STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of **CONSUMERS ENERGY COMPANY** for reconciliation of its power supply cost recovery plan (Case No. U-21257) for the 12 months ended December 31, 2023.	)))))	Case No. U-21258

At the December 5, 2025 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Shaquila Myers, Commissioner

ORDER

On March 29, 2024, Consumers Energy Company (Consumers) filed an application in this docket, with supporting testimony and exhibits, requesting approval of its reconciliation of power supply cost recovery (PSCR) expenses and revenues for calendar year 2023 pursuant to MCL 460.6j and its calculation of a revised financial compensation mechanism (FCM) pursuant to MCL 460.6t(15).[1] Consumers' PSCR plan for calendar year 2023 was approved in the August 30, 2023 order in Case No. U-21257.

A prehearing conference was held on May 8, 2024, before Administrative Law Judge James M. Varchetti (ALJ Varchetti). At the prehearing conference, ALJ Varchetti recognized the notice of intervention filed by the Michigan Department of Attorney General (Attorney General) and

[1] For further background on the FCM, see the June 7, 2019 order in Case No. U-20165 (June 7 order), pp. 84-85, and the December 17, 2020 order in Case No. U-20697, pp. 211-213.

granted the petitions to intervene filed by the Residential Customer Group, the Association of Businesses Advocating Tariff Equity, and the following biomass merchant plants (collectively, the BMPs): Cadillac Renewable Energy L.L.C.; Genesee Power Station Limited Partnership; Grayling Generating Station Limited Partnership; T.E.S Filer City Station Limited Partnership; National Energy of Lincoln, LLC; and National Energy of McBain, LLC. Consumers and the Commission Staff (Staff) also participated in the proceeding.

On August 23, 2024, the BMPs filed direct testimony and exhibits. A protective order for use in this matter was entered on November 13, 2024, and on December 18, 2024, the Staff and the Attorney General filed testimony and exhibits. Consumers filed rebuttal testimony on January 27, 2025.

On February 20, 2025, this docket was reassigned to Administrative Law Judge Sally L. Wallace (ALJ). The ALJ held an evidentiary hearing on March 20, 2025, during which all testimony and exhibits were bound into the record.

Consumers, the Staff, the Attorney General, and the BMPs filed initial briefs on April 18, 2025, and reply briefs on May 16, 2025. The ALJ issued a Proposal for Decision (PFD) in this matter on June 17, 2025. Consumers, the Attorney General, and the BMPs filed exceptions to the PFD on July 8, 2025, and replies to exceptions on July 22, 2025.

The record in this matter consists of 402 pages of transcript and 80 exhibits admitted into evidence. Portions of testimony and certain exhibits have been designated as confidential.

The Proposal for Decision

The ALJ provided a detailed explanation of the testimony and positions of the parties on pages 2-13 of the PFD, which will not be repeated here.

For 2023, Consumers calculated a year-end underrecovery of $242,976,563, which, when combined with the statutory interest and underrecovery from 2022, resulted in a cumulative 2023 proposed underrecovery of $258,979,967.[2] 2 Tr 49-50; Revised Exhibits A-5 and A-6. For its FCM reconciliation, Consumers calculated a year-end overrecovery of approximately $2,518,161 for 2023, which the company proposed to incorporate into an updated FCM surcharge calculation beginning on January 1, 2026. 2 Tr 41; Exhibit A-20.

In her PFD, the ALJ noted that most of Consumers' PSCR reconciliation was not contested and recommended that the Commission approve those uncontested portions. PFD, pp. 14, 42. There were, however, three contested issues the ALJ identified: (1) the recovery of replacement power costs for some of the noted outages, (2) the amount of BMPs' costs Consumers and the BMPs reported, and (3) an element of Consumers' FCM. *Id*.

Finding the parties to be in agreement on certain aspects of Consumers' PSCR reconciliation and having no exceptions filed on these issues, the Commission adopts the ALJ's recommendations on the uncontested issues. The contested issues, objected to in exceptions, are discussed in detail and organized by issue below.

1. Outages

Consumers provided an Event Summary Report for 2023 that documented all of the 2023 outages that were reported. 2 Tr 68, 70; Exhibit A-10. According to Consumers, the Event Summary Report for 2023 specifically provided "a description of each [outage] event, including the event start time, event end time, cause code, duration in equivalent hours, and equivalent MWh [megawatt-hours]" and classified each outage event into one of "eight distinct event types:

[2] Consumers initially claimed a total year-end underrecovery of $255,175,669 in its March 29, 2024 application, which was subsequently revised to $258,979,967. PFD, p. 13.

(i) Planned Outage; (ii) Maintenance Outage; (iii) Planned Outage Extension; (iv) Maintenance Outage Extension; (v) Startup Failure; (vi) Unplanned (Forced) Outage-Immediate; (vii) Unplanned (Forced) Outage-Delayed; and (viii) Unplanned (Forced) Outage-Postponed." 2 Tr 69-70; Exhibit A-10. Consumers also provided outage information sheets containing more detailed information on the causes and corrective actions for outage events that had generating units with a lower availability average than the industry standards established under the Generating Availability Data System (GADS) and for outage events that lasted 28 days or more. 2 Tr 70-71; Exhibit A-12.

Consumers reported that there was a total of 424 outage events listed in the Event Summary Report for 2023.[3] 2 Tr 68; Exhibit A-10. Of the 424 outage events, Consumers explained that there were 10 outages that lasted longer than 28 days, with three of the outages lasting more than 90 days; all 10 outages are identified in Exhibit A-13. 2 Tr 72-76; Exhibit A-13. Consumers asserted that all of the outages listed in Exhibit A-13 were "carefully planned, prudently managed, and free of negligence on the part of Consumers Energy as to either causation or extension of outage time." 2 Tr 73, 76.

The Staff reviewed Consumers' three longest outage events (Outage Event Nos. 107-111 at the J. H. Campbell Generating Plant (Campbell) Unit 2, Outage Event Nos. 33-34 at the Dan E. Karn Generating Plant (Karn) Unit 3, and Outage Event No. 1 at Zeeland Unit 1) and found the company's actions to be reasonable and did not cause or lead to the extension of the outages. 2 Tr 389-391. The Staff also reviewed all the periodic outage reports Consumers provided for all

[3] According to Consumers, the 424 outage events listed in the Event Summary Report for 2023 reflected 35 outage events at the coal units; 124 outage events at the Ludington Pumped Storage Plant (Ludington) Units; 64 outage events at the Zeeland Generating Station (Zeeland) Combined Cycle Plant Units 3, 4, and 5; 22 outage events at the Zeeland Simple Cycle Units 1 and 2; and 142 outage events at the River Hydroelectric Generating Units. 2 Tr 68.

of the company's unit outages lasting more than seven days and, except for one unplanned outage (Outage Event No. 163 at the company's Ludington Unit 3 (Event 163)), did not find that Consumers acted "imprudently or negligently either in causing or extending the duration of the outages reported." 2 Tr 391-392. The Staff argued that because Consumers' Periodic Outage Report showed that the root cause of Event 163 was the result of "'[t]he operator appl[ying] the turbine generator's pneumatic brakes to the incorrect unit[,]'" the replacement power costs associated with this outage "should be borne by the Company and not collected through the PSCR." 2 Tr 392-393 (quoting Exhibit S-2.0, p. 25). Therefore, the Staff recommended that the Commission disallow Consumers' recovery of the replacement power costs associated with Event 163 due to operator error. 2 Tr 393.

In her PFD, the ALJ noted that Consumers "withdrew its request to recover replacement power costs for the Ludington Unit 3 [Event 163] outage contested by Staff. In light of the Company's concession, . . . [the] replacement power costs of $55,301 [for this outage event] should be removed from the reconciliation."[4] PFD, p. 16.

The Attorney General argued that Consumers had 424 outage events, "both planned and unplanned, in 2023 with the potential loss of 13,676,568 MWh of power generation. Customers are already absorbing the incremental cost of most of these power outages and should not be responsible for higher power costs that are the result of errors by the Company." 2 Tr 323-324. Specifically, the Attorney General disputed nine outage events (Outage Event Nos. 108-111 at the Campbell Unit 2 (Events 108-111); Outage Event Nos. 111 and 231 at Campbell Unit 3

[4] Consumers initially requested a replacement power costs of $52,199 for Event 163, but subsequently "discovered an error in its original replacement power cost calculations for the Ludington plant. As a result, the corrected amount of replacement power costs [was] revised to $55,301." 2 Tr 120.

(Event 111 and Event 231); and Outage Event Nos. 21-22 and 29 at the Zeeland Unit 3, 4, and 5 (Events 21-22 and 29)), arguing that Consumers or its contractors "failed to exercise proper care and diligence, [which] result[ed] in higher [replacement] power costs to PSCR customers during 2023." 2 Tr 321. As a result, the Attorney General recommended that the Commission disallow Consumers' recovery of $4,622,074 for the replacement power costs associated with these nine outage events. 2 Tr 321.

a. Outage Event Nos. 108-111 at Campbell Unit 2

Consumers explained that Events 108-111 lasted more than 90 days after a "tube leak in the hydraulic coupling circuit oil cooler [was repaired]" but during post-maintenance testing, the start-up boiler feed pump (SUBFP) "experienced a thrust event which resulted in damage to the SUBFP internal flow element, thrust bearing, and drive coupling." 2 Tr 79-80. Consumers asserted that "[t]he cause of the [SUBFP] failure was the thrust event, and the cause of that event is still under investigation." 2 Tr 80. Consumers explained that "the SUBFP was disassembled and rebuilt[, but because a]n exact replacement for the drive coupling was not readily available, . . . the SUBFP was rebuilt with a replacement drive coupling." 2 Tr 80. With the replacement drive coupling weighing "approximately 67 pounds heavier than the original[,]" Consumers contended that the rebuilt SUBFP was flagged with vibration issues and failed to function properly, which placed the unit out of service for a total of 149 days. 2 Tr 80-81. The company asserted that it:

> rigorously investigated, evaluated, and implemented alternatives to restore the SUBFP to service, and continues to do so. The unavailability of an identical drive coupling (lead time of 33 weeks) led the Company to pursue reasonable alternatives to restore Campbell Unit 2 to service. The Company did not cause the failure of the SUBFP, nor did its actions extend the outage, rather it managed the SUBFP restoration activities in a reasonable, prudent, and responsible manner throughout the 2023 outage duration.

2 Tr 82.

The Staff reviewed Consumers' "filing and discovery responses regarding the extended forced outage at Campbell Unit 2 and [found] that the Company acted prudently in its efforts to restore the SUBFP to operational and did not take any actions which caused or extended the duration of this outage." 2 Tr 391. The Staff noted that the Campbell Unit 2 was "built in the 1960s, which makes obtaining readily available replacement parts difficult." 2 Tr 391.

The Attorney General argued that two final root cause analysis (RCA) reports provided by Consumers during discovery indicated that:

> the root cause of the [SUBFP] pump failure is attributed to an error during reassembly of the pump following its July 2023 overhaul. Apparently, the pump was no[t] completely purged of non-compressible gasses (vented) or an air bubble was trapped in the pump. According to the [RCA] reports, the Company had no set procedure to ensure complete purging of the pump and relied on the basic operator knowledge. The operator failed to fully purge the pump of trapped gases in the pump.

2 Tr 322. The Attorney General further explained that:

> the root cause of the power outages was an improper purging of the boiler feed pump. The error caused the generating unit to abort the start-up and required repairs which carried through at least the end of 2023. As a result, the Company had to purchase replacement power during the outage period at an incremental cost of $2,355,042. The incremental power costs for this outage that the Company seeks to recover in this reconciliation case are the result of Company personnel or a contractor working on behalf of the Company failing to perform a basic task of purging the boiler feed pump of trapped gases within the [SUBFP] pump. Customers should not pay for the incremental cost of replacement power resulting from an error caused by Company employees or its contractors.

2 Tr 322-323. As such, the Attorney General recommended that the Commission disallow the replacement power costs of $2,355,042 for this outage from the reconciliation. 2 Tr 324.

In her PFD, the ALJ rejected the Attorney General's recommended disallowance of $2,355,042 for Events 108-111, finding that "[t]he preponderance of the evidence support[ed] the conclusion that while the cause of the thrust event is still unknown, it was not caused or prolonged

by unreasonable or imprudent management by [Consumers]." PFD, p. 22. Specifically, the ALJ found that:

> [b]ecause this outage exceeded 90 days, to recover its costs, the Company has the burden to demonstrate by clear and satisfactory evidence that the outage was not caused or prolonged by Company negligence or unreasonable or imprudent management. [*See*, MCL 460.6j(13)(c).]
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> This PFD finds that the Company has met its burden for the following reasons. First, the Company has sufficiently refuted the Attorney General's claim that the [SUBFP] pump failed due to operator error in pump venting. The Company's report clearly states that the root cause of the thrust event was, "[u]ndetermined," but that insufficient venting was one of two *possible* causes. And the Company provided evidence that the operator did purge the pump before startup. Further, there is evidence that a fully vented pump can still fail, which suggests that trapped gases alone would not cause such a pump failure. Additionally, while the Attorney General did not focus on inadequate seal lubrication as causing the pump failure, the Company's analysis suggested that it was a possible cause. Incidents with seal pressure occurred earlier in 2023 and the Company took actions to understand why and to implement the mitigating procedure of increasing the pressure setpoint during startup.

Id., pp. 21-22 (emphasis in original).

In exceptions, the Attorney General argues that the ALJ erred in her analysis and recommendation to reject the Attorney General's proposed disallowance where the ALJ found "the cause [of the thrust event to be] unknown, [but] nonetheless . . . conclude[d] that it was not caused or prolonged by the Company's negligence or unreasonable/imprudent management. That is an internally inconsistent conclusion, that relieves the Company of its burden of proof." Attorney General's exceptions, p. 8. The Attorney General also argues that Consumers "[o]ffering possible alternatives is not the same as proving the reasonableness and prudence of its actions. Even if the Attorney General does not completely address other possible causes such as the Company's claims regarding a possible seal water leak, it is not her burden to do so." *Id*., pp. 8-9. Moreover, the Attorney General asserts that "[g]iven the nature of the burden of proof, the Commission may reject even uncontradicted evidence." *Id*., pp. 8-9.

In reply, Consumers argues that once the ALJ found that "the Company established, by a preponderance of the evidence, that it acted reasonably and prudently, the 'burden of going forward' shifted to the Attorney General to overcome the Company's evidence." Consumers' replies to exceptions, p. 7 (citing *In re Application of DTE Electric Co for Approval of Facility*, unpublished per curiam opinion of the Court of Appeals, issued February 7, 2019 (Docket No. 344031), p. 4). Because the Attorney General "could not overcome the Company's evidence by showing that the Company caused the feed pump to fail or otherwise acted unreasonably[, Consumers asserts that] . . . the Commission should reject the Attorney General's proposed disallowance for these outages and adopt the ALJ's recommendations on this issue." Consumers' replies to exceptions, p. 7.

The Commission has reviewed the record and the parties' arguments for Events 108-111 and respectfully disagrees with the ALJ's recommendation on this issue. MCL 460.6j(13)(c) requires the disallowance of replacement power costs in a reconciliation proceeding where the outage was "more than 90 days in duration unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management." While the Commission finds that Consumers acted reasonably in its decision to rebuild the SUBFP instead of waiting 33 weeks for an identical drive coupling to be built, the Commission does not find that the company acted reasonably when it failed to fully purge the SUBFP of trapped gases or inadequately lubricate the seal. The Commission does not believe Consumers caused the SUBFP to fail; however, the company cannot demonstrate by clear and satisfactory evidence that the outage was not extended by the company's failure to perform the basic task of purging the SUBFP of trapped gases or lubricating the seal prior to startup. Because Consumers has not met its burden under MCL 460.6j(13)(c), the

Commission adopts the Attorney General's recommended disallowance of $2,355,042 for Events 108-111.

b. Outage Event No. 111 at Campbell Unit 3

According to Consumers, Event 111 was an unplanned power outage that lasted about 15 days after the superheat platen tubing failed. 2 Tr 109; Exhibit A-12. Consumers explained that the superheat platen tubing, "which failed after 17 years of in-service operation[,] was tested for material properties and the testing revealed that the material did not conform to the requested material specifications. The incorrect tubing was determined to be the root cause of the tubing failure, thereby resulting in the outage." 2 Tr 109. However, Consumers argued that "it is not uncommon for tubing to fail due to continued operation under temperature and pressure[,]" and "[s]ubsequent to its installation [in approximately 2006/2007], the superheat platen tubing performed reliably until its failure in 2023. There were no other failures in the superheat platen tubing associated with the incorrect material." 2 Tr 107, 109.

The Attorney General argued that Consumers should have taken appropriate precautions to ensure the correct material was used, but "failed to do so and improperly installed a section of tubing that did not meet the required specifications. As a result, the [superheat platen] tubing failed and caused a two-week power outage that required the Company to purchase replacement power at an incremental cost of $565,9777 [sic]." 2 Tr 325. Because this was an error on Consumers' part, the Attorney General argued that the "[c]ustomers should not pay for the incremental cost of replacement power resulting from errors by Company employees or its contractors." 2 Tr 325-326. Thus, the Attorney General recommended that the Commission disallow the replacement power costs of $565,977 for this outage from the reconciliation associated with Event 111. 2 Tr 326.

In her PFD, the ALJ agreed with the Attorney General's recommended disallowance of $565,977 for Event 111, finding that Consumers "installed a part that was incorrectly manufactured by the supplier, which in turn resulted in failure before the end of its service life,[5] an outage, and additional power supply costs for customers." PFD, p. 25. Moreover, the ALJ noted that Consumers did not provide any evidence on the record to show that it "attempted to pursue a remedy from the tubing supplier to potentially reduce costs to customers." *Id*., p. 26 (citing October 13, 2021 order in Case No. U-20220, pp. 31-32 (October 13 order), which discussed a discharge ring defect that was expected to last 40 years but failed after 4.5 years).[6]

In its exceptions, Consumers urges the Commission to reject the proposed disallowance of $565,977, arguing that the Commission has never held that "a utility is always responsible for the actions of its contractors regardless of the circumstances." Consumers' exceptions, pp. 3, 7. Moreover, Consumers argues that:

> [t]here are at least four differences between the situation in [the October 13 order] and the present case. The first distinction – age – is one that even the ALJ recognized. The ALJ found that "*although the failure of the tubing occurred after a longer period than the failure at Ludington* discussed in Case No. U-20220, the circumstances are otherwise the same." Age is a critical distinction. The tubing had been in service for 17 years and was approaching the end of its useful life when it failed. Although the material specifications may have been partly responsible for the failure, age could also have played a role, as the tubing operated under temperature and pressure for all the years it was in service. [The October 13 order] involved a far shorter timeframe.
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> * * *

[5] The life expectancy of superheat platen tubing is 25 years or more. *See*, 2 Tr 108.

[6] In the October 13 order, the Staff raised concerns with Consumers "unreasonably fail[ing] to pursue any remedy from the original manufacturer of the discharge ring in a way that could potentially have reduced the costs to customers[,]" and the Commission agreed, finding it "'unreasonable to expect ratepayers to pay for . . . costs that Consumers conceded were the result of a discharge ring defect that occurred, which was due to internal stresses attributed to the manufacturing process, and that the part failed requiring replacement long before its full-service life.'" October 13 order, pp. 31-32 (quoting Staff's initial brief, p. 19).

> Second, although the ALJ found that "there is no evidence in this record that Consumers attempted to pursue a remedy from the tubing supplier to potentially reduce costs to customers," there was no reason for the Company to do so in this case. As already mentioned, the tubing had functioned without issue for 17 years, and there is no evidence in this case that a warranty or other contractual right would still be effective or would cover replacement power costs stemming from the tubing's failure. Indeed, no party challenged the Company's decision not to sue the tubing supplier because there was no reason to believe that an actionable claim existed. . . .
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> Third, it would have been impractical and uneconomical to expect the Company to materially test every superheat platen tube element in Campbell Unit 3 to ensure it was built to specification. There is over 100,000 linear feet of tubing in Unit 3, and there would have been "up to 264 locations to access, clean, and sample, leaving the Company with a large undertaking, considering the components are hanging from the roof, more than 100 feet above the bottom of the furnace." It would have cost the Company between $10 and $20 million for the material and labor needed to replace the tubing. There was simply no reason to perform metallurgical analysis on the original tubing or to replace it under the circumstances. It would be inefficient to require the Company to dissect and analyze every product a contractor delivers.
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> Fourth, the unit was slated to retire on May 31, 2025; if it had not been, the Company likely would have replaced the tubing despite the cost. But given the expected closure, replacing the tubing would have been a bad financial investment on an avoidable expense, and likely not even recoverable. Just five years ago, the Commission disallowed over $4 million in proposed capital expenditures for the Campbell Plant because the expenditures were "potentially avoidable" even though no one knew then whether the plants would retire early. [Commission] Case No. U-20697, December 17, 2020 Order, pages 74–77. Once the Commission approved early retirement, costs were even more likely to be considered avoidable.
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> A similar situation arose in Case No. U-21049 when the ALJ and the Commission found that it would have been unreasonable for Consumers Energy to invest in a replacement for a degraded condenser in Karn Unit 1 since the unit was scheduled for retirement. [Commission] Case No. U-21049, December 11, 2024 PFD, page 16; [Commission] Case No. U-21049, April 10, 2025 Order, pages 5–6 (adopting the ALJ's recommendation). Clearly, the Commission has considered impending retirements in the past, and it should do so again in this case to hold that the Company was right not to metallurgically test or replace tubing in a plant that the Company planned to retire in the near future.

Consumers' exceptions, pp. 3-6 (citations omitted; emphasis in original) (quoting PFD, pp. 25-26; Exhibit AG-10; Exhibit A-36). If the Commission disallows the replacement power costs for

Event 111, Consumers states that it would be in an untenable position moving forward for retiring generation facilities that need updates of having to choose between "possible disallowed replacement power costs (if no updates are made and lead to outages) and disallowed capital expenditures and operations and maintenance expenses (if updates are made and considered avoidable)." Consumers' exceptions, p. 6. This, Consumers argues, leaves the company with only one other option to avoid possible disallowed replacement power costs, which is "to materially test all tubing installed in its fleet. But the costs of this testing would be extraordinary – particularly considering the plant's imminent closure – leaving the Company with no good options." *Id*. (citing 2 Tr 110).

In her replies to exceptions, the Attorney General asserts that the Commission should adopt the ALJ's recommendation to disallow recovery of replacement power costs for Event 111 because "ratepayers [should not be] the guarantors of the Company and its suppliers' faulty performance." Attorney General's replies to exceptions, p. 10. In disagreeing with Consumers' assertion that there were four differences between the October 13 order and this case, the Attorney General argues:

> First, the age of tubing – "The Tubing had been in service for 17 years and was approaching the end of its useful life when it failed." The Company claimed that age could have played a role in addition to the [wrong] material specifications. However, the normal service life of superheat platen tubing is 25 years so if the proper material had been used in the tubing, it is unlikely that a failure and replacement would need to have been made in year 17. The Company notes that [the October 13 order] involved a far shorter time frame [before the problem was discovered]. While the Commission discussed the relatively shorter time frame before the problem was manifested based on the facts in [the October 13 order], it did not set a timeline for when a utility can no longer be responsible for the failure of a part or faulty performance by its contractor. From the date of the tubing's failure, there would still be about eight years of service life left for superheat platen tubing made from the proper materials. While the failure occurred much sooner in [the October 13 order], if the tubing had lasted another eight years in this case, the replacement power costs would probably have been avoided in this case.

> Second the Company disagreed with the ALJ's finding [that there was] no evidence on the record that Consumers' [sic] attempted to pursue a remedy with the tubing supplier to reduce costs to customers. The Company does have the burden of proving to the Commission that it took all appropriate steps to minimize the cost of fuel and that its proposed PSCR costs were "incurred under reasonable and prudent policies and practices." Presumably that obligation underlies the ALJ's analysis. According to the Company "there is no evidence in this case that a warranty or other contractual right would still be effective or would cover replacement power costs stemming from the tube's failure." It notes that no party challenged the Company's decision not to sue the tubing supplier based primarily on statute of limitations claims. While the Attorney General suspected that the same type of warranty as was found in [the October 13 order] may still not be in effect in this case, it was not unreasonable for the PFD to raise the issue. This also appears to reflect the ALJ's recognition of the unreasonableness of having ratepayers cover the cost of a failure due to the Company's suppliers' actions. For purposes of this case, determining whether the Company could or should have pursued recovery against the tubing supplier does not change the fact that it is responsible for the actions of its chosen supplier and therefore should not recover replacement power costs it incurred due to superheat platen tubing made from the wrong materials being provided and installed.
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> Third, the Company claims that it would have been impractical or uneconomical to expect it to materially test every superheat platen tube element in Campbell Unit 3 to ensure it was built to specifications. It is the Company's decision whether to do any testing, including representative testing of materials to ensure conformity with specifications. However, the Company's decision to rely on the supplier to determine conformity to the specifications, and to not confirm its findings, is the risk the Company accepted to its detriment. Ratepayers should not bear the cost.
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> Fourth, the Company points out that the unit was slated to retire on May 31, 2025, and given the expected closure replacing the tubing would have been a bad financial investment on an avoidable expense, citing Case No. U-20697, December 17, 2020 Order, pp. 74 – 77 to support its position. This argument is not well taken. The Company is focusing on what it could do after the failure, however, the Attorney General's focus is on what should have been before or when the tubing was installed in 2007 (or at some point before the failure) that could have avoided the replacement power costs.

Attorney General's replies to exceptions, pp. 5-8 (footnotes omitted) (quoting Consumers' exceptions, pp. 3-4; MCL 460.6j(1)(b)).

The Attorney General also disagrees with Consumers' assertion that the Commission has "never held that any contractor error, anywhere in the supply chain, that is tangentially related to

an outage, whether it caused the outage or not, requires the Commission to disallow replacement power costs for an outage." Attorney General's replies to exceptions, p. 8 (citing Consumers' exceptions, pp. 6-7). Rather, the Attorney General notes that the Commission disallowed replacement power costs for an outage in the October 13 order following the installation of a discharge ring that was found defective after the upgraded unit had been in operation for just 4.5 years of a 40-year service expectancy; and the Commission disallowed additional replacement power costs incurred for the extension of that outage in the August 11, 2022 order in Case No. U-20526 (August 11 order) after the part manufacturer and installer, acting as an agent of the utility under the overall supervision of the utility, failed to fix the defective discharge ring. Attorney General's replies to exceptions, pp. 8-9 (citing October 13 order, pp. 31-32; August 11 order, pp. 12-13; March 2, 2010 order in Case No. U-15001-R, p. 8, which found that replacement power costs incurred as a result of the utility's negligence or the negligence of the utility's employee or agent acting within the scope of their employment or agency are not recoverable).

The Commission has reviewed the record and the parties' arguments for Event 111 and respectfully disagrees with the ALJ's recommendation on this issue. While Consumers acknowledged that the use of incorrect tubing material may have contributed to the outage, the Commission finds relevant the fact that the superheat platen tubing operated with the incorrect tubing material for 17 years without issue and that the company was retiring the unit in May 2025. *See*, 2 Tr 109; Exhibit A-36. Further, the Commission agrees with Consumers that it would be unreasonable to expect Consumers to materially test over 100,000 linear feet of superheat platen tubing in the unit to ensure it was built to specifications. As such, the Commission is satisfied that the preponderance of the evidence supports a finding that Consumers acted in a reasonable and prudent manner in its handling of the superheat platen tubing. *See*, 2 Tr 112-114. Therefore, the

Commission declines to adopt the Attorney General's proposed $565,977 disallowance for Event 111.

c. Outage Event No. 231 at Campbell Unit 3

According to Consumers, Event 231 was an unplanned power outage that lasted about 7 days after Campbell Unit 3 tripped due to a fault in the breaker cubicle 2B (breaker 2B) of the Furnas Brand motor control center (MCC) 33D1. 2 Tr 110. Consumers indicated that it restored breaker 2B, but while "Campbell Unit 3 was in the process of recovering from the initial trip event and going back into a restart[,]" an arc flash event occurred in breaker cubicles 2A and 2B during post maintenance testing and restoring of the MCC 33D1 back to service. 2 Tr 111. When the company went to investigate the arc flash event, Consumers stated that another arc flash occurred that caused injuries to employees, so the company aborted the startup "out of an abundance of caution for the safety of the employees and the safe operation of MCC 33D1." 2 Tr 111. Consumers explained that an investigation into the arc flash raised concerns that there may be "missing protective grommet[s] through which the conductors pass through from the line side into the breaker cubicle[,]"[7] but additional inspection into the same branded MCCs "resulted in only a 2% defect rate for missing/dislodged grommets.[8] This led [Consumers] to [conclude] that the fault associated with the [MCC 33D1 breaker] 2B cubicle was related to insulation degradation from cycling and vibration of the breaker and not due to a missing or dislodged grommet." 2 Tr 111.

[7] According to Consumers, "protective grommets [are] unique to MCC 33D1 and other MCCs in the plant, and missing or dislodged grommets were the cause of two prior faults elsewhere in the plant." 2 Tr 111.

[8] Consumers noted that "seven out of the thirteen Furnas Brand MCC's [sic] were inspected while Campbell Unit 3 remained offline." 2 Tr 111.

The Attorney General argued that Consumers "failed to properly train its employees on the standardized process to maintain the MCC equipment and failed to perform preventive maintenance that could have avoided the power outage. The failure caused [Campbell Unit 3] to trip into a power outage that lasted approximately 7 days." 2 Tr 327. The Attorney General pointed to Consumers' RCA report, asserting that:

> [t]he report identified three related reasons for the MCC [33D1] fault:
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> 1. Unidentified deteriorating insulating components within the MCC.
> 2. Grommets and other wire chaffing points in Furnas MCCs have been observed during pre-fault and post-fault inspections.
> 3. Inadequate Preventive Maintenance Plan application for Furnas MCCs.
>
> The [RCA] report provided by the Company also point[ed] out that the standardized operational process was not followed, the process document was not clear and sufficient, and the team member was not sufficiently qualified or trained on the standardized process.

2 Tr 326-327. As a result of the unplanned outage, the Attorney General noted that Consumers had to purchase replacement power during the outage period at an incremental cost of $1,046,270. 2 Tr 327. Thus, the Attorney General recommended that the Commission disallow the replacement power costs of $1,046,270 for this outage from the reconciliation associated with Event 231, arguing that the incremental power costs incurred for Event 231 are "the result of negligence by the Company[, and c]ustomers should not pay for the incremental cost of replacement power resulting from deficient operating procedures and lack of prudent actions by Company employees." 2 Tr 327-328.

Consumers rebutted the Attorney General's claims, arguing that "the [RCA] did *not* find that the process document was not clear or that the team members were not sufficiently qualified or trained[.]" 2 Tr 112-113 (emphasis in original). Consumers asserted that the company's MCC

preventative maintenance would not have prevented the MCC 33D1 failure because it would not have addressed the location of the fault. 2 Tr 113. Consumers also asserted that it "reasonably and prudently performed electrical testing to detect insulation degradation prior to returning the MCC [33D1] to service[, and t]he intensive meggering[9] resulted in satisfactory results, thereby indicating that the integrity of the insulation should have been appropriate for plant operation." 2 Tr 113. Continuing, Consumers argued that it "performed post-maintenance testing to validate the integrity of the insulation, and the failure to perform more standard training would not have prevented the outage." 2 Tr 114. Consumers also argued that it "took actions to abort the startup in order to evaluate other like equipment to ensure that other MCCs were not susceptible to the same failure. This was done to protect co-workers and equipment alike." 2 Tr 114. Thus, Consumers contended that "[t]here is no evidence that the Company was unreasonable[, negligent,] or imprudent when maintaining and operating the MCCs[.]" 2 Tr 114. Therefore, Consumers argued that the Commission should reject the Attorney General's recommendation to disallow the replacement power costs of $1,046,270 for this outage from the reconciliation associated with Event 231. 2 Tr 114.

In her PFD, the ALJ agreed with the Attorney General's argument that Consumers did not act reasonably and prudently, finding that:

> [Consumers' RCA] contain[ed] a "Problem Solving Worksheet" wherein the Company checked "NO" in response to the following prompts:
>
> > Was the standardized process followed?
> > Is the document clear and sufficient to the process?
> > Is the team member qualified/trained on the standardized process?

[9] According to Consumers, "[m]eggering is a test method used to measure the insulation resistance in an electrical component, where a voltage is applied to a circuit and the current that flows through the insulation is measured." 2 Tr 112. Consumers explained that "[m]eggering is used to identify potential issues with insulation before it causes equipment failures or costly downtime." 2 Tr 111, n. 6.

> In addition, the [RCA] report found that the maintenance plan for MCCs was "inadequate" and that "the scope and method of cleaning is determined by outage schedule and resources rather than by manufacturer recommendations or good maintenance practices."

PFD, pp. 29-30 (footnotes omitted) (citing Exhibit AG-3). While Consumers claimed "that preventative maintenance at the time would not have stopped the MCC [33D1] fault and [claimed to have] conducted rigorous testing that did not identify issues with the insulation[,]" the ALJ found that these assertions did not "mitigate the conclusions of the [RCA] report[.]" PFD, p. 30. The ALJ also found that Consumers provided "no evidence to show that its standardized process for preventative maintenance on the MCCs was adequate or followed, that the process was clear and sufficient, or that the relevant team members were qualified or trained on the process." *Id*. Thus, the ALJ recommended that the Commission disallow the replacement power costs of $1,046,270 for this outage from the reconciliation associated with Event 231. *Id*.

In its exceptions, Consumers urges the Commission to reject the proposed disallowance of $1,046,270, arguing that the ALJ's reliance on a "Problem Solving Worksheet" contained in an RCA report under a "Preliminary Information and Problem Definition" section was misplaced as these were not the company's final conclusions. Consumers' exceptions, pp. 9-10. While the company admits to minor shortcomings with its MCC maintenance plan,[10] Consumers argues that the extensive meggering tests it performed to "validate the integrity of the insulation before returning [MCC 33D1] to service . . . more than made up for it[and s]till, the pending failure [of the MCC 33D1] was not detected during the additional testing." *Id*., p. 9. Consumers contends

[10] According to Consumers, "[t]he issue with the [MCC] maintenance plan was merely that the 'scope and method of cleaning was determined by outage schedule and resources' to the exclusion of other considerations. Improvements have since been made." Consumers' exceptions, p. 9, n. 5 (alteration in original, citations omitted) (quoting Exhibit AG-3, p. 9).

that the MCC 33D1 fault was not detected because "it was the first of its kind. Campbell Unit 3 had been in operation since 1980, and this type of failure – insulation degradation on a motor control center like this one – stands apart as an anomaly." *Id*. Consumers argues that it could not have "prevented the outage unless it had preexisting knowledge that damage was occurring as it cycled the breakers over time. This knowledge could only have been acquired through invasive inspection of the motor control center, and not even the manufacturer recommended such an invasive inspection." *Id*., p. 10 (citing Exhibit A-37, p. 1).

In her replies to exceptions, the Attorney General asserts that the Commission should adopt the ALJ's recommendation to disallow recovery of replacement power costs for Event 231, arguing that:

> [j]ust because it is the first time that the Company encountered this exact cause for an outage does not render it reasonable. It does not excuse the Company's plan/process for maintaining equipment, or lack thereof. Reasonableness and prudence may require more frequent or invasive inspections than that recommended by the manufacturer. Ultimately, it is the Company's, as owner and operator of the equipment, responsibility to determine the appropriate level of inspection. Degradation of the insulation occurred over time, and the Company had no standard or process in place to identify such degradation before it caused an untimely outage. Waiting for a failure to occur before deciding to do inspections is not reasonable or prudent.
>
> Whether the Company had specific preexisting knowledge of degradation of the insulation at this location should not be determinative. The fact that the cycling of breakers caused vibrations should have put the Company on notice that over time some wear or degradation could occur. Further, the Company['s] use of meggering testing to validate the integrity of insulation would not make sense if it did not anticipate the possibility that the insulation could degrade over time from operation or other reasons.

Attorney General's replies to exceptions, pp. 13-14 (footnotes omitted).

The Commission has reviewed the record and the parties' arguments for Event 231 and respectfully disagrees with the ALJ's recommendation on this issue. While the Commission agrees that Consumers fell short in its MCC maintenance procedures and employee training on the

standardized process of maintaining the MCC equipment, the Commission finds that these shortcomings did not ultimately cause the MCC 33D1 breaker to fail. Because Consumers provided sufficient evidence to support a showing that the fault associated with the MCC 33D1 breaker was related to insulation degradation from cycling and vibration of the breaker and not due to a missing or dislodged grommet, the Commission declines to adopt the Attorney General's proposed $1,046,270 disallowance for Event 231.

d. Outage Event Nos. 21-22 and 29 at Zeeland Units 3, 4, and 5

According to Consumers, Events 21-22 and 29 were unplanned power outages that lasted about 5 days after a 10-foot section of the hot reheat steam-line drainpipe shared by Zeeland Units 3, 4, and 5 broke away from the steam line shutting down all three units. 2 Tr 115. Consumers explained that the company's periodic outage reports showed that the original plant design did not include proper pipe support for the drainpipe, which led to weld fatigue and ultimately a drain connection weld failure. 2 Tr 115.

The Attorney General argued that Consumers' RCA reports "confirm the improper design of the pipe system, a lack of planning and awareness to add a support structure, and that the plant's post-commissioning activities did not remove the temporary drain and did not add the required pipe support." 2 Tr 328. Moreover, the Attorney General argued that Consumer's RCA report also showed that the design flaw of the drainpipe caused the power outage, and "[t]he responsibility for that failure lies with the company." 2 Tr 329. While the drainpipe may have been installed by a previous plant owner, the Attorney General asserted that it is still the company's responsibility to perform a thorough review of the facility and make necessary modifications and improvements to ensure that the "equipment is in proper working order and not prone to failure. It is now apparent that the Company failed to identify the problem during the

due-diligence phase of the plant acquisition and after several years of ownership subsequent to the purchase of the plant for more than 10 years." 2 Tr 330. Thus, the Attorney General recommended that the Commission disallow the replacement power costs of $654,785 for this outage from the reconciliation associated with Events 21-22 and 29, arguing that the incremental power costs incurred for Events 21-22 and 29 are the "the result of [the] Company's failure to correct an inherent equipment design problem[, and c]ustomers should not pay for the incremental cost of replacement power resulting from errors or lack of corrective actions by the Company or the prior owner of the plant." 2 Tr 330.

While Consumers conceded that its RCA report showed that the design flaw of the drainpipe caused the outage, it argued that it is not responsible for the failure of the piping that led to the outage when it did not design or construct the Zeeland Generating Station.[11] 2 Tr 115. Continuing, Consumers argued that:

> [a]t no time were the Company's actions either unreasonable or imprudent. It is unrealistic to expect the Company to identify and remedy a design flaw attributable to a prior owner when the equipment was not even reflected on drawings or otherwise identifiable in a condition assessment. This would essentially require the Company to walkdown [sic] and review the previous design of the entire plant. There were no problems identified with the drain line through its first 21 years of operation and expecting it to be found, given the circumstances, is unrealistic at best. Despite this outage for all three combined cycle units, the combined cycle units generated over $40 million of NEV [net energy value] during 2023.

[11] According to Consumers, construction of the Zeeland Generating Station "simple cycle units (Zeeland Units 1 and 2) was completed in 2001 and the . . . combined cycle units (Zeeland Units 3, 4, and 5) was completed in 2002. The Company purchased [the] Zeeland Generating Station from LS Power Group in December 2007." 2 Tr 115-116; *see also*, December 18, 2007 order in Case No. U-15245 (December 18 order), which provided Consumers with approval to purchase the Zeeland Generating Station.

2 Tr 118-119. Therefore, Consumers asserted that the Commission should reject the Attorney General's recommendation to disallow the replacement power costs of $654,785 for this outage from the reconciliation associated with Events 21-22 and 29. 2 Tr 114.

In her PFD, the ALJ agreed with the Attorney General's argument that Consumers did not act reasonably and prudently, finding that:

> [t]he Company's [RCA] reports demonstrate that Consumers *should* have been aware of the lack of support for the [drain]pipe and remedied it before the [drain]pipe broke. Despite Consumers' many arguments as to why it is unreasonable to expect the Company to have been aware of the lack of pipe support since they didn't design or construct the Zeeland plant, and the [drain]pipe was not included on construction drawings, the preponderance of the evidence shows that the Company should have recognized and fixed the problem during post-commission or over the course of 16 years of ownership. Consumers states that going forward, it has included this drain line in its high energy piping surveillances, but it does not explain why this was not the Company's past practice. That the [drain]pipe was intact for 20 years is irrelevant.
>
> Further, the Commission approved the reasonable and prudent costs associated with [the] Zeeland [plant] and this PFD finds that the replacement costs for these outage events could have been avoided if the Company had undertaken more thorough inspections and recognized the lack of pipe support. Therefore, the replacement costs were not reasonably or prudently incurred, and this PFD agrees with the Attorney General's recommendation to disallow $654,785.

PFD, pp. 33-34 (footnotes omitted; emphasis in original).

In its exceptions, Consumers urges the Commission to reject the proposed disallowance of $654,785, arguing that it does "perform surveillance of its high-energy piping, but . . . [did] not cover[] th[e] static drainpipe [that failed because it] was not part of any plant drawings. Going forward, this piping will be part of the surveillance[.]" Consumers' exceptions, p. 11 (citations omitted). Consumers contends that it did not intend to "imply that other static drainpipes were not part of any condition assessments." *Id*., p. 12. While the company "may not assess static drain lines with the same 'level of review' it scrutinizes rotating equipment," Consumers asserts that it "does not mean it ignores drain lines altogether. Drain lines are part of condition assessments –

just not drain lines the Company does not know exist." *Id*. Consumers also argues that the drainpipe lasting more than 20 years before failing is relevant because it shows that that the drainpipe failed only after extensive wear and tear and not within a month or even a year of being installed. *Id*. Thus, Consumers asserts that the Commission should reject the disallowance because the "costs stemming from the fail[ed drainpipe] should be considered reasonable costs of operating and maintaining the plant, which the Commission has already said are recoverable." *Id*. (citing December 18 order, p. 22).

In her replies to exceptions, the Attorney General asserts that the Commission should adopt the ALJ's recommendation to disallow recovery of replacement power costs for Events 21-22 and 29, arguing that Consumers is misunderstanding that "the PFD[, when read in context,] is questioning the Company's actions related to the failed drainpipe, not all drainpipes." Attorney General's replies to exceptions, p. 16. The Attorney General also argues that "[t]he drainpipe failure was not the result of just wear and tear from usage, it was the cumulative effect of the failure to properly support the piping connection making it prone to fatigue and therefore the resulting failure." *Id*., p. 17. Moreover, the Attorney General asserts that the replacement costs were not reasonably nor prudently incurred, "[a]s the PFD correctly found – 'the replacement costs for these outage events could have been avoided if the Company had undertaken more thorough inspections and recognized the lack of pipe support[.']" *Id*. (quoting PFD, pp. 33-34).

The Commission agrees that Consumers did not act reasonably and prudently in preventing the Events 21-22 and 29 outages and adopts the findings and recommendations of the ALJ. *See*, PFD, pp. 33-34. While the Commission acknowledges the predicament Consumers was in with the plant's construction drawings failing to include the drainpipe that was installed by the plant's previous owner, the Commission finds that the preponderance of the evidence showed that the

company should have identified and remedied the improper design of the pipe system either through its review of the facility at the time it purchased the plant or at some point over the course of owning the plant for more than 16 years. Therefore, the Commission adopts the disallowance of $654,785 in replacement power costs from the reconciliation associated with Events 21-22 and 29.

2. Biomass Merchant Plants' Costs

Consumers explained that it has power purchase agreements (PPAs) with six wood waste fueled electric generation facilities collectively known as the BMPs. 2 Tr 152. Consumers further explained that the BMPs receive payment for two separate costs: (1) energy and capacity costs paid under the PPAs and (2) recovery of other operations and maintenance (O&M) expenses allowed under MCL 460.6a in accordance with a settlement agreement approved by the Commission in the August 11, 2009 order in Case No. U-16048.[12] 2 Tr 152-153. According to Consumers, "[t]he purpose of the BMP payment separate from the PPA is to compensate the BMPs for Other Expenses allowed under MCL 460.6a(8) up to a $1,263,050 monthly cap adjusted for inflation." 2 Tr 159.

In her PFD, the ALJ noted that the parties to the case:

> do not challenge the BMPs' request for recovery of fuel and variable O&M costs that exceeded the amount the BMPs were paid pursuant to their PPAs with Consumers, which includes capped costs under MCL 460.6a(9)-(10) and, with respect to four of the BMPs, uncapped environmental compliance costs under MCL 460.6a(10).[13] Exhibit BMP-2 presents the BMPs' reconciliation of costs that are recoverable under statute and shows the BMPs are owed $7,304,209. In addition, there is no dispute over the adjustment by Staff and the Attorney General

[12] Consumers noted that "[t]he Commission approved a new settlement agreement with revised BMP cost recovery procedures in its July 7, 2023 Order in Case No. U-16048, which updated the BMP[s'] cost recovery that will be sought for 2023." 2 Tr 153.

[13] MCL 460.6a(10) provides an exception to the monthly cap for certain environmental compliance costs.

> to the Company's Purchased and Interchange Power costs to reflect the full amount that is due to the BMPs. The Company filed Revised Exhibit A-29 to reflect the adjusted BMP[s'] costs of $19,429,494.

PFD, p. 34 (footnote omitted). Rather, the ALJ identified that the contested issues for BMPs' costs pertained to the amount of BMPs' costs Consumers and the BMPs reported. PFD, p. 14.

Regarding the PPA costs, the Attorney General argued that there was a discrepancy between the variable energy costs Consumers reported paying the BMPs under the PPAs and the amounts the BMPs reported. 2 Tr 331 (referencing Exhibit A-29 and Exhibits BMP-3, BMP-4, BMP-5, BMP-7, and BMP-9); *see also*, Exhibit AG-5 (comparing the amounts in Exhibit A-29 to the amounts the BMPs reported in Exhibits BMP-3, BMP-4, BMP-5, BMP-7, and BMP-9). According to the Attorney General, Consumers recorded $1,633,144 in additional energy costs above the amount reported by the BMPs, and when the company was pressed for an explanation on the difference, "no pertinent response was provided" by Consumers. 2 Tr 332. Thus, the Attorney General argued that the Commission should disallow the excess amount of $1,633,144 included in Consumers' Exhibit A-29 and rely on the more detailed amounts provided in Exhibits BMP-3, BMP-4, BMP-5, BMP-7, and BMP-9 to "protect customers from excessive recorded costs." 2 Tr 332.

The Attorney General also argued that Consumers' exhibits did not match the O&M expense and environmental costs requested by the BMPs. 2 Tr 333. When Consumers and the BMPs were asked to "compare, reconcile, and validate the amounts shown in Exhibit BMP-2 and on line 86 of Exhibit A-29[,]" the Attorney General noted that there was "considerable disagreement between the Company and the BMPs as to the correct inflation adjustment calculations and which amounts in the exhibits were correct[.]" 2 Tr 333-334. While Consumers and the BMPs eventually "agreed

that the inflation adjusted and capped O&M expenses in Exhibit BMP-2 were correct[,]" the Attorney General opined that this:

> highlight[s] a fundamental problem that currently exists between financial information included in the exhibits filed by the BMPs and the information included in the Company's exhibits pertaining to the same financial transactions between the parties. The parties need to do more to reconcile the differences before filing testimony and exhibits, and need to proactively explain any reconciled or unreconciled differences.

2 Tr 334. Based on the aforementioned and Exhibit A-29 and Exhibit BMP-2, the Attorney General stated that:

> the Company recorded O&M expenses paid or payable to the BMPs of $15,156,601, as shown on line 86 of Exhibit A-29. Exhibit BMP-2 shows that the actual capped expenses for 2023 were $17,043,240. The difference of $1,886,639 is the additional amount due to the BMPs and should be included with PSCR expenses in this reconciliation. The BMPs also requested environmental compliance cost recovery in the amount of $2,386,253, as shown in column (H) of Exhibit BMP-2. At least so far, the Company has not objected to these additional costs due to the BMPs. Therefore, the total amount of $4,272,892 ($1,886,639 + $2,386,253) needs to be included in this PSCR reconciliation in addition to costs currently reported by the Company.
>
> * * *
>
> [As it pertains to the BMPs' cost reporting and reconciliation, the Attorney General] recommend[s] that before filing their testimony and exhibits the BMP[s] reconcile their reported revenues and costs with the Company and identify any reconciling items with applicable explanations in a separate exhibit schedule. If there are any disagreements, the BMPs should identify and address them in filed testimony.
>
> Similarly, [the Attorney General] also recommend[s] that the Company file supplemental testimony shortly after the BMPs file their direct testimony to reconcile or confirm the BMP[s'] costs recorded in Exhibit A-29, or similar exhibit, the additional expense amounts owed to the BMP[s], and the additional amount that the Company requests be added to the PSCR expense previously filed.

2 Tr 334-335.

Consumers rebutted the Attorney General's argument to disallow the amount of $1,633,144, arguing that:

> it was a valid expense that the Company paid and recorded through the process of billing the Power Purchase Agreements ("PPAs") between the Company and the BMPs related to Energy and Capacity. [The Attorney General] fails to appreciate that the BMPs represent six separate and independent businesses, each of which may book the PPA payments they receive from Consumers Energy somewhat differently in their accounting records than Consumers Energy does in its accounting records. That difference does not support the conclusion that the Variable Energy Expenses as presented in [Exhibit A-29] are incorrect. The values shown on Exhibit A-29 match the invoices actually paid by Consumers Energy to the BMPs, and the invoices match the contract. There were no PPA billing disputes in 2023 between the Company and the BMPs.

2 Tr 157. Moreover, Consumers asserted that it does not have any authority to require "the BMPs to book the PPA payments they receive from the Company in particular ways and does not control how the BMPs present the data in exhibits. Sometimes the Company has sufficient information to reconcile the difference, but it may not always have the information needed to do so." 2 Tr 158. Irrespective, Consumers argued that it is "entitled to recover the amounts that it paid to the BMPs regardless of how they book those amounts." 2 Tr 159. Therefore, Consumers contended that it is "entitled to recover the amounts that it actually pays to the BMPs under its PPAs and the provisions of [MCL 460.6a,] and [t]he Attorney General's proposed disallowance would violate that right." 2 Tr 160.

With regard to the O&M expense and environmental costs requested by the BMPs, Consumers agreed with the BMPs' expenses as laid out in Exhibit BMP-2. 2 Tr 160. However, Consumers noted that "the BMPs' actual costs for 2023 significantly exceeded the statutory cap, [so] those differences have no impact on the amount the BMPs are eligible to recover in this case. Both the BMPs' accounting and the Company's accounting agree on that recoverable amount." 2 Tr 160. Consumers also agreed that a "coordination meeting prior to the filing of exhibits and the discovery process could simplify the process for all[,]" and agreed to work with the BMPs on implementing a joint process to limit the differences in future PSCR filings. 2 Tr 160-161.

In reply, the BMPs also disagreed with the Attorney General's recommendation for a $1,663,144 disallowance to Consumers' recovery, arguing that the company's books confirmed payment of these amounts and differing accounting numbers between Consumers and the BMPs "is not a basis for denying [the company] cost recovery." BMPs' reply brief, p. 3. The BMPs noted that:

> 2008 PA 286 only authorizes the BMPs to recover (i) their unpaid fuel and *variable* O & M expenses up to the CPI [consumer price index] adjusted cap and (ii) their uncapped environmental costs incurred due to changes in state and federal environmental laws enacted after October 8, 2008. The BMPs' fuel and *variable* O & M expenses do not include either their capacity payments or their *fixed* O & M expenses. The Company, in contrast, is reporting its total payments to the BMPs, including both its capacity payments and their *fixed* O & M expenses.

Id. (emphasis in original). Similar to Consumers, the BMPs also agreed to deliver all of the BMPs' spreadsheets to Consumers before filing them as exhibits in future PSCR cost recovery cases so that the BMPs and the company can crosscheck the amounts submitted in the exhibits. *Id*., p. 4.

In her PFD, the ALJ rejected the Attorney General's recommended disallowance of $1,663,144, finding that Consumers provided "substantial evidence that its numbers accurately reflect the amounts paid per the invoices and the contracts, and the Attorney General has not shown that the difference between Consumers' and the BMPs' numbers should be construed against the Company." PFD, p. 38. Moreover, the ALJ noted that the BMPs indicated that "they have no reason to dispute Consumers' numbers, and they attribute the discrepancies to different accounting practices (as does the Company)." *Id*., p. 39 (referencing Exhibit AG-15).

For future PSCR reconciliations, the ALJ agreed with the Attorney General on Consumers and the BMPs needing to make "efforts to proactively reconcile any differences in their recorded costs before filing testimony . . . [and] explain any differences in testimony and exhibits. Staff and

intervenors should not be responsible for ferreting out this information through the discovery process." PFD, p. 39. For purposes of Consumers' next PSCR reconciliation, the ALJ found that the "efforts [the company's witness Raymond T.] Scaife described in his rebuttal [testimony], [which] intended to establish a reconciliation process with the BMPs, [were] reasonable." *Id*.

In her exceptions, the Attorney General recommends the establishment of a formal process where the case schedule requires Consumers to "file supplemental or responsive testimony to the BMP[s'] testimony at least 30 days before the scheduled date of Staff and Intervenor testimony to give Staff and Intervenors a reasonable opportunity to evaluate and respond to any remaining discrepancies or controversies between the Company's and BMPs' costs." Attorney General's exceptions, p. 12.

In reply, the BMPs disagree with the Attorney General's recommendation for the establishment of a formal process, arguing that the reconciliation process Consumers and the BMPs proposed is "all that is necessary and more than adequate." BMPs' replies to exceptions, p. 3.

In their exceptions, the BMPs request clarification on the ALJ's recommendation to "[a]pprove the portions of the reconciliation that are unopposed" by asking that the Commission specifically approve the following unopposed cost recovery amounts:

1. The BMPs' $17,043,240 capped cost recovery amount for costs incurred by the BMPs during 2023, and

2. The BMPs' $2,386,253 of uncapped costs incurred in 2023 due to changes in federal or state environmental laws or regulations implemented after October 6, 2008.

BMPs' exceptions, p. 2.

The Commission has reviewed the record and the parties' arguments and is satisfied that the preponderance of the evidence supports Consumers' request for recovery of replacement costs

associated with the BMPs' costs. The Commission finds that the ALJ reasonably concluded that Consumers provided sufficient evidence to support the $1,663,144 in additional energy costs it paid to the BMPs under the PPAs, and that the Attorney General failed to present persuasive evidence that the discrepancy in numbers between the company and the BMPs should be read against Consumers. As a result, the Commission adopts the ALJ's recommendation to deny the Attorney General's request for disallowance. *See*, PFD, p. 38.

The Commission also agrees with the ALJ that Consumers and the BMPs need to take a more proactive approach to reconciling any differences in their recorded costs before testimony is filed, and that any differences in the company's and the BMPs' testimony and exhibits should be explained and not left for the Staff and intervenors to uncover through the discovery process. The Commission agrees with the ALJ that the efforts Mr. Scaife outlined in his rebuttal testimony that intended to establish a reconciliation process with the BMPs is a reasonable approach. Therefore, the Commission adopts the ALJ's recommendation for Consumers to begin implementing the reconciliation process Mr. Scaife outlined in his rebuttal testimony in the company's next PSCR reconciliation.[14] Finally, as requested by the BMPs, the Commission clarifies that it is approving the unopposed cost recovery amounts of $17,043,240 in capped costs and $2,386,253 in recoverable uncapped costs incurred by the BMPs during 2023.

[14] *See*, 2 Tr 160-161, which provides the following reconciliation process Mr. Scaife outlined in his rebuttal testimony for Consumers' next PSCR reconciliation:

> [a]s a result of our discussion regarding differences in the filings during the course of this case, the Company and the BMPs are working to implement a joint process to limit the differences in future PSCR filings. . . . [T]he Company agrees that a coordination meeting prior to the filing of exhibits and the discovery process could simplify the process for all.

3. Financial Compensation Mechanism

According to Consumers, the June 7 order granted the company the authority to earn an FCM on all new PPAs approved by the Commission after January 1, 2019.[15] 2 Tr 125; *see also*, June 7 order, p. 91; and Exhibit A, p. 9. Consumers explained that the settlement agreement approved in the June 7 order laid out how the FCM should be calculated, providing specifically that:

> [a]s described on page 9 [of the settlement agreement approved in the June 7 order], "the Company will be authorized to annually earn an FCM equal to the product of the PPA payments in that year multiplied by the Weighted Average Cost of Capital ('WACC')." Additionally, as described on page 9 [of the settlement agreement], the [June 7 o]rder indicated there would be a "cap" or a limit for the FCM, specifically stating that "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 [s]ettlement agreement based on the time of PPA execution."

2 Tr 126 (alterations in original) (quoting June 7 order, Exhibit A, p. 9). For 2023, the company opined that the total amount of FCM incentive revenue that was earned and recorded by the Company was $2,568,664, and the total amount of FCM surcharge that was billed during 2023 was $2,975,075. 2 Tr 127 (citing Exhibits A-20 and A-21). Consumers also opined that its total overrecovery amount was $2,375,334, which it calculated by adding the beginning overrecovery balance of $1,968,924 to the total FCM surcharge billed and then subtracting the earned FCM incentive revenue. 2 Tr 128 (citing Exhibit A-20). At the end of 2023, Consumers indicated that its total FCM overrecovery amount, including interest, was $2,518,161. 2 Tr 128 (citing Exhibit A-20).

While the Staff generally agreed with Consumers' calculation, the Staff raised the following issues that could impact the company's calculation projection:

[15] In her direct testimony, Consumers' witness Hannah L. Patton incorrectly referred to July 7, 2019, as the date the Commission issued the order in Case No. U-20165 that provided the company with the authority to earn an FCM on new PPAs on or after January 1, 2019. The date the order was issued should reflect June 7, 2019.

> First, the beginning balance of $1,968,934 must be updated for any final decisions impacting the FCM ending balance in [Commission] Case No. [U-21049[16]], which is Consumers Electric's pending [PSCR] case for 2022. The final ordered ending balance in [Case No. U-21049] will be the beginning balance in the instant case and the FCM must be recalculated in the instant case if the [Case No. U-21049] ending balance is changed. A change in the beginning will also require interest to be recalculated by the Commission in the instant case.
>
> * * *
>
> Second, the Company has included three energy-only contracts to its calculation of the FCM recovery. Those contracts are identified on Exhibit A-21 (HLP-2) as Autocam Medical, Otsego Paper [Inc. (Otsego)], and Prairie View Dairy (lines 3, 42, 43). In the pending [Commission] Case No. U-21049[,] Consumers[']2022 PSCR case, Staff noted that the Commission may determine that energy-only contracts are not eligible for the FCM. Staff recommends that if the Commission decides in that case that energy-only contracts are not eligible for the FCM, then the three contracts identified as energy-only contracts in this case should be disallowed and the FCM should be recalculated.

2 Tr 399-400. Other than the two issues noted above, the Staff contended that Consumers' FCM calculations in the instant case were reasonable. 2 Tr 401.

In rebuttal, Consumers asserted that the Otsego, Autocam Medical, and Prairie View Dairy PPAs are eligible for the FCM because they are PPAs that incurred cost in 2023. 2 Tr 175. Specifically, Consumers argued that:

> [t]he Commission has approved the Company's cost recovery of the Otsego PPA in each annual [PSCR] reconciliation case since the first year in which deliveries began in the Company's 2019 PSCR reconciliation case in Case No. U-20220. The Otsego PPA was included in the Company's 2023 PSCR Plan in Case No. U-21257 which was approved by the Commission's August 30, 2023 Order. The PPAs are energy[-]only agreements which allows the Company to purchase energy from the Resource at the Midcontinent Independent System Operator, Inc.'s ("MISO") real-time locational marginal prices less an administration fee per Section C11.1 Self Generation in the Company's Rate Book for Electric Service and the terms of the PPA. The PPAs are registered with the Federal Energy Regulatory Commission ("FERC") as a Qualifying cogeneration facility under the Public Utility Regulatory Policies Act of 1978 ("PURPA").

[16] The Staff's witness Robert F. Nichols II incorrectly referred to Consumers' pending PSCR case for 2022 as Case No. U-20194 and Case No. U-21094 in his direct testimony. Consumers' pending PSCR case for 2022 should reflect Case No. U-21049.

> The PPAs are eligible for the FCM construct approved in the [June 7 order]. The settlement agreement approved in th[e June 7 o]rder stated "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 Otsego PPA meets all these requirements to be eligible for the FCM since: (i) it was executed on July 1, 2019; (ii) it is with a PURPA Qualifying Facility; (iii) it was entered into in accordance with the Company's Commission-approved Rate Book for Electric Service; and (iv) its costs were approved by the Commission in the Company's 2023 PSCR Plan case.

2 Tr 175-176 (alteration in original) (quoting June 7 order, Exhibit A, p. 9).

In her PFD, the ALJ found that the "April 10, 2025 order in Case No. U-21049, pp. 3-4, which adopted the PFD's recommendation to approve the FCM for Otsego, permit[ted] the application of the FCM to the other energy-only contracts (Autocam Medical and Prairie View Dairy) presented here." PFD, p. 41. The ALJ also noted that the Staff reviewed Consumers' calculations, reconciliation, and the updated surcharge for the FCM and found them to be reasonable. *Id*. As such, the ALJ recommended that the Commission include the costs associated with the Otsego, Autocam Medical, and Prairie View Dairy PPAs in Consumers' FCM calculation. *Id*. The ALJ also recommended that the company's beginning balance reflect the Commission's final order in Case No. U-21049. *Id*., p. 42.

No exceptions were filed on this issue.

The Commission finds the ALJ's recommendation for the inclusion of costs associated with the Otsego, Autocam Medical, and Prairie View Dairy PPAs in Consumers' FCM calculation to be well-reasoned and supported by the record. The Commission also agrees with the Staff and the ALJ that the company's beginning balance for the FCM calculation should reflect the Commission's final order in Case No. U-21049. Therefore, the Commission adopts the ALJ's recommendations on this issue. *See*, PFD, pp. 41-42.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's application for a power supply cost recovery reconciliation for calendar year 2023 is approved, as modified by this order.

B. The request of the biomass merchant plants for $17,043,240 in capped and $2,386,253 in uncapped costs is approved.

C. Consumers Energy Company's net power supply cost recovery underrecovery balance of $255,961,382, inclusive of interest, shall be reflected as the company's 2024 power supply cost recovery reconciliation beginning balance.

D. Beginning with the company's next power supply cost recovery reconciliation, Consumers Energy Company shall implement the biomass merchant plant reconciliation process pre-application filing as described in this order.

E. Consumers Energy Company's net financial compensation mechanism overrecovery balance of $2,518,161, inclusive of interest, shall be reflected as the company's 2024 financial compensation mechanism calculation beginning balance.

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 and to the Michigan Department of Attorney General - Public Service Division at 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

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Shaquila Myers, Commissioner

By its action of December 5, 2025.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-21258

County of Ingham)

Brianna Brown being duly sworn, deposes and says that December 5, 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 5th day of December 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-21258

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