

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
CONSUMERS ENERGY COMPANY for approval	)	
of power purchase agreement amendments.	)	Case No. U-21946
_____	)	

At the October 1, 2026 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

History of Proceedings

On July 17, 2025, Consumers Energy Company (Consumers) filed an application in this case, pursuant to Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j, with supporting testimony and exhibits, requesting approval of an amended power purchase agreement (PPA) with T.E.S. Filer City Station Limited Partnership (T.E.S. Filer). More specifically, the utility requested approval of the fourth amendment to the PPA between Consumers and T.E.S. Filer (referred to herein as Amendment 4). Application, pp. 1-5.

By way of background, Consumers and T.E.S. Filer (under a prior name) entered into a long-term PPA on July 31, 1986, which provided that T.E.S. Filer would supply and sell electric energy and capacity to Consumers. Application, p. 2; Exhibit A-1. The original contract was amended in

1987 (Amendment 1) and again in 2017 (Amendment 2).¹ Exhibit A-1. Thereafter, on February 28, 2023, Consumers and T.E.S. Filer then entered into the third amendment of the contract (Amendment 3) to modify the original terms. On July 7, 2023, the Commission issued an order in Case No. U-21407 (July 7 order) approving Amendment 3 to the PPA. *See*, Exhibit A-1.

In its application in this matter, Consumers explained that it was requesting approval of Amendment 4 to the PPA with T.E.S. Filer due to the planned retirement of the remaining coal plants, the costs of which were previously used as the basis for the rates paid to T.E.S. Filer. Application, p. 3. In its application, Consumers stated that:

[t]he amended energy rate schedule, mutually agreed upon by both parties, was developed using a three-year analysis of historical energy rate trends from projects whose energy rates were based on the operations and expenditures of qualified base plants. In addition to the revised energy rate methodology, Amendment [] 4 also updates the capacity payment provisions under the [T.E.S.] Filer PPA. The updated capacity payment reflects a mutually agreed-upon adjustment that aligns with current Midcontinent Independent System Operator, Inc. (“MISO”) capacity market conditions.

Id., p. 2. The application also stated that Amendment 4 is intended to provide reliability and system support as Consumers transitions from traditional fossil generation to a clean energy plan over the next few years in compliance with Public Act 235 of 2023. *Id.*, p. 3. In addition, the application indicated that Consumers expects that Amendment 4 will result in customer savings of \$19.1 million in energy savings and capacity costs (compared to the current Amendment 3). *Id.* Lastly, the application stated that Amendment 4 contains a definite end date for the contract of May 31, 2027. *Id.*; Exhibit A-2.

¹ The February 5, 2018 order in Case No. U-18392 approved a settlement agreement that required Consumers to obtain approvals from the Federal Energy Regulatory Commission (FERC). On October 18, 2018, Consumers filed a letter with the Commission that noted Consumers did not receive permission from FERC, and as a result, Amendment 2 was void in accordance with its own terms because of that denial.

In its request for relief, Consumers asked the Commission to approve two things:

(1) Amendment 4 of the PPA between Consumers and T.E.S. Filer and (2) the recovery by Consumers of all payments under Amendment 4 for the purposes of MCL 460.6j and all other applicable laws. Application, p. 4.

A prehearing conference was held on September 18, 2025, before Administrative Law Judge Sally L. Wallace (ALJ). Consumers and the Commission Staff (Staff) participated in the proceeding. Subsequently, on September 29 and 30, 2025, Michigan Environmental Council (MEC) and Sierra Club (SC) (together MEC/SC)² filed unopposed out-of-time petitions to intervene. A second pre-hearing conference was held on October 22, 2025, at which the ALJ recognized the intervention of MEC/SC and established a case schedule.

On December 23, 2025, the ALJ adopted a protective order for use in this matter.

On January 14, 2026, direct testimony and exhibits were filed by the Staff and MEC/SC. On February 11, 2026, Consumers filed rebuttal testimony and exhibits.

On February 26, 2026, an evidentiary hearing was held, wherein one witness was cross-examined, and the remaining testimony and exhibits were bound into the record.

Consumers, the Staff, and MEC/SC filed initial briefs on March 19, 2026. On March 30, 2026, Consumers and MEC/SC filed reply briefs. The Staff filed a letter stating that it would not be filing a reply brief.

The ALJ issued a Proposal for Decision (PFD) on April 30, 2026.

² The Michigan Environmental Council and the Sierra Club jointly filed testimony, exhibits, briefs, and exceptions. Therefore, like the ALJ, the Commission jointly refers to Michigan Environmental Council and the Sierra Club as MEC/SC.

On May 21, 2026, Consumers and MEC/SC filed exceptions to the PFD and the Staff filed a letter stating it would not be filing exceptions. On June 4, 2026, Consumers and MEC/SC filed replies to exceptions and the Staff filed a letter stating it would not be filing replies to exceptions.

The record in this case consists of 182 pages of transcript and 38 admitted exhibits.

Proposal for Decision

On pages 3-15 of the PFD, the ALJ provided a thorough overview of the record, which will not be repeated here. The ALJ determined that the following issues were in dispute and required resolution in this proceeding: (1) whether the Commission should pre-approve the power supply cost recovery (PSCR) for all PPA costs for Amendment 4, (2) whether Amendment 4 complies with the Code of Conduct, and (3) whether the Commission should approve Amendment 4. PFD, pp. 15-20.

After addressing each of the issues, the ALJ recommended that the Commission issue an order approving Amendment 4 with the caveat that future applicable PSCR proceedings address/review: (1) the actual costs incurred under the PPA (and the costs should not be pre-approved in this case), and (2) whether the PPA complies with the Code of Conduct (because there was not enough evidence in this record to make a decision regarding the same). *Id.*

Consumers' and MEC/SC's exceptions to the PFD address the issues articulated by the ALJ. The Commission will address the three contested issues in the reverse order of the PFD.

1. Amendment 4 to the T.E.S. Filer Power Purchase Agreement

Consumers seeks approval of Amendment 4 to the T.E.S. Filer PPA. The Staff supports approval of Amendment 4, and MEC/SC dispute the approval. MCL 460.6j(13)(b) provides, in relevant part, that in a power supply cost reconciliation, the Commission shall do all of the following when it comes to capacity charges in a contract:

[n]ot disallow the capacity charges for any facilities for which the electric utility would otherwise have a purchase obligation if the commission has approved capacity charges in a contract with a qualifying facility, as that term is defined by the Federal Energy Regulatory Commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat 3117, unless the commission has ordered revised capacity charges upon reconsideration under this subsection. A contract is valid and binding in accordance with its terms, and capacity charges paid pursuant to that contract are recoverable costs of the utility for rate-making purposes notwithstanding that the order approving that contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or by July 29, 1987 if the order was issued after September 1, 1986 and before June 29, 1987. The commission shall determine the scope and manner of the review of capacity charges for a qualifying facility. Except as to approvals for qualifying facilities granted by the commission before June 1, 1987, proceedings before the commission seeking those approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges for a qualifying facility in a contested case hearing after passage of a period necessary for financing the qualifying facility, if both of the following apply:

- (i) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval.
- (ii) The commission finding is set forth in a commission order subject to immediate judicial review.

Consumers argued that Amendment 4 should be approved because it: (1) updates the energy rate methodology; (2) updates the capacity provisions; (3) removes the evergreen provision and sets a date certain (May 31, 2027) for the end of the contract; and (4) under Amendment 4, customers are expected to save approximately \$19.1 million over the remaining term of the PPA. 3 Tr 139-146; Exhibit A-3.

The Staff testified that the updated methodology to calculate energy rates and capacity payments in Amendment 4 is reasonable and prudent. 3 Tr 179; *see also*, Staff's initial brief, pp. 4-5. The Staff stated that T.E.S. Filer is a biomass merchant plant (BMP) – a power generation

facility designated to sell to wholesale markets that is powered by biomass. The Staff explained that MCL 460.6a states that merchant plants having entered into a contract with an initial term of 20 years or more before January 1, 2008, are able to recover the amount by which actual incurred fuel and variable costs exceed the amount that the merchant plant is paid under contract for these costs. 3 Tr 178; *see also*, Staff’s initial brief, p. 4 (citing MCL 460.6a(9)-(11)). The Staff stated that, exclusive of these additional “BMP payments[,]” Amendment 4 reduces the levelized cost of energy (LCOE) of the PPA by \$18.85 per megawatt-hour (MWh), from \$122.12/MWh (in Amendment 3) to \$103.27/MWh, as well as the overall cost of the contract by \$15.5 million over the remainder of the PPA term, from \$72.7 million to \$57.2 million. The Staff argued that, inclusive of BMP payments, the inclusion of Amendment 4 reduces costs to ratepayers by an additional \$3.6 million over the remainder of the PPA term, for a total of \$19.1 million. 3 Tr 179; Staff’s initial brief, p. 4; Exhibit A-3.

The Staff also stated that Amendment 4 also provides non-monetary benefits to ratepayers:

- (1) the fixed nature of the energy rates gives stability given the uncertain nature of fuel costs, and
- (2) clarity is provided to both parties about the date certain end date while supporting grid reliability as Consumers transitions away from coal and natural gas in alignment with clean energy goals set forth in Public Act 235 of 2023. 3 Tr 179; Staff’s initial brief, pp. 4-5. Therefore, the Staff recommended approval of Amendment 4. 3 Tr 179.

MEC/SC argued that the Commission should reject Amendment 4 for two main reasons:

- (1) although Consumers states that there will be savings (as compared to Amendment 3), the cost of the existing PPA is exorbitant; and (2) the costs of Amendment 4 are above the costs of other comparable PPAs and T.E.S. Filer is designated as a must-run resource in MISO, resulting in

market energy losses, and the cost of capacity in Amendment 4 is much higher than the capacity value used in other Consumers cases. 3 Tr 153.

The ALJ found that Consumers' evidence that the company entered into Amendment 4 because it may need additional reserves for capacity purposes to meet its Planning Reserve Margin Requirement (PRMR) was persuasive. The ALJ reasoned that even if Consumers does have excess capacity, it can sell the excess and receive some compensation from the MISO capacity auction. The ALJ found that even though the cost of Amendment 4 may be higher than some other PPAs, Amendment 4, as a whole, is reasonable, and she recommended approval. PFD, p. 18.

MEC/SC excepts to the PFD and argues that the Commission should not approve Amendment 4 for two main reasons: (1) the cost of Amendment 4 is too high, and (2) the ALJ should not have found that approval of Amendment 4 was reasonable due to capacity concerns. MEC/SC's exceptions, pp. 9-17. An examination of the cost of Amendment 4 will be discussed more fully in the next section regarding the Code of Conduct, but for the purposes of approving Amendment 4, MEC/SC contends that Amendment 4 should not be approved because it is higher than market price and higher than any reasonable cost comparison. *Id.*, pp. 9-13.

As to MEC/SC's arguments regarding capacity concerns, MEC/SC provides five reasons why it contends that the ALJ should not have found that Amendment 4 was reasonable due to Consumers' capacity concerns. First, MEC/SC argues there is no evidence that there are capacity concerns because Consumers planned to terminate the contract in 2024 – a time when Consumers had all of the same concerns it has today. *Id.*, pp. 14-15 (citing 3 Tr 157; Exhibit MEC-25). Second, MEC/SC contends that there is no evidence that Consumers anticipates a capacity shortfall to need energy from T.E.S. Filer, and if there was, Consumers could buy it from MISO. MEC/SC's exceptions, p. 15 (citing 3 Tr 158-159; Exhibit MEC-5). Third, MEC/SC avers that

there is no evidence that there is a material risk of new resources for the clean energy plan not coming online in time, negating Consumers' capacity concerns. MEC/SC's exceptions, p. 16 (citing Exhibit MEC-12, Company Response 21946-ST-CE-0028; 3 Tr 98-99, 100, 104, 130). Fourth, MEC/SC argues that since Amendment 4 is 100% of the MISO Cost of New Entry (CONE), there is no scenario where Consumers receives positive net revenues for the extra capacity from T.E.S. Filer. MEC/SC's exceptions, pp. 16-17 (citing 3 Tr 92, 165). Fifth, MEC/SC states that even if there is a shortfall in capacity, Consumers must still meet the requirements of the Code of Conduct, and Amendment 4 does not meet those requirements. MEC/SC's exceptions, p. 17.

Consumers filed a reply to MEC/SC's exceptions and argues that MEC/SC misrepresented the ALJ's decision and that the ALJ did not only rely on capacity concerns in making her recommendation. Consumers' replies to exceptions, p. 6. Consumers argues that Amendment 4 is at market rate and reasonable (which will be discussed in detail below). *Id.*, pp. 5-6. Consumers also defends its capacity concerns as some of the reasoning for entering into Amendment 4. *Id.*, pp. 7-10. Consumers argues that it entered into Amendment 4 to preserve immediate energy and capacity value from an already-operational facility and T.E.S. Filer provided near-term reliability benefits during a period of resource transition from coal to clean energy sources. *Id.*, p. 7 (citing Consumers' initial brief, pp. 5-16; Consumers' reply brief, pp. 4-7; Staff's initial brief, p. 4). Consumers also argues that capacity was needed for the company's PRMR – and it did not need to prove that a shortfall was certain, only that the company needed to account for near-term capacity risk. Consumers' replies to exceptions, p. 9 (citing Consumers' initial brief, pp. 12-16; Consumers' reply brief, pp. 5-7). Consumers argues that “the record showed that TES Filer provided value whether the Company was below, at, or above its PRMR, because it either reduced

deficit exposure or generated offsetting market value.” Consumers’ replies to exceptions, p. 9 (citing Consumers’ reply brief, pp. 5-7). Therefore, Consumers requests that the Commission find that Amendment 4 is reasonable. *Id.*, p. 10.

After reviewing the record and arguments of the parties, the Commission adopts the recommendation of the ALJ to approve Amendment 4. The Commission finds that the recommendation was well-reasoned and supported by the record. PFD, p. 18. The Commission finds credible the testimony of Consumers and the Staff that the inclusion of Amendment 4 has cost savings, inclusive of BMP payments, and is projected to reduce costs to ratepayers by a total of \$19.1 million when compared to the terms of Amendment 3. *See*, 3 Tr 139-146, 179; *see also*, Exhibit A-3.

The Commission also finds credible the testimony that Amendment 4 alleviates capacity concerns by purchasing energy from a service provider that is already operational while Consumers is in a resource transition from coal to clean energy. 3 Tr 139-146, 179. This provides the benefit of alleviating PRMR concerns. The Commission also finds reasonable Consumers’ argument that it can still receive some compensation from the MISO capacity auction even if there is ultimately excess capacity which is important since T.E.S. Filer is a must-run resource and could result in some energy losses because of that status. 3 Tr 153. The Commission recognizes that in this case, Consumers values the need for capacity and that capacity payments are an important part of the decision to enter into Amendment 4 with T.E.S. Filer. The Commission will monitor how Consumers values capacity concerns in both affiliate and non-affiliate transactions to ensure consistency across the board.

In addition to cost savings and remedying capacity concerns, the Commission finds that there is a benefit to customers to have certainty over the contract term for this once open-ended contract.

The Commission notes that the contract expires in May 2027 and Consumers and T.E.S. Filer are already several months into the contract terms. Moreover, the Commission finds that the fixed nature of the proposed energy rates gives stability to the uncertain nature of fuels costs. 3 Tr 179. Therefore, the Commission finds that Amendment 4, as a whole, is reasonable and prudent and beneficial to customers and directs that it be approved.

2. Code of Conduct

The Code of Conduct's purpose is to "promote fair competition by establishing measures to prevent cross-subsidization, information sharing, and preferential treatment between the regulated and unregulated operations of electric utilities, alternative electric suppliers, and their affiliates." *In re Application of Detroit Edison Co*, 311 Mich App 204, 212; 874 NW2d 398 (2015), citing the Code of Conduct, preface. Consumers and MEC/SC dispute whether Amendment 4 complies with the pricing provision of the Code, which provides, in pertinent part:

[if] an affiliate or other entity within the corporate structure provides services or products to a utility, and the cost of the service or product is not governed by section 10ee(8) of 2016 PA 341, MCL 460.10ee(8), compensation is at the lower of market price or 10% over fully allocated embedded cost.

Mich Admin Code, R 460.10108(4) (Rule 8(4)). Therefore, the Code of Conduct requires that if an affiliate (here, T.E.S. Filer³) provides services to a utility (here, Consumers), then the cost of service must be at the lower of market price or 10% of fully embedded costs. *See, id.*

Consumers argued that Amendment 4 does comply with the Code of Conduct because the cost is at market rate and compensation is not over 10% of the fully embedded costs. Consumers argued that the economic comparison for Amendment 4 is complex because as a dispatchable, renewable resource that is subject to both capped and uncapped BMP recovery, there are very few

³ T.E.S. Filer is co-owned by NorthStar Clean Energy, which is a subsidiary of Consumers' parent company, CMS Energy. *See*, MEC/SC's initial brief, pp. 5-6.

comparables to the contract with T.E.S. Filer. 3 Tr 29. Consumers argued that since Amendment 4 provides cost savings for customers (as compared to Amendment 3), it is indicative of adherence to market rate. 3 Tr 143. MEC/SC argued that Amendment 4 should not be approved because it violates the Code of Conduct since the cost is exorbitant, being well above market rate. 3 Tr 153.

In the PFD, the ALJ pointed out that both parties agree that the Code of Conduct applies to Amendment 4. PFD, p. 17. The ALJ found that there is not enough evidence to make a determination and recommended that the issue be deferred to the next PSCR proceeding to allow for additional evidence. *Id.* The ALJ also found that “comparing the existing TES Filer PPA to Amendment 4 is not a reasonable approach to determine whether the amendment complies with the Code of Conduct.” *Id.*, p. 20. The ALJ acknowledged that identifying appropriate benchmarks and cost comparison for the T.E.S. Filer PPA may be difficult since there are not many comparable plants in Michigan. *Id.*

Both Consumers and MEC/SC filed exceptions to the PFD on this issue, but both parties are in agreement that the Code of Conduct issue should not be deferred to the next PSCR case. Consumers’ exceptions, pp. 3-5; MEC/SC’s exceptions, pp. 9-13. Both parties contend that the Commission should decide the issue now, in this docket. *Id.*

In its exceptions, Consumers proffers several reasons why the Commission should not defer the Code of Conduct issue and why Amendment 4 does not violate the Code of Conduct. First, Consumers argues that it is not reasonable to expect Consumers to go forward and incur costs under Amendment 4 without a determination that the PPA is consistent with the Code of Conduct. Consumers’ exceptions, p. 4.

Second, Consumers contends that contrary to the ALJ’s conclusion that there is not enough evidence in the record to support a finding regarding the Code of Conduct issue, there is ample

evidence to make a determination. *Id.* Consumers states that it provided three main arguments that Amendment 4 is a market rate contract (with the caveat that the pool of comparables for capped and uncapped BMPs is small). Consumers avers that the following demonstrate Amendment 4 is at market rate: (1) Amendment 4 is less expensive than the existing contract in Amendment 3; (2) the “energy price paid under Amendment [] 4 through March 2026 is less than the rates negotiated and paid to Commonwealth for the outputs of Irving and Middleville Plants under Amendment No. 3 to both of the PPAs with Consumers Energy as presented in Case No. U-21943[;]” and (3) Amendment 4 is comparable to other BMP PPAs such as Cadillac, Grayling, and Genesee. *Id.* (citing Consumers’ initial brief, pp. 9-10; 3 Tr 40, 43-44).

Third, Consumers argues that even if market rate is not considered, the company presented evidence regarding its fully allocated embedded costs and that the price of Amendment 4 is below that price. Consumers’ exceptions, p. 4 (citing 3 Tr 41-42; Exhibit A-5).

Lastly, Consumers argues that delaying a decision regarding the Code of Conduct would be a waste of the Commission’s resources because a new proceeding would not likely uncover any new evidence to make a better determination. Consumers’ exceptions, p. 5. (citing *Pennwalt Corp v Pub Serv Comm’n*, 166 Mich App 1, 9; 420 NW2d 156 (1988)).

MEC/SC also excepts to the PFD and contends that the ALJ was incorrect to defer the issue of whether Amendment 4 complies with the Code of Conduct for several reasons. First, MEC/SC contends that the evidence demonstrates that Amendment 4 is a higher market price than every reasonable comparison in the record, including: Consumers’ other PPAs; Consumers’ Public Utility Regulatory Policies Act of 1978 (PURPA) avoided costs; Consumers’ Campbell and Belle River contracts; the Commonwealth Hydro PPAs; and one of the two other biomass plants with which Consumers has contracts. MEC/SC notes that there is only one more expensive biomass

contract: Genesee (which is also an affiliate of Consumers). MEC/SC's exceptions, p. 10 (citing 3 Tr 12-28, 156-157, 167). Ultimately, MEC/SC proffers that Amendment 4 is 137% over market and that Consumers' own evidence demonstrates this. MEC/SC's exceptions, pp. 7, 11 (citing 3 Tr 127-28; Exhibit MEC-21).

Second, MEC/SC argues the burden of proof to demonstrate that Amendment 4 complies with the Code of Conduct is on Consumers. If the record is insufficient to determine if Amendment 4 complies with the Code of Conduct, then Consumers did not meet its burden. MEC/SC's exceptions, p. 11 (citing January 25, 2010 order in Case No. U-15675, p. 9).

Third, MEC/SC avers that approving a contract that does not comply with the Code of Conduct is contrary to law. MEC/SC cites to *Mich Pub Serv Comm'n v Indiana Michigan Power Co*, 349 Mich App 654, 673; 28 NW3d 393 (2024) for the proposition that the market price rule is a separate and additional requirement for affiliate transactions in the PSCR. MEC/SC's exceptions, p. 11. MEC/SC contends that an order that does not meet this rule is contrary to law. And "[a]lternatively, a decision to approve a contract where the evidence is inconclusive as to whether it meets the market price rule is not based on substantial evidence. The Commission's decisions must be supported by substantial evidence." MEC/SC's exceptions, p. 11 (citing *In re Detroit Edison*, 296 Mich App 101, 115; 817 NW2d 630 (2012)). MEC/SC contends that since there is not enough evidence on the record to make a decision, the Commission cannot approve the contract.

Fourth, MEC/SC argues that the issue should not be deferred to a PSCR docket because the Commission has not done so in the past. MEC/SC contends that a Code of Conduct issue is typically deferred because the utility never seeks contract approval in the first place, or because the issue of Code of Conduct compliance is not raised at the time of contract approval. MEC/SC

argues that neither scenario is applicable in this case. Here, MEC/SC argues, the issue is being brought before the Commission now and so the Commission should consider it in this docket, and not the PSCR docket. MEC/SC's exceptions, pp. 12-13 (citing April 8, 2021 order in Case No. U-20527, p. 33; May 13, 2021 order in Case No. U-20529, pp. 17-18).

Consumers replied to MEC/SC's exceptions. Consumers argues that MEC/SC "incorrectly claims the weight of the evidence demonstrates that Amendment No. 4 is higher than market price." Consumers' replies to exceptions, p. 2. Consumers contends that MEC/SC's market comparisons are not applicable to Amendment 4 because MEC/SC uses plants that are not a similar type. *Id.* p. 2-3. Consumers cites to the April 11, 2024 order in Case No. U-20805, p. 14, for the proposition that a PPA with an affiliate should be compared to the market price of "other comparable long-term agreements." Consumers further argues that MEC/SC is misleading when it states that the "company's own evaluation found it was over market" because MEC/SC compared Amendment 4 to the entire MISO market – not just other comparable agreements. Consumers' replies to exceptions, p. 3 (citing 3 Tr 113). More importantly, Consumers argues that MEC/SC did not evaluate capacity costs, which are critical to the overall evaluation of the Amendment 4. *Id.* (referencing Exhibit MSC-24).

Consumers also takes issue with MEC/SC's conclusion that Cadillac is not an appropriate comparison to demonstrate market rate. Consumers reiterates that Cadillac is the most appropriate comparison as an unaffiliated dispatchable BMP, and that Amendment 4 is less expensive than Cadillac's PPA. Consumers contends that MEC/SC only compared data for a single year (2024) instead of comparing over a number of years. "Even under Amendment [] 3 [T.E.S.] Filer was less expensive than Cadillac in two out of four years from 2021 to 2024 and the cost of the [T.E.S.] Filer contract will be lower under Amendment [] 4." Consumers' replies to exceptions,

p. 4; Exhibit MSC-21. Consumers contends that isolating a single year is unreasonable, especially given that the comparison being made is in reference to the structure of the PPA under Amendment 3 and not the updated costs under Amendment 4. *Id.*

MEC/SC replied to Consumers' exceptions and agreed with Consumers in substance that deferring the Code of Conduct issue to a different docket would be a waste of Commission resources. MEC/SC's replies to exceptions, pp. 2-3. MEC/SC reiterates that it is Consumers that has the burden of proof, and since the company already "put forth its best case[.]" it will not be able to demonstrate that Amendment 4 does not violate the Code of Conduct, thus being a waste of Commission resources. *Id.*, p. 3. MEC/SC also argues that Consumers failed to prove it complied with the Code of Conduct. MEC/SC argues that none of the benchmarks Consumers provides are appropriate benchmarks because they are either affiliates of Consumers, and the one that is unaffiliated – Cadillac – is not as costly as Amendment 4. *Id.*, pp. 4-5 (citing 3 Tr 127-128). MEC/SC also argues that the company's evidence regarding the fully embedded cost is irrelevant because the Code of Conduct limits price based on the embedded costs of the seller (T.E.S. Filer), not the buyer (Consumers).

After reviewing the record and the testimony, the Commission respectfully declines to adopt the recommendation of the ALJ regarding the Code of Conduct issue. The Commission finds that there is enough evidence in the record to determine that Amendment 4 does not violate the Code of Conduct because Amendment 4 is at market price. The Commission also respectfully declines to adopt the ALJ's position that "comparing the existing [T.E.S.] Filer PPA to Amendment 4 is not a reasonable approach to determine whether the amendment complies with the Code of Conduct." PFD, p. 20. Since the Commission approved Amendment 3 in the July 7 order and the rate has been in effect for several years, it is not unreasonable for the Commission to consider that rate as

market rate when finding benchmarks for comparison in this case. As a result, the evidence that demonstrates there will be \$19.1 million in cost savings for rate payers (as compared to Amendment 3), indicates that Amendment 4 is at market rate. 3 Tr 139-146. In addition, when Amendment 4 is compared to similar BMP PPA agreements for Grayling, Genesee, and Cadillac plants, the evidence shows that Amendment 4 is priced comparatively. 3 Tr 40, 43-44. Even if Cadillac, the only non-affiliate, is reviewed on its own, over a several year average, it is comparable to Amendment 4. The Commission finds that other examples provided by MEC/SC are too dissimilar to T.E.S. Filer to determine market rate. Given the evidence in the record, the Commission finds that Amendment 4 does not violate the Code of Conduct.⁴ However, the Commission reminds Consumers that it has an ongoing obligation to demonstrate compliance with Rule 8(4) of the Code of Conduct in future PSCR cases and reconciliations.

3. Pre-Approval of Amendment 4 Costs

In Consumers' request for relief in its application, the company asks that the Commission "specifically indicate that the Commission approves the recovery by Consumers Energy Company of all payments under the amended Power Purchase Agreement for the purposes of Section 6j of 1982 PA 304, MCL 460.6j, and all other applicable law." Application, p. 4. Consumers and MEC/SC dispute whether the Commission is authorized to pre-approve the costs associated with Amendment 4. MCL 460.6j requires the Commission to review PSCR costs, including those resulting from PPAs, for reasonableness and prudence, both before and after the plan year.

⁴ The Commission makes this finding based on the evidence regarding Amendment 4's comparison to market rates. Consumers also presented evidence of the company's fully allocated embedded costs and argued that the price of Amendment 4 is below that cost. 3 Tr 41-42; Exhibit A-5. The goal of Rule 8(4) is to ensure an affiliate is not over-paying. The evidence Consumers provided of the company's costs is not relevant to the analysis of whether the embedded costs violate the Code of Conduct. Therefore, Consumers' embedded cost evidence is disregarded by the Commission in this instance.

Consumers argued that the Commission regularly reviews Consumers' PPAs and amendments for approval outside of PSCR cases, and the company does not exclude PPAs that received approval from the PSCR plan and reconciliation cases. Consumers' reply brief, p. 2.

MEC/SC argued that MCL 460.6j reveals no authority for Consumers' request and that Consumers must annually file a PSCR plan for Commission review and approval. MEC/SC's initial brief, p. 3.

The ALJ recommended that the Commission deny Consumers' request that the Commission pre-approve all PPA costs for Amendment 4. The ALJ recognized that PPAs and PPA amendments are approved prospectively, i.e., the Commission grants approval of a PPA that appears reasonable and prudent at the time presented. But the ALJ pointed out that the principal of approving a reasonable PPA or an amendment to a PPA (as in this case) is very different than what Consumers is requesting: a "run around the Commission's responsibilities under Section 6j to only permit recovery of reasonable and prudently incurred power supply costs." PFD, pp. 15-17. The ALJ reasoned that since Consumers provides no legal authority for the Commission to pre-approve PSCR costs, Consumers' request should be denied. *Id.*, p. 17.

Consumers argues in its exceptions that the PFD incorrectly dismisses Consumers' request for cost recovery related to the PPA. Consumers' exceptions, p. 1. Consumers states that it "ultimately agrees with the PFD's recommendation . . . that actual costs incurred under the PPA will be reviewed in the applicable PSCR Proceeding." *Id.*, p. 2 (citing PFD, p. 18). Consumers states it only takes exception to the PFD "to the extent that it states the Commission cannot approve cost recovery of the PPA prospectively." Consumers' exceptions, p. 2. In other words, Consumers argues that it is not asking the Commission to eliminate future PSCR proceedings, only that the Commission provide "reasonable prospective assurance" that Consumers will be able

to recover prudently incurred costs under Amendment 4. *Id.* Consumers argues that this request for “reasonable prospective assurance” to recover costs is consistent with the Commission’s “long-standing anti-hindsight doctrine” – which Consumers argues stands for the proposition that “prudence is assessed based on the facts reasonably available when the utility acted, not on later developments viewed in retrospect.” *Id.*, pp 2-3 (citing August 18, 1972 order in Case No. U-3910, pp. 11–12; March 31, 1983 order in Case No. U-6474, p. 8; May 7, 1991 order in Case No. U-7830, p. 306; and referencing *Residential Ratepayer Consortium v Pub Serv Comm*, 198 Mich App 144, 151; 497 NW2d 558 (1993)). Consumers also contends that the Michigan Court of Appeals has applied the same principle in gas and power cost recovery and has held that the ability to recover turns on whether the costs were incurred under reasonable and prudent policies in light of the conditions at the time of purchase or contracting. Consumers’ exceptions, pp. 2-3 (citing *Attorney Gen v Pub Serv Comm*, 161 Mich App 506, 517; 411 NW2d 469 (1987); *Attorney Gen v Pub Serv Comm No 2*, 171 Mich App 700, 702; 431 NW2d 49 (1988)).

Consumers also cites to a Commission case involving the Palisades PPA and argues that the Commission has previously concluded that the Commission has authority to provide long-term prospective approval of PPAs and that the approval remains subject to continuing statutory authority and obligation to review all major contracts and power supply arrangements entered by the utility annually. Consumers’ exceptions, p. 3 (citing March 27, 2007 order in Case No. U-14992, pp. 55-65, (March 2007 Palisades order)). Therefore, Consumers requests that the same rationale that applied to approval of the Palisades PPA also be applied to Amendment 4. Consumers’ exceptions, p. 3.

In its reply to Consumers’ exceptions, MEC/SC argues that the anti-hindsight doctrine does not apply to the Commission’s review of power supply costs – it only applies if the Commission is

determining whether a contract is reasonable and prudent. MEC/SC's replies to exceptions, p. 7 (citing December 19, 1991 order in Case No. U-9173-R, pp. 39-40 (December 1991 order)).

MEC/SC contends that the doctrine "does not apply to the Commission's review of costs under a contract for purposes of determining whether conditions have changed such that the costs are still reasonable and prudent or whether the utility should be taking additional actions to minimize costs for customers." MEC/SC's replies to exceptions, p. 7. MEC/SC also argues that utilities are not guaranteed future cost recovery simply because the Commission determined that the initial contracting decision was reasonable. *Id.*, pp. 7-8 (citing December 1991 order).

MEC/SC also addresses Consumers' request for "reasonable prospective assurance" as to the recoverability of costs and argues that approval of a contract under MCL 460.6j⁵ does not obviate the need for yearly reviews. MEC/SC's exceptions, p. 8 (citing June 7, 2019 order in Case No. U-18404, p. 4).

⁵ MCL 460.6j(6) addresses power supply cost recovery review and states:

[i]n its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by an electric utility under subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.

MEC/SC also addresses Consumers' reference to the company's 15-year Palisades PPA, which was approved in a PSCR case. MEC/SC notes in that case, the Commission reviewed the contracting decision, not the power supply costs. MEC/SC contends that in the Palisades PPA case, the Commission specifically determined that the underlying costs would remain subject to review in the future PSCR to determine if the company had taken all appropriate actions to minimize the cost of fuel so any party could dispute the "reasonableness and prudence of the purchase." MEC/SC's exceptions, p. 9 (citing March 2007 Palisades order, pp. 63-64).

The Commission has reviewed the record and all arguments regarding this issue. The Commission finds that Consumers has changed its request regarding the preapproval of recovery in its replies to exceptions. Consumers originally asked that the Commission "approve[] the recovery by Consumers Energy Company of all payments under the amended Power Purchase Agreement." Application, p. 4. But now, Consumers asserts that approval of Amendment 4 remains subject to the Commission's continuing statutory authority and obligation to review all major contracts and power supply arrangements entered by the utility annually in its PSCR proceedings and reconciliation cases. Consumers' replies to exceptions, pp. 1-3. Generally, the Commission has the power to approve PPA and amendment requests, whereas the reasonableness of costs are addressed in a PSCR case or general rate case. MCL 460.6j(6), (13); *see also*, March 2007 Palisades order, pp. 63-66. The Commission also notes that the courts have also provided guidance on this issue, holding that "[t]he Legislature gave the [Commission] discretion in dealing with requests for approval, with the understanding that any party could dispute the reasonableness and prudence of the purchase at least in a power supply cost recovery case and perhaps in a general rate case." *Attorney General v Public Service Comm*, 220 Mich App 561, 566; 560 NW2d 348 (1996). Given the plain language of MCL 460.6j(6), the Commission adopts the

recommendation of the ALJ and will not pre-approve costs for Amendment 4. However, the Commission clarifies that it finds, as stated above, Amendment 4 to be reasonable and prudent. Therefore, Amendment 4 costs will be subject to review in PSCR plan, reconciliation, and applicable future rate cases, but will not be subject to disallowance on the basis that the underlying contract was not reasonable or prudent at the time that Consumers and T.E.S. Filer entered into Amendment 4.

THEREFORE, IT IS ORDERED that:

A. The fourth amendment to the power purchase agreement between Consumers Energy Company and T.E.S. Filer City Station Limited Partnership is approved, as described in this order.

B. The fourth amendment to the power purchase agreement between Consumers Energy Company and T.E.S. Filer City Station Limited Partnership complies with the Code of Conduct.

C. The costs associated with the fourth amendment to the power purchase agreement between Consumers Energy Company and T.E.S. Filer City Station Limited Partnership are not pre-approved and will be subject to review in PSCR plan, reconciliation, and applicable future rate cases, as applicable, but will not be subject to disallowance on the basis that the underlying contract was not reasonable or prudent at the time that Consumers and T.E.S. Filer entered into the amendment.

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 sheacl@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

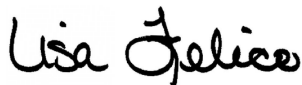


Katherine L. Peretick, Commissioner



Shaquila Myers, Commissioner

By its action of October 1, 2026.



Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

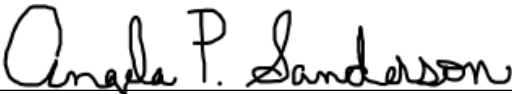
Case No. U-21946

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on October 1, 2026 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 1st day of October 2026.


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

Service List for Case: U-21946

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