Sunfish Solar 2 through the process established in Act 295 and the Company’s RE Plan, including through VGP program subscriptions, the transfer price mechanism, or other mechanisms as determined by the Commission. The parties agree that the Company should use the 2021 transfer price schedule that was approved by the Commission in Case No. U-21197 for Sunfish Solar 2.

9. The parties join in requesting the Commission to issue an order approving this Agreement. The parties agree that approval of this Agreement by the Commission is reasonable and in the public interest.

10. This Agreement has been made for the sole and express purpose of reaching a compromise and an accommodation among the parties to this case. This Agreement shall not in any way prejudice any of the parties' right to take new and/or different positions in any other proceeding. All offers of settlement and discussion relating to this Agreement shall be considered privileged under MRE 408. If the Commission approves this Agreement without modification, neither the parties to this Agreement, nor the Commission shall make any reference to, or use the Agreement, or the order approving it as 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 or use may be made to enforce this Agreement and the order approving it.

11. For the sole purpose of submitting this Agreement to the Commission, the parties waive compliance with the provisions of Section 81 of the Administrative Procedures Act of 1969, MCL 24.281.


CONSUMERS ENERGY COMPANY

By:  _____
Digitally signed by Gary A. Gensch, Jr.
Date: 2023.09.11 10:00:16 -04'00'

Gary A. Gensch, Jr. (P66912)
Anne M. Uitvlugt (P71641)
Attorneys for Consumers Energy
One Energy Plaza
Jackson, MI 49201

Date: September 11, 2023

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

By:  _____
Nicholas Q. Taylor (P81020)
Alena M. Clark (P73252)
Assistant Attorneys General
7109 West Saginaw Highway
Lansing, MI 48917

Date: September 18, 2023


PROOF OF SERVICE

STATE OF MICHIGAN)

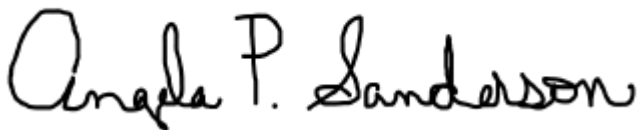
Case No. U-21409

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on September 28, 2023 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 Brown

Subscribed and sworn to before me
this 28th day of September 2023.



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

Service List for Case: U-21409

Name	On Behalf of	Email Address
Alena Clark	MPSC Staff	clarka55@michigan.gov
Anne M. Uitvlugt	Consumers Energy Company	anne.uitvlugt@cmsenergy.com
Consumers Energy Company (1 of 2)	Consumers Energy Company	mpsc.filings@cmsenergy.com
Consumers Energy Company (2 of 2)	Consumers Energy Company	kelly.hall@cmsenergy.com
Gary A. Gensch Jr.	Consumers Energy Company	gary.genschjr@cmsenergy.com
Lesley Fairrow	ALJs - MPSC	fairrowl1@michigan.gov
Nicholas Q. Taylor	MPSC Staff	taylorn10@michigan.gov