

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
<b>CONSUMERS ENERGY COMPANY</b>	)	
for approval to implement a power supply	)	Case No. U-21423
cost recovery plan for the 12 months	)	
ending December 31, 2024.	)	
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At the June 12, 2025 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**

History of Proceedings

On September 29, 2023, Consumers Energy Company (Consumers) filed an application in this docket, with supporting testimony and exhibits, pursuant to Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j, and the June 9, 2023 order in Case Nos. U-21421 *et al.* (June 9 order)<sup>1</sup> requesting approval of the company’s power supply cost recovery (PSCR) plan and monthly PSCR factors for the 12-month period ending December 31, 2024. Consumers filed a revised application on October 9, 2023, in this docket (application).

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<sup>1</sup> The June 9 order assigned docket numbers and filing deadlines for Consumers and other electric providers to file their respective power supply, gas, and steam supply cost recovery plans and reconciliations among other filings. June 9 order, pp. 1-2.

In its application, Consumers included its “five-year forecast of its power supply requirements, anticipated sources of supply, and projections of power supply costs.” Application, p. 2. Consumers also sought in its application approval of a PSCR factor of \$0.00877 per kilowatt-hour (kWh) plus additional amounts contingent upon future events. *Id.* The application also included Consumers’ proposal for a “PSCR Factor Ceiling Price Adjustment (Contingency) Mechanism [PSCR contingency mechanism] for the 2024 PSCR Plan year” that would help the company “meet goals of matching costs incurred with cost[s] charged during the PSCR period, help send more accurate price signals to customers, and help reduce future under-recoveries.” *Id.*, pp. 2-3.

A prehearing conference was held on November 16, 2023, before Administrative Law Judge Lesley Fairrow (ALJ Fairrow). At the prehearing conference, ALJ Fairrow recognized the intervention of the Michigan Department of Attorney General (Attorney General) and granted intervention status to Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership, Energy Michigan, and the Association of Businesses Advocating Tariff Equity (ABATE). Consumers and the Commission Staff (Staff) also participated in the proceeding. On December 6, 2023, the Sierra Club filed a petition for late intervention. No objection was entered, and ALJ Fairrow granted intervention to the Sierra Club on December 7, 2023.

ALJ Fairrow issued a protective order for use in this matter on February 14, 2024.

Consumers filed revised direct testimony on April 22, 2024. The Staff and ABATE filed direct testimony and supporting exhibits on May 10, 2024. Consumers and ABATE filed rebuttal testimony on June 10, 2024.

On July 9, 2024, this docket was reassigned to Administrative Law Judge Katherine E. Talbot (ALJ).

An evidentiary hearing was held before the ALJ on July 25, 2024, during which the Staff's witness Raushawn Bodiford, Consumers' witness Joshua Hahn, and Consumers' witness Andrew Volansky were cross-examined, and testimony of the remaining witnesses and exhibits were bound into the record.

Initial briefs were filed by Consumers, the Staff, and ABATE on August 30, 2024, and reply briefs were filed by Consumers, the Staff, and ABATE on September 27, 2024. The ALJ issued a Proposal for Decision (PFD) in this matter on March 10, 2025. Consumers and ABATE filed exceptions to the PFD on March 31, 2025. Replies to exceptions were filed by the Staff, Consumers, and ABATE on April 14, 2025.

The record in this matter consists of 287 pages of transcript and 33 exhibits admitted into evidence, with some of that evidence marked as confidential.

### Proposal for Decision

The ALJ provided a thorough overview of the record and statutory requirements pertaining to PSCR plan proceedings on pages 2-8 of the PFD, which will not be repeated here. The ALJ next turned to Consumers' 2024 PSCR plan and five-year forecast, noting that many components therein were undisputed by the parties. PFD, p. 9. Specifically, the ALJ listed the undisputed components as follows:

The undisputed components of the [2024 PSCR] plan include the electric deliveries, generation requirements, and peak forecasts for 2024 through 2028, and the electric generation resources, sources of supply, and power purchase agreements for the same period. The components also include major plant outages for 2024; miscellaneous outages for 2024; the 2024 through 2028 procurement strategy; the five year estimate of power supply costs; energy transmission and market costs; the net system power supply costs; 2024 total transmission and energy market administration expenses, including charges imposed on Consumers under the Midcontinent Independent System Operator, Inc. (MISO) Federal Energy Regulatory Commission (FERC)-approved Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff); and environmental costs, including

projected urea, aqueous ammonia, lime, and activated carbon expenses. The components further include total system requirements, and seasonal capacity planning, including the calculation of 2024 seasonal capacity reserve margins, and the purchase of additional capacity in 2024, based in part on MISO's seasonal capacity construct.

*Id.*, pp. 9-10 (footnotes omitted).

The ALJ explained that “there was no objection to Consumers’ five-year forecast, the projected PSCR plan expenses, inclusion of a portion of the 2022 underrecovery, or the calculation of the PSCR Factor for the plan year, January 1, 2024 [through] December 31, 2024” and thus recommended that “the Commission approve Consumers’ proposed 2024 PSCR plan and approve a base PSCR Factor of \$0.00877 per kWh.” PFD, p. 12. The ALJ identified that the sole contested issue was “the [PSCR] contingency mechanism proposed by Consumers in the 2024 PSCR plan[.]” *Id.*

Finding the parties to be in agreement on the above-listed aspects of Consumers’ PSCR plan and having no exceptions filed on these issues, the Commission adopts the ALJ’s recommendations on the uncontested issues. The contested issue, objected to in exceptions, is discussed in detail below.

### Discussion

As part of its application, Consumers proposed a PSCR contingency mechanism that “would allow for upward adjustments in the PSCR factor based upon increases in the 12-month forward NYMEX [New York Mercantile Exchange] average natural gas price.” 2 Tr 201. Specifically, Consumers proposed a PSCR contingency mechanism that would “allow for defined increases in the maximum PSCR factor based upon increases in the 12-month forward NYMEX average gas price in increments of \$0.25/MMBtu [million metric British thermal units] up to a maximum increase of \$4.00/MMBtu.” 2 Tr 202. Consumers explained that the proposed PSCR contingency

mechanism “mirrors the mechanism that the Company has used in its Gas Cost[] Recovery (‘GCR’) plans for decades”<sup>2</sup> and also “promotes accurate price signals that allow customers to make informed decisions about their electric consumption and helps shield customers from large under-recoveries and associated interest costs.” Consumers’ initial brief, p. 1.

The Staff recommended that the PSCR contingency mechanism be approved, noting that “because the Company’s proposed [PSCR] Contingency mechanism is being implemented to avoid large utility under recoveries during volatile market conditions, Commission approval of the Company’s proposed [PSCR] Contingency mechanism would be in the best interest of Michigan ratepayers.” 2 Tr 63. The Staff explained that “large underrecoveries can cause sharp increases to ratepayers’ bills in subsequent months when those amounts are recovered through reconciliation.” Staff’s initial brief, p. 7. Moreover, the Staff asserted that the proposed PSCR contingency mechanism would provide more precise billing scenarios, allow Consumers to “incorporate volatility from gas cost fluctuations, both directly and indirectly, into the PSCR factor as soon as practicable,” and minimize the “interest customers would owe the Company as the result of carrying a large under-recovery over an extended period of time.” *Id.*, pp. 7-8.

ABATE objected to Consumers’ proposed PSCR contingency mechanism. ABATE argued that the proposed contingency mechanism would establish more than one specific monthly PSCR factor, which is incompatible with MCL 460.6j(3) (which ABATE contends “mandates that only one PSCR factor may be set for each month within the PSCR plan period, and multiple contingent PSCR factors per month are not permissible”) and MCL 460.6j(6) (which ABATE contends

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<sup>2</sup> While contingency mechanisms are not unusual in GCR plans, they are relatively new to PSCR plans. The first PSCR plan approved with a contingency mechanism was in the July 26, 2023 order in Case No. U-21265.

“mandates that only one PSCR factor can be approved by the Commission for each month within the PSCR plan period”). ABATE’s initial brief, pp. 8-9. ABATE asserted that Consumers’ proposed contingency mechanism “would establish 17 different PSCR factors for each month of the PSCR Plan period” by establishing the “the ‘Maximum Allowable Factor of \$0.00877/kWh’ . . . [and] establish[ing] 16 additional specific PSCR factors ranging from \$0.00965/kWh to \$0.01925/kWh for each month of 2024.” *Id.*, p. 9 (citing Exhibit A-28). Additionally, ABATE argued that Consumers’ proposed PSCR contingency mechanism is also incompatible with MCL 460.6j(6) because “MCL 460.6j(6) establishes that PSCR factors ‘may include amounts contingent on future events’” and Consumers’ proposed contingency mechanism “ties contingent PSCR factors to historical [actual monthly NYMEX] price data, rather than exclusively to future events.” *Id.*, pp. 9-10 (citing Exhibit A-28).

ABATE also objected to Consumers’ proposed PSCR contingency mechanism because Consumers “has not demonstrated a direct relationship between its total power supply costs and the stepped NYMEX forecast increases tied to the specific contingent PSCR ceiling factors” and “without a clear and direct correlation between Consumers’ recoverable costs and the incremental NYMEX forecast increases linked to the proposed PSCR ceiling factors, the Commission cannot find the Company’s proposal to be reasonable or prudent.” ABATE’s initial brief, p. 12. ABATE also argued that Consumers’ proposed PSCR contingency mechanism is not in the best interest of ratepayers as “it has the potential to cause unpredictable and substantial rate increases without adequate notice[;]” instead of “allowing the Company to concentrate the recovery of significant and unpredictable costs within the PSCR period in which they are incurred[,]” ABATE argued that it would be more appropriate to protect ratepayers from “periods of unforeseen elevated and volatile pricing” if the Commission retained the option of spreading “the recovery of reasonable

and prudent costs over an extended period as it did in [the February 23, 2023 order in] Case No. U-21257[.]” ABATE’s initial brief, pp. 14-17. ABATE also contended that Consumers’ proposed contingency mechanism’s “reliance on non-verifiable ‘Updated NYMEX Price Forecasts,’ . . . cannot be deemed reasonable or prudent” and the “inability to properly audit this mechanism introduces unacceptable risks to ratepayers, who could be subject to arbitrary and potentially inflated costs.” *Id.*, p. 18.

Lastly, ABATE objected to Consumers’ proposed PSCR contingency mechanism because it is unnecessary. ABATE argued that “MCL 460.6j(10) already provides a procedure to address future under-recoveries, rendering the proposed [PSCR contingency] mechanism redundant.” *Id.*, p. 21. ABATE also pointed out that Consumers’ proposed PSCR contingency mechanism “fails to demonstrate that it will send accurate price signals to customers, as it lacks transparency and verifiability.” *Id.* Additionally, ABATE asserted that “[t]here is no evidence suggesting the Company would be harmed without the [PSCR] Contingency Mechanism” as Consumers could “recover all of its approved PSCR costs for a given year irrespective of whether the recovery occurs in the same year as the costs are incurred, or whether the recovery is spread over multiples years.” *Id.*

In the PFD, the ALJ found, “[b]ased on the totality of the evidence in the record[,] . . . [that] the arguments made by Consumers and Staff relat[ing] to the statutory authority and need for a contingency mechanism to be more persuasive and consistent with prior legal precedent than the arguments made by ABATE.” PFD, p. 30. The ALJ disagreed with ABATE’s contention that “approval of [Consumers’ PSCR] contingency mechanism in this case results in approval of 17 different PSCR Factors for each month[,]” concluding that:

this PFD does not find that the contingency mechanism proposed in this case actually authorizes more than one factor in any given month. The contingency

mechanism simply provides for an alternative PSCR Factor if and when the cost of natural gas rises unexpectedly. When the contingency mechanism is triggered a new maximum PSCR Factor is calculated and implemented . . . . Only one factor is implemented and charged. The Company also properly notes that the statute itself does not expressly limit the Commission to approval of a single PSCR Factor, pointing out that MCL 460.6j(6) provides for the monthly factors and “amounts contingent on future events” – leading to the reasonable interpretation that at least two factors are authorized. And as Staff point out the language of MCL 460.(6)j [sic] has been interpreted to specifically authorize a contingency mechanism in GCR cases. This PFD finds that ABATE’s assertions violate rules of statutory construction and misconstrue the application of the contingency mechanism.

*Id.*, p. 31 (footnotes omitted).

The ALJ also disagreed with ABATE’s assertion that the operation of Consumers’ PSCR contingency mechanism that “ties contingent PSCR factors to historical actual monthly NYMEX prices to determine when an adjustment is warranted” is not based on future events. PFD, p. 32. The ALJ found that ABATE’s assertion is “contradicted by precedent interpreting the GCR statute, MCL 460.6h(6)” and “confuses the frame of reference for what constitutes a future event[ where t]he term ‘future’ relates to events occurring after the PSCR plan was filed.”<sup>3</sup> *Id.* The ALJ also found ABATE’s argument that “GCR cases are not comparable to PSCR cases” unpersuasive, noting that the comparison of the PSCR statute, MCL 460.6j(6) (providing “[t]he

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<sup>3</sup> For her interpretation of the term “‘future’ relat[ing] to events occurring after the PSCR plan was filed[,]” the ALJ relied on *In re Consumers Energy Co*, 278 Mich App 547, 565; 753 NW2d 287 (2008), which “cited, with approval, an early unpublished per curium opinion of the Court of Appeals, *Michigan Community Action Agency Ass’n*,” and held:

[i]t seems apparent that the NYMEX index cost of gas is a future event on which the price of gas may be contingent. A base GCR factor is a “fixed dollar” amount. The NYMEX price index itself is not a future event; however, a rise in that index is a future event. The PSC [Public Service Commission] has approved contingent mechanisms based on changes in the NYMEX index cost of gas. We defer to the PSC’s longstanding interpretation of statutory language.

PFD, pp. 32-33.



factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific *amounts contingent on future events*”) and the GCR statute, MCL 460.6h(6) (providing “[t]he factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific *amounts contingent on future events*, including proceedings of the federal energy regulatory commission or its successor agency”) “for both PSCR and GCR plans [are] nearly identical, and the Commission should not ignore interpretations of the GCR provisions.” *Id.*, pp. 32-33 (quoting MCL 460.6j(6) and MCL 460.6h(6); emphasis added).

The ALJ also disagreed with ABATE’s argument that Consumers’ PSCR contingency mechanism is not reasonable and prudent. PFD, p. 34. According to the ALJ, ABATE inaccurately claims that Consumers has not demonstrated that “the NYMEX price increase correlates to recoverable PSCR costs and did not provide detailed calculations for the contingent mechanism factors[.]” finding that:

[MCL 460.6j(6)] does not contain such a requirement. And this PFD finds, based on the testimony of [Consumers’ witness] Mr. Hahn, Consumers has established a direct link between natural gas prices and its recoverable costs. The fact that Consumers makes all of its gas purchase in the spot market, with prices linked to LMPs [locational marginal prices], clearly shows a correlation. And the Company persuasively explained that detailed calculations were not supplied because there are no such calculations to share. Consumers established that the only variable changed in model runs to calculate the PSCR Factor amounts in the contingency mechanism was the price of natural gas.

*Id.*, p. 34 (footnotes omitted). The ALJ also disagreed with ABATE’s assertion that Consumers’ PSCR contingency mechanism “is unreasonable because it can’t be properly audited because the Company’s forecast uses information that is not readily available to the public[.]” however, the ALJ found that the NYMEX price forecast data is public information, the methods Consumers used in its calculations for the PSCR contingency mechanism are based on public information available to ABATE and its members, and it is not necessary for Consumers to “propose an

alternative to NYMEX in the extraordinarily unlikely event that it was to disappear.” *Id.*, pp. 34-35.

The ALJ also disagreed with ABATE’s argument that Consumers’ PSCR contingency mechanism is “not in the best interests of ratepayers because it introduces uncertainty and can cause unpredictable and substantial rate increases without notice.” PDF, p. 35. Rather, the ALJ pointed out that:

the Commission and courts have made it clear that large underrecoveries indicate that the amount being charged is not sending accurate price signals to customers. In balancing the competing priorities of price predictability with other important priorities such as providing meaningful and accurate price signals, avoiding unnecessary interest, and ensuring the customers who use the energy pay for it, the Commission has repeatedly held that contingency mechanisms like the one at issue in this case are reasonable and in the best interests of customers. And ABATE acknowledged [the] Commission has long held that customers should receive accurate price signals to ensure that customers who use the energy are the ones who pay for it rather than shifting costs to future customers; large over- and underrecoveries should be avoided. Clearly, the contingency mechanism will facilitate these price signals.

*Id.*, pp. 35-36 (footnote omitted). According to the ALJ, “ABATE’s argument that the Commission should also consider the affordability of the impacts produced by implementation of the mechanism is not without merit[, b]ut given the Commission’s long-standing preference to match increasing costs with the customers who use the electricity,” the ALJ recommended the Commission approve the Consumers’ PSCR contingency mechanism as proposed. *Id.*, p. 36.

Finally, the ALJ disagreed with ABATE’s argument that Consumers’ PSCR contingency mechanism was unnecessary because MCL 460.6j(10) “already provide[d] a procedure to address potential under recoveries and . . . use of this statutory provision is preferable as it gives the Commission the option to spread an under recovery over a period of time as was done in [the February 23, 2023 order in] Case No. U-21257.” PFD, p. 36. The ALJ noted that “it was too late to use [MCL 460.6j(10)] in [Case No.] U-21257 when prices started rising precipitously and the

Commission was forced to address the large underrecovery. If a [PSCR] contingency mechanism had been in place[,] the underrecovery would have been mitigated.” *Id.*

While the ALJ recommended the Commission approve contingency mechanisms in PSCR plans, the ALJ found “some merit in ABATE’s argument that the mechanism as proposed may limit the Commission’s ability to address large underrecoveries[.]” PFD, p. 37. The ALJ noted:

[t]he Commission may not want to forgo this option in the future. If natural gas prices become more volatile, the Commission could lessen the financial shock to ratepayers by spreading an underrecovery over a few years. Lowering the threshold[] would allow prices to increase to a point leaving the Commission the option to mitigate some of the increased costs to customers while maintaining the correlation between usage and payment, sending appropriate signals to ratepayers. This would strike a balance between sudden increases in energy bills and incurring massive underrecoveries. And because a contingency mechanism can be proposed in annual PSCR plan cases, the increments and threshold can be modified annually.

*Id.* In sum, the ALJ recommended that the Commission approve Consumers’ “2024 PSCR plan as filed, however, in the alternative, the Commission could modify the maximum threshold amount in the proposed [PSCR] contingency mechanism to \$2.00/MMBtu. Increases above the threshold would be addressed in another contested case.” *Id.*, p. 38.

Consumers’ takes exception to the alternative proposed by the ALJ that modifies the maximum threshold amount of Consumers’ proposed PSCR contingency mechanism to \$2.00/MMBtu “in case the Commission does not want to ‘forgo’ the option to have the utility incur a large under-recovery so that it can be spread over a large period of time in the future[,]” noting that the alternative “is not necessary and would be counterproductive.” Consumers’ exceptions, p. 2. Consumers points out that the Commission “always has the option to intervene during a PSCR case, on its own motion, to enter a temporary order that overrides a utility’s filed PSCR factors (including its contingency factors)” under MCL 460.6j(8) and “has express statutory authority to ‘spread [under-recoveries] over a period that the commission determines to be

appropriate” under MCL 460.6j(15). *Id.*, pp. 2-3. Thus, Consumers argues that the Commission does not forgo any of its statutory authority “[b]y approving the \$4.00/MMBtu ceiling proposed in this case[.]” *Id.*, p. 3. Consumers also argues that “the alternative proposed by the [ALJ] would increase the likelihood of large under-recoveries during a spike in natural gas prices, which is what the [PSCR contingency] mechanism is supposed to remedy.” *Id.*

In its replies to Consumers’ exceptions, ABATE points out that the ALJ “recognized concerns with the \$4.00 figure[ by] suggesting that the Commission consider halving the proposed ceiling to \$2.00/MMBtu (with any larger increases addressed in a separate case) and thus implicitly acknowledging that the originally proposed \$4.00 threshold was excessive.” ABATE’s replies to exceptions, p. 13. ABATE argues that “Consumers provides no new evidence or reasoning to defend \$4.00 beyond its preference for more flexibility[, and] . . . there is no record evidence that a \$4.00 limit (as opposed to \$2.00, \$1.00, or any other value) is tied to any legitimate requirement or analysis.” *Id.* ABATE asserts that the Commission’s adoption of “such an arbitrary cap would violate the Act 304 mandate that PSCR factors be established based on reasoned forecasting and prudent planning.” *Id.*

ABATE takes exception to the ALJ’s recommendation to approve Consumers’ proposed PSCR contingency mechanism, alleging that the ALJ’s “findings on this issue are not supported by the record and are based on legal and policy conclusions that are contrary to law and sound ratemaking principles.” ABATE’s exceptions, p. 25. ABATE asks the Commission to reject the ALJ’s recommendation for several reasons. First, ABATE argues that the ALJ’s recommendation to approve Consumers’ PSCR contingency mechanism is “unreasonable because the record evidence in this case regarding the mechanism is scant[ and] leav[es] the Commission without requisite evidence mandated by MCL 460.6j to determine that such a significant new cost recovery

device is reasonable and prudent.” *Id.*, p. 1. ABATE asserts that it was “clearly demonstrated by the PFD and evidence in the record” that Consumers did not affirmatively demonstrate “with substantial evidence that the decisions underlying its 2024 PSCR [plan] considered increases in natural gas prices up to \$4.00 per MMBtu above forecasted natural gas prices.” *Id.*, p. 4. ABATE also asserts that the record lacks any credible support for the ALJ’s conclusion that Consumers’ proposed PSCR contingency mechanism is reasonable or prudent where “the Company has provided no evidence of a consistent, quantifiable correlation between increases in NYMEX prices and its total PSCR costs” and “the NYMEX-based Contingency Mechanism is speculative, disconnected from actual cost data, and unsupported by detailed forecasting or planning required by MCL 460.6j.” *Id.*, pp. 9-10. Additionally, ABATE argues that the ALJ “incorrectly concluded that ‘the contingency mechanism can be mathematically calculated from the publicly published NYMEX index’” where the ALJ relied on the Staff’s analysis that used a small utility company’s PSCR contingency mechanism that was approved through a settlement as a template for approving Consumers’ PSCR contingency mechanism; ABATE opines that “the record shows Staff’s analysis was perfunctory and not truly independent” and “Staff’s endorsement [being] based on an assumption that if something like this was acceptable for a small utility in a settlement, it must be fine for Consumers[,] . . . was not a ‘critical evaluation’ of reasonableness, and the Commission should not place weight on it.” *Id.*, pp. 10-11 (referring to the July 26, 2023 order in Case No. U-21265).

Next, ABATE argues that the ALJ’s recommendation to approve Consumers’ PSCR contingency mechanism “overlooks the *magnitude of harm* and instability the proposed Contingency Mechanism would impose on customers” and “effectively prioritizes the utility’s revenue timing over the financial well-being of customers[,]” which is “neither reasonable nor

consistent with Commission policy[.]” ABATE’s exceptions, pp. 11-12 (emphasis in original).

ABATE points out that:

ensuring utilities recover their costs from the right customers is *not* mutually exclusive with protecting customers from debilitating price shocks. Act 304 already provides a reconciliation mechanism with interest to square up any under- or over-recoveries, and gives the Commission tools (like spreading recovery over time) to mitigate customer impacts when needed. The PFD’s one-sided focus on real-time price signals ignored the equally important regulatory principle of rate gradualism – smoothing out rate impacts to avoid customer hardship.

*Id.*, pp 12-13 (emphasis in original). ABATE also points out that the ALJ “recognized that the \$4.00/MMBtu cap in the mechanism might limit the Commission’s ability to mitigate a truly extreme spike (since the utility could massively increase rates up to that cap without further Commission leave)” but “still recommend[ed] approval, effectively trading away a proven regulatory tool (multi-period recovery) in favor of an untested one-size-fits all approach[, which] is not in the best interest of ratepayers.” *Id.*, pp. 13-14. Additionally, ABATE contends that the ALJ’s suggestion that avoiding underrecovery interest is “reason enough to implement the mechanism insufficiently considers the ratepayer benefit of spreading those charges out[; w]hile ratepayers pay some interest on deferred recovery, that interest cost (and any slight ‘price signal’ dampening) is a small price to pay for preventing rate shock and potential widespread ratepayer distress.” *Id.*, p. 15.

ABATE also argues in its exceptions that the ALJ “erred by effectively finding the mechanism ‘needed’ to avoid a scenario like [in] 2022 [when Consumers incurred such a large underrecovery late in the year where t]he record shows that scenario can be handled in other ways if it even recurs.” *Id.*, p. 20. ABATE points out that “[t]he ALJ conceded that ABATE’s alternative of using MCL 460.6j(10) (mid-year plan case filings) to address unexpected cost surges is a viable option, but the PFD downplay[ed] this on the grounds that in the 2022 spike it was ‘too late’ to use

that tool.” *Id.*, p 18. Moreover, ABATE contends that the ALJ’s “rationale for approving [Consumers’ PSCR contingency mechanism] – essentially ‘why not, since it could mitigate underrecoveries’ – inadequately considers the downsides and the availability of existing remedies.” *Id.*, p. 22.

ABATE also argues in its exceptions that the ALJ’s analysis of ABATE’s statutory arguments under MCL 460.6j is flawed and ignores the plain language of the statute. *Id.*, p. 22. ABATE asserts that the ALJ’s reasoning that Consumers’ PSCR contingency mechanism “‘does not . . . actually authorize more than one factor in any given month’ because only one factor would ultimately be charged – either the base or the higher contingent factor if triggered . . . is a distinction without a difference.” *Id.*, p. 23 (internal citation omitted). According to ABATE, under Consumers’ proposal, the Commission would “pre-authorize a *range* of specific PSCR factors for the same month, leaving it to Consumers to select which one applies based on a formula. That is effectively authorizing multiple potential rates for the same period, contrary to the statute’s requirement of a single specific factor per month.” *Id.* (emphasis in original). Moreover, ABATE “does not dispute that Act 304 allows *contingencies* – but those must be structured in a way that still honors the one-factor-per-month principle. Here, Consumers is effectively asking for 16 different ‘if-then’ rate combinations at once,” and “[t]he Commission would be exceeding its statutory authority by approving a menu of pre-set factors for each month, instead of one factor subject to a defined adjustment in a narrow circumstance.” *Id.* (emphasis in original).

In its replies to ABATE’s exceptions, Consumers argues that ABATE’s assertion that its PSCR contingency mechanism is not authorized by MCL 460.6j is plainly incorrect and ignores relevant case law. Consumers’ replies to exceptions, p. 2. Consumers opines that “[t]he plain and

ordinary language of MCL 460.6j(6) expressly authorizes the Commission to approve specific amounts contingent on future events as part of the PSCR factors approved in its final order in a PSCR Plan case.” *Id.*, p. 4. Moreover, Consumers notes that:

the Company’s contingency mechanism does not ask the Commission to approve more than one PSCR factor for each month. If the contingency is not triggered, the only PSCR ceiling factor that is “approved” for any given month is the base PSCR ceiling factor. If the contingency is triggered, the only ceiling PSCR factor that is “approved” for that month is the PSCR ceiling factor that corresponds to that specific contingency. From a practical perspective, the effect of the contingency mechanism is that it will only result in one “approved” ceiling factor in any given month.

ABATE claims that this is “a distinction without a difference,” arguing that the contingency mechanism would “pre-authorize a *range* of specific PSCR factors for the same month, leaving it to Consumers [Energy] to select which one applies based on a formula.” First, ABATE’s argument is misleading because it implies that Consumers Energy somehow has discretion to “select” its own PSCR factor from some broad “range” of options. The contingency mechanism does not give the Company any discretion. Under the contingency mechanism, external and independent gas price data dictates a single PSCR factor that the Company is required to recognize as the ceiling factor for each given month. Second, ABATE fails to explain *why* the existence of a range of contingent factors, only one of which is actually authorized for use, would be inconsistent with the statute. Again, the statute plainly permits the Commission to “include specific amounts [plural] contingent on future events.” That’s exactly what the contingency mechanism does. Contrary to ABATE’s claim, the observation that the contingency mechanism only results in one approved PSCR ceiling factor for any given month *is* a meaningful distinction because it gives operative effect to all provisions of the statute unlike ABATE’s interpretation.

*Id.*, pp. 4-5 (internal citation omitted; emphasis and alterations in original).

In its replies to ABATE’s exceptions, Consumers also argues that ABATE “incorrectly attempts to cast the issue [of whether to approve Consumers’ proposed PSCR contingency mechanism] as a fact-driven decision rather than a policy-driven decision[,]” and “threads its erroneous reference to the competent, material, and substantial evidence standard throughout several arguments in its Exceptions.” Consumers’ replies to exceptions, pp. 11-12. Consumers asserts that the question of whether to approve its proposed PSCR contingency mechanism is,



however, “not ‘simply a testimonial conflict to be resolved on the basis of credibility of competing witnesses[,]’” but rather, a “policy question the Commission is asked to decide . . . subject only to an abuse-of-discretion standard.” *Id.*, p. 12.

Consumers asserts in its replies to ABATE’s exceptions that it satisfied the requirements of MCL 460.6j(3) as it pertains to the entire PSCR plan presented in this case, and “ABATE does not dispute the Company’s presentation of those requirements. There are no other specific statutory requirements that restrict the Commission’s decision about *whether* to approve a contingency mechanism under MCL 460.6j(6) or any other provision of Act 304.” *Id.*, p. 16 (emphasis in original). Thus, Consumers contends that as long as the Commission “is satisfied with the evidence supporting the contingency mechanism, which in this case is equal to the evidence supporting the base PSCR ceiling factor, there is no legal requirement that the Commission must have more or different evidence.” *Id.*

Consumers also asserts in its replies to ABATE’s exceptions that ABATE’s argument that the company does not pay the NYMEX price for gas is misleading. *Id.*, p. 17. Consumers points out that “[i]t is accurate that Consumers Energy does not pay the *exact* NYMEX price for the gas it purchases, but that does not support the conclusion that the NYMEX price of gas has no relationship to the price Consumers Energy pays.” *Id.* (emphasis in original). Additionally, Consumers argues that ABATE’s argument “regarding a supposed lack of ‘correlation’ between NYMEX prices and the Company’s total PSCR costs” is incorrect because “there is no statutory provision that requires the Commission to find a ‘correlation’ between changes in the NYMEX index and the Company’s total PSCR costs before the Commission may find that the contingency mechanism is reasonable and prudent.” *Id.*, pp. 17-18.

Consumers also asserts in its replies to ABATE’s exceptions that ABATE “promotes the idea that, when energy prices are dramatically rising, customers’ best interest is always to ‘spread [those costs] over an extended period[,]’” but “[t]hat argument is patently at odds with court decisions acknowledging ‘the recognized goals of charging customers the correct price for gas as near in time as possible to when the gas is used[,]’” and “at odds with numerous Commission decisions discussing the important countervailing goals of ensuring accurate price signals, avoiding unnecessary interest, and ensuring that the customers who use the energy are the same customers who pay for the energy.” *Id.*, p. 22 (quoting *In re Consumers Energy Co*, 278 Mich App 547, 567; 753 NW2d 287 (2008); emphasis in original). Moreover, Consumers points out that “ABATE fails to appreciate” that in Case No. U-21257, Consumers and the Commission “had no choice but to figure out how to handle the large 2022 under-recovery starting in 2023 when it was already too late to send accurate price signals or ensure that the customers who use the energy were the ones who would pay for it” because the \$450 million underrecovery occurred after “natural gas prices unexpectedly spiked in 2022[, and t]here was no contingency mechanism included in the 2022 PSCR Plan case[ that] could have minimized or avoided the large under-recovery in 2022.” *Id.* Also, Consumers contends that its proposed PSCR contingency mechanism “does not *create* volatility in energy pricing, nor does it *create* any risk of significant price increases for customers[;]” rather, the PSCR contingency mechanism “exists to ensure that customers only pay for the actual reasonable costs incurred to provide their energy[, and i]t is in the customer’s interest to pay those costs as close in time to when the energy is actually used[.]” *Id.*, p. 24 (emphasis in original). Additionally, Consumers points out that “if the commodity costs become high enough to cause ‘rate shock,’ disallowing the contingency mechanism wouldn’t spare customers from the ‘rate shock.’ It would just defer the ‘rate shock’ to a future point in time.” *Id.*,

p. 25. Contrary to ABATE's arguments, Consumers asserts that its proposed PSCR contingency mechanism is "needed and prudent" and "[t]he alternative procedures that ABATE asks the Commission to rely on in lieu of a contingency mechanism, found in MCL 460.6j(10), have limitations that render that mechanism unavailable in many cases." *Id.*, pp. 25, 29.

In its replies to ABATE's exceptions, the Staff argues that ABATE fails to acknowledge the prospective nature of a contingency mechanism or the importance of the reconciliation process provided by Act 304. Staff's replies to exceptions, p. 3. The Staff, while recognizing the burden of evidence falling on Consumers to demonstrate the reasonableness and prudence of its proposed PSCR contingency mechanism, notes that "the implementation of a contingency mechanism is both dependent on future events and subject to the [PSCR] reconciliation proceeding." *Id.*, pp. 3-4. The Staff asserts that the ALJ acknowledged Consumers' stated intent in implementing a PSCR contingency mechanism is to "avoid such large underrecoveries and to send accurate and timely price signals to customers[,]'" and argues that the PSCR contingency mechanism proposed by Consumers in this case "avoids large underrecoveries by gradually increasing the PSCR factor, if necessary, without the need for additional interest. The Contingency Mechanism is a planned, prospective, approach for recovering PSCR costs as opposed to a reactive approach put forth in reconciliation after a large under recovery has occurred." *Id.*, p. 4.

In its replies to ABATE's exceptions, the Staff also points out ABATE's failure to acknowledge the "rate shock that would occur without a Contingency Mechanism if the utility were forced to roll a massive under-recovery from one year into the next year's PSCR factor." *Id.*, p. 5. The Staff asserts that "[t]his roll-in would create a drastic increase in the PSCR factor from the December of one plan year to the January of the new plan period[, and t]his extreme increase in PSCR factor from one year to the next can hardly be described as gradualism or stability." *Id.*

In contrast, the Staff provides that “a factor that receives monthly contingent adjustments will more accurately reflect month to month changes in electric prices, thereby sending timely and accurate price signals for customers to adjust their usage, accordingly, minimizing the plan-year to plan-year rate shock[.]” *Id.*

The Staff also points out in its replies to ABATE’s exceptions that there is “[n]othing in ABATE’s exceptions [that] demonstrates a flaw in the [ALJ]’s analysis.” *Id.*, p. 9. The Staff contends that:

[a]lthough the contingent adjustment matrix itself allows for a multitude of distinct PSCR factor options for the plan period, only a single PSCR factor will be imputed and billed each month. The PSCR factor will be based on a specific contingent future event, the increase of the NYMEX natural gas futures price forecast that aligns with the PSCR factor needed to recover the increasing cost of generation. This does not conflict with the plain language of Act 304. Only a single PSCR factor will be billed each month as determined by the contingent matrix if needed.

\* \* \*

[a]s stated in Staff’s Reply Brief, approving these amounts does not constitute impermissibly setting multiple PSCR factors. A finding of such by the Commission would render the language of Sections 6j(6) and 6h(6) of Act 304 [MCL 460.6j(6) and MCL 460.6h(6)] inoperative.

*Id.*

Having reviewed the record in this matter, the Commission finds the ALJ’s recommendation to approve Consumers’ proposed PSCR contingency mechanism to be well-reasoned and supported by the record. *See*, PFD, pp. 30-38. While the Commission recognizes the concerns raised by ABATE, it also recognizes the benefit to customers in avoiding large underrecoveries during volatile market conditions. The Commission also agrees with the ALJ’s findings that the contingency mechanism proposed in this case is permissible under MCL 460.6j and provides for only one PSCR factor to be implemented and charged in any given month with an alternative

PSCR factor available if the cost of natural gas rises unexpectedly. Accordingly, the Commission adopts the ALJ's findings and conclusion on this issue.

The Commission notes, however, that electric utilities have a broader range of generation options to meet customer needs than do natural gas utilities, and there is concern that adjustment mechanisms could potentially influence a utility's analysis when comparing natural gas generation resources with alternatives that have less fuel cost volatility, both in terms of the overall generation resource mix and in dispatch decisions, even as the appropriateness of the utility's decisions are subject to review in integrated resource planning and other proceedings. As such, there is a balance between the benefits to customers in avoiding bill shocks tied to unrecovered natural gas price increases used for electric generation and the benefits to customers of a more diversified generation mix that would serve as a hedge against such volatility. That said, the Commission has approved settlement agreements in PSCR plan cases that included an adjusted maximum PSCR factor mechanism. *See*, July 26, 2023 order in Case No. U-21265, February 8, 2024 order in Case No. U-21431, and April 24, 2025 order in Case No. U-21600.

In this case, Consumers' proposed PSCR contingency mechanism provides a means of collecting increased PSCR costs within the plan year they were incurred, which allows the company and its customers to avoid potential large underrecoveries and associated interest. The Commission notes that given Consumers' current generation portfolio, there is a correlation between generation cost and natural gas prices, but that in all cases with contingent adjustment requests, the appropriateness of current and subsequent approvals will be reviewed each year. Moreover, all costs are reviewed for reasonableness in the associated PSCR reconciliation case regardless of whether the costs were collected through a PSCR factor or an adjusted maximum PSCR factor.

THEREFORE, IT IS ORDERED that:

A. The application filed by Consumers Energy Company for a power supply cost recovery plan for the 12 months ending December 31, 2024, is approved, as set forth in this order.

B. Consumers Energy Company's proposed power supply cost recovery factor of \$0.00877 per kilowatt-hour is approved, and the company's five-year forecast is accepted.

C. Consumers Energy Company's proposed power supply cost recovery factor ceiling price adjustment (contingency) mechanism for the 2024 power supply cost recovery plan year 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 [LARA-MPSC-Edockets@michigan.gov](mailto:LARA-MPSC-Edockets@michigan.gov) and to the Michigan Department of Attorney General - Public Service Division at [sheac1@michigan.gov](mailto:sheac1@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

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Daniel C. Scripps, Chair

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Katherine L. Peretick, Commissioner

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Alessandra R. Carreon, Commissioner

By its action of June 12, 2025.

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Lisa Felice, Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

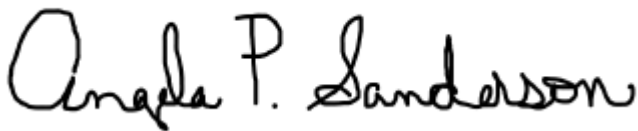
Case No. U-21423

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on June 12, 2025 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 12<sup>th</sup> day of June 2025.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2030



**Service List for Case: U-21423**

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