

STATE OF MICHIGAN  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR 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-18402) for the 12-months )  
ended December 31, 2018. )

Case No. U-20202

**NOTICE OF PROPOSAL FOR DECISION**

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on June 29, 2020.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before July 20, 2020, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before August 3, 2020.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission  
**Sally L. Wallace**

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June 29, 2020  
Lansing, Michigan

Sally L. Wallace  
Administrative Law Judge

STATE OF MICHIGAN  
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<u>ended December 31, 2018.</u> )	

**PROPOSAL FOR DECISION**

**I.**

**HISTORY OF PROCEEDINGS**

On March 29, 2019, Consumers Energy Company (Consumers) filed an application, supported by testimony and exhibits, requesting approval to reconcile its power supply cost recovery (PSCR) plan revenues and expenses for 2018. Consumers' PSCR plan was approved in the November 14, 2019 order in Case No. U-18402.

A prehearing conference was held on May 20, 2019, at which Consumers and the Commission Staff (Staff) appeared. At the prehearing conference, petitions to intervene filed by the Department of the Attorney General (Attorney General), the Association of Businesses Advocating Tariff Equity, Midland Cogeneration Venture Limited, and the Residential Customer Group (RCG) were granted. A joint petition to intervene filed by Cadillac Renewable Energy, LLC, Genesee Power Station Limited Partnership, Grayling Generating Station Limited Partnership, Hillman Power Company, LLC, TES Filer City

Station Limited Partnership, Viking Energy of Lincoln, Inc., and Viking Energy of McBain, Inc. (collectively the biomass merchant plants or BMPs) was also granted.

The BMPs filed testimony and exhibits on August 30, 2019, and the Staff and the Attorney General filed testimony and exhibits on December 20 and 23, 2019. On January 30, 2020, Consumers and the BMPs filed rebuttal testimony and exhibits. Staff filed a motion to strike portions of the BMPs' rebuttal on February 4, 2020 and the BMPs filed a response on February 11, 2020. The BMPs filed a motion for oral argument before the presiding officer on February 12, 2020. Both motions were subsequently withdrawn.

An evidentiary hearing was held on February 18, 2020, at which three witnesses for Consumers were cross-examined. On February 25, the BMPs filed a motion to reopen the record to admit one exhibit, Exhibit BMP-30, that was omitted at the evidentiary hearing. In a ruling issued on March 3, 2020, the motion was granted, the exhibit was admitted, and the record was closed.

Consumers, Staff, the BMPs, the Attorney General, and the RCG filed briefs on March 19, 2020,<sup>1</sup> and on April 16, 2020, the company, the BMPs, Staff, and the Attorney General filed reply briefs. On April 21, 2020, the BMPs filed a motion to strike a portion of the Staff's reply brief. Staff responded on April 29, 2020. Oral argument via teleconference was held on May 1, 2020.<sup>2</sup>

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<sup>1</sup> The company and the Attorney General filed both public and confidential versions of their initial and reply briefs.

<sup>2</sup> The BMPs' motion to strike is addressed in Section V of this PFD.

## II.

### **OVERVIEW OF THE RECORD**

The evidentiary record is contained in 579 transcript pages, in three volumes, and 72 exhibits. Portions of the transcript and several exhibits are designated confidential. This section contains a brief summary of the testimony and exhibits, with a more detailed discussion of the relevant evidence and arguments contained in Section V.

#### A. Consumers

Consumers presented the testimony of nine witnesses, three of whom were cross-examined.

Norman J. Kapala, Executive Director of Coal Generation for Consumers, testified regarding the reasonableness and prudence of outages at the company's fossil fueled plants and the Ludington pumped storage facility. Mr. Kapala also discussed costs associated with certain emissions allowances and expenses for urea, aqueous ammonia, lime, and activated carbon. Mr. Kapala filed rebuttal testimony concerning replacement power costs related to outages at Karn Unit 1 and Zeeland Unit 2. He sponsored Exhibits A-2 through A-8 and rebuttal Exhibits A-22 and A-23.<sup>3</sup>

Stephen J. Nadeau, Manager of Natural Gas Supply for Generation in Fossil Fuel Supply for Consumers, testified concerning the company's 2018 actual volumes and costs of oil and gas used for electric generation. Mr. Nadeau also filed rebuttal testimony regarding replacement power costs for the Zeeland units, and he sponsored Exhibit A-9.<sup>4</sup>

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<sup>3</sup> Mr. Kapala's direct and corrected rebuttal testimony are transcribed at 2 Tr 271-301. Cross examination of Mr. Kapala begins at 2 Tr 302 and concludes at 2 Tr 322. A portion of Mr. Kapala's cross is contained in a confidential record.

<sup>4</sup> Mr. Nadeau's direct and rebuttal testimony are transcribed at 2 Tr 326-338. Cross-examination of Mr. Nadeau begins at 2 Tr 339 and ends at 2 Tr 349.

Michael B. Shi, Data Scientist in EGI Analytics for Consumers, testified regarding revenues and expenses associated with the company's participation in the Midcontinent Independent System Operator (MISO) Financial Transmission Rights (FTR) and Auction Revenue Rights (ARR) markets. Mr. Shi also provided corrected replacement power costs for outages at Zeeland Units 1 and 2 in his rebuttal testimony. Mr. Shi sponsored Exhibits A-15, A-16, and rebuttal Exhibit A-24.<sup>5</sup>

Joshua W. Hahn, a Senior Engineer in the Electric Sourcing and Resource Planning Section of Consumers' Electric Supply Department, testified regarding the projected costs in the company's 2018 PSCR plan approved in Case No. U-18402, and the actual generation requirements and purchased and interchange expenses Consumers incurred in 2018.<sup>6</sup>

Hannah L. Patton, a Senior Accounting Analyst II in the Electric Revenue and Fuel Reconciliation section of Consumers' General Accounting Department, explained the method and calculation of the company's over- or underrecovery amount related to the operation of the PSCR clause during 2018. She sponsored corrected Exhibits A-10 and A-11.<sup>7</sup>

Jenny L. Rickard, a Senior Business Support Consultant in the Electric Transactions and Wholesale Settlements section of Consumers' Electric Supply Department, provided testimony on payments to BMPs in accordance with the

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<sup>5</sup> Mr. Shi's corrected direct and rebuttal testimony are transcribed at 2 Tr 355-361. Cross examination of Mr. Shi begins at 2 Tr 362 and ends at 2 Tr 371. A portion of Mr. Shi's cross is contained in the confidential record.

<sup>6</sup> Mr. Hahn's corrected direct testimony is transcribed at 2 Tr 374-378. Mr. Hahn sponsored corrected Exhibit A-1.

<sup>7</sup> Ms. Patton's corrected testimony is transcribed at 2 Tr 381-389.

Commission's Order in Case No. U-16048 and pursuant to MCL 460.6a(9), (10), and (11). Consumers' payments to the BMPs are shown in Exhibit A-19.<sup>8</sup>

Angela K. Rissman, Manager of Coal Procurement in Fossil Fuel Supply for Consumers, testified 2018 actual volumes and costs of coal used for electric generation. Ms. Rissman sponsored Exhibits A-12 and A-13.<sup>9</sup>

Raymond T. Scaife, MISO Settlements Manager of the Electric Transactions & Wholesale Settlements section of Consumers' Electric Supply Department, testified regarding the settlement of market transactions and transmission expenses incurred with MISO. He sponsored corrected Exhibit A-14.<sup>10</sup>

Keith G. Troyer, Manager of Supply Contracts in the Transactions and Wholesale Settlements, Electric Contract Strategy Section of Consumers' Electric Supply Department, testified regarding purchased power supply costs incurred in 2018, the allocation of costs to the renewable resource fund, and purchases and sales with third parties in 2018. He sponsored corrected Exhibit A-17 and Exhibits A-18 through A-20.<sup>11</sup>

Emily J. Warners, a Senior Engineer responsible for Renewable Resources in the Transaction and Wholesale Settlements section of Consumers' Electric Supply Department, testified regarding the renewable energy transfer price included in PSCR expenses. She sponsored Exhibit A-21.<sup>12</sup>

#### B. Biomass Merchant Plants

The BMPs filed direct and rebuttal testimony and exhibits of 12 witnesses.

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<sup>8</sup> Ms. Rickard's testimony can be found at 2 Tr 392-394.

<sup>9</sup> Ms. Rissman's testimony is transcribed at 2 Tr 397-402.

<sup>10</sup> Mr. Scaife's corrected direct testimony is transcribed at 2 Tr 405-408.

<sup>11</sup> Mr. Troyer's corrected direct testimony can be found at 2 Tr 411-425.

<sup>12</sup> Ms. Warners' testimony is transcribed at 2 Tr 428-433.

Matthew C. Paradise, Finance Manager for Atlantic Power Corporation, the parent company of Cadillac Renewable Energy, LLC (Cadillac), described Cadillac's actual fuel and variable operation and maintenance (O&M) costs for 2018, and testified that those costs were reasonably and prudently incurred. Mr. Paradise also testified regarding the amount that Consumers paid to Cadillac for fuel and variable O&M costs. He sponsored Exhibits BMP-3 and BMP-17 and co-sponsored Exhibits BMP-1, BMP-2, BMP-25 and BMP-26.<sup>13</sup>

Larry Heibel, Fuel Manager for the Cadillac facility, describe Cadillac's actual fuel purchases and its variable O&M activities for 2018, testifying that these costs were reasonably and prudently incurred, and are therefore recoverable under 2008 PA 286, MCL 460.6a.<sup>14</sup>

Kenneth A. DesJardins, Plant General Manager of the Genesee Power Station (Genesee), described Genesee's actual fuel and variable O&M costs for 2018, and testified that those costs were reasonably and prudently incurred. Mr. DesJardins also testified regarding the amount that Consumers paid to Genesee for fuel and variable O&M expenses incurred during that time period and supported Genesee's request for recovery of costs under Act 286. Finally, Mr. DesJardins supported the BMPs' request for a Consumer Price Index (CPI) adjustment permitted under Act 286. He sponsored Exhibits BMP-4, BMP-10, and BMP-18, and he cosponsored Exhibits BMP-1, BMP-2, BMP-25 and BMP-26.<sup>15</sup>

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<sup>13</sup> Mr. Paradise's testimony is transcribed at 2 Tr 30-42

<sup>14</sup> Mr. Heibel's testimony is transcribed at 2 Tr 44-53.

<sup>15</sup> Mr. DesJardins' testimony is transcribed at 2 Tr 55-77

Michael D. Bean, the Asset Manager responsible for the Grayling Generating Station (Grayling) plant, described Grayling's actual fuel and variable O&M costs for 2018, and testified that those costs were reasonably and prudently incurred. Mr. Bean also testified regarding the amount that Consumers paid to Grayling for fuel and variable O&M costs in 2018. Mr. Bean sponsored Exhibits BMP-5 and BMP-19, and co-sponsored Exhibits BMP-1, BMP-2, BMP-25, and BMP-26.<sup>16</sup>

Chase D. Shepherd, Plant Manager of Hillman Power Company, LLC (Hillman), described Hillman's actual fuel and variable O&M costs for 2018, and testified that those costs were reasonably and prudently incurred. Mr. Shepherd also testified regarding the amount that Consumers paid to Hillman for fuel and variable O&M costs in 2018. Mr. Shepherd sponsored Exhibits BMP-6 and BMP-20 and co-sponsored Exhibits BMP-1, BMP-2, BMP-25, and BMP-26.<sup>17</sup>

Robert Joe Tondu, owner and president of Tondu Corporation and owner and one of two general partners of T.E.S. Filer City Station Limited Partnership (TES Filer), described TES Filer's actual fuel and variable O&M costs for 2018, and testified that those costs were reasonably and prudently incurred. Mr. Tondu also testified regarding the amount that Consumers paid to TES Filer for fuel and variable O&M costs in 2018. Mr. Tondu discussed the Cross-State Air Pollution Rule (CSAPR) and mercury and air toxics standard (MATS) as these regulations apply to TES Filer. Mr. Tondu testified regarding compliance costs incurred that TES Filer contends are not subject to the monthly cap on cost recovery under the statute, explaining that these costs were reasonably and prudently incurred. Mr. Tondu filed rebuttal testimony in response to Staff's and the

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<sup>16</sup> Mr. Bean's testimony is transcribed at 2 Tr 79-95.

<sup>17</sup> Mr. Shepherd's testimony is transcribed at 2 Tr 97-113.



Attorney General's witnesses.<sup>18</sup> He sponsored Exhibits BMP-7, BMP-11, BMP-12, BMP-13, BMP-14, BMP-15, BMP-16, BMP-23 and BMP-24, and co-sponsored Exhibits BMP-1, BMP-2, BMP-25 and BMP-26.<sup>19</sup>

Neil R. Taratuta, Plant Manager for Lincoln Power Station (Viking-Lincoln), described Viking-Lincoln's actual fuel and variable O&M costs for 2018, and testified that those costs were reasonably and prudently incurred. Mr. Taratuta also testified regarding the amount that Consumers paid to Viking-Lincoln for fuel and variable O&M costs in 2018. Mr. Taratuta sponsored Exhibits BMP-8 and BMP-21 and co-sponsored Exhibits BMP-1, BMP-2, BMP-25, and BMP-26.<sup>20</sup>

Thomas V. Vine, Plant Manager for the Viking Energy McBain Power Station (Viking-McBain) described Viking-McBain's actual fuel and variable O&M costs for 2018, and he testified that those costs were reasonably and prudently incurred. Mr. Vine also testified regarding the amount that Consumers paid to Viking-McBain for fuel and variable O&M costs in 2018. Mr. Vine sponsored Exhibits BMP-9 and BMP-22 and co-sponsored Exhibits BMP-1, BMP-2, BMP-25, and BMP-26.<sup>21</sup>

Donald Adams, a Regional Fuel Manager for Viking Energy, describe fuel procurement practices for Viking-Lincoln and Viking-McBain and provided support to demonstrate that fuel costs for the two plants were reasonably and prudently incurred.<sup>22</sup>

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<sup>18</sup> Mr. Tondou's direct testimony is transcribed at 2 Tr 115-155, and his rebuttal testimony is transcribed at 2 Tr 259-263.

<sup>19</sup> Exhibits BMP-24, BMP-25, and BMP-26 were withdrawn and are not part of the record. See 2 Tr 264.

<sup>20</sup> Mr. Taratuta's testimony is transcribed at 2 Tr 157-169.

<sup>21</sup> Mr. Vine's testimony is transcribed at 2 Tr 171-184.

<sup>22</sup> Mr. Adams' testimony is transcribed at 2 Tr 186-194.

Todd Guenthardt, the Senior Maintenance Supervisor at TES Filer, filed rebuttal testimony in response to the Staff's and the Attorney General's witnesses. He sponsored Exhibits BMP-27 and BMP-28.<sup>23</sup>

Andrew W. Sutherland, a Senior Project Manager, Senior Mechanical Engineer, and Associate Vice President of HDR Engineering, Inc. testified in response to Staff's witness and in support of the reasonableness and prudence of TES Filer's actions in managing its plant.<sup>24</sup>

John F. Caudell, PE, the owner of As-Needed Resources. LLC, also testified that TES Filer's actions regarding burning natural gas were reasonable and prudent.<sup>25</sup>

### C. Commission Staff

Naomi J. Simpson, a Public Utilities Engineer in the Generation and Certificate of Need Section in the Commission's Energy Resource Division, offered Staff's position regarding the MATS regulations as they apply to TES Filer's request for fuel costs related to MATS compliance.<sup>26</sup>

Raushawn D. Bodiford, an engineer in the Act 304 and Sales Forecasting Section of the Commission's Energy Operations Division, testified concerning TES Filer's uncapped fuel costs reportedly incurred for MATS compliance and Staff's alternative proposal recommending disallowance of uncapped costs. Mr. Bodiford sponsored Exhibits S-2.0, S-2.1, S-2.2, confidential Exhibit S-2.3, and Exhibit S-2.4.<sup>27</sup>

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<sup>23</sup> Mr. Guenthardt's rebuttal testimony is transcribed at 2 Tr 196-245.

<sup>24</sup> Mr. Sutherland's rebuttal testimony can be found at 2 Tr 247-253.

<sup>25</sup> Mr. Caudell's rebuttal testimony is transcribed at 2 Tr 255-257.

<sup>26</sup> Ms. Simpson's testimony is transcribed at 2 Tr 527-534.

<sup>27</sup> Mr. Bodiford's testimony is available at 2 Tr 500-515.

Gretchen M. Wagner, the Utility Depreciation Auditor in the Act 304 Reconciliations Section of the Commission's Energy Operations Division, presented the Staff's recommendations regarding Consumer's cumulative PSCR reconciliation for 2018. Ms. Wagner also addressed the BMPs' request for cost recovery for their capped and uncapped actual fuel and variable O&M costs incurred in 2018. Ms. Wagner sponsored Exhibits S-1.0, S-1.1, S-1.2, and S-1.3.<sup>28</sup>

Jesse J. Harlow, Manager of the Resource Adequacy and Retail Choice Section of the Commission's Energy Resources Division, provided recommendations regarding Consumers' presentation of information subject to MCL 460.6w(3)(b) for its State Reliability Mechanism (SRM) in PSCR reconciliation cases and made a recommendation for the information to use in its next rate case filing related to the SRM. Mr. Harlow sponsored Exhibit S-3.<sup>29</sup>

#### D. Attorney General

Sebastian Coppola, an independent business consultant with extensive experience in utility matters, testified on behalf of the Attorney General. As described in more detail below, Mr. Coppola recommended disallowances of certain replacement power costs related to plant outages and the correction of an overrecovery of costs pertaining to a sanction assessed to Consumers by MISO. He also recommended an adjustment for fuel costs incurred by TES Filer and adjustments to the PSCR underrecovery balance filed by the company, including revising the prior year carryover

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<sup>28</sup> Ms. Wagner's testimony is transcribed at 2 Tr 537-547.

<sup>29</sup> Mr. Harlow's testimony is transcribed at 2 Tr 518-524.

balance. Mr. Coppola sponsored confidential Exhibit AG-1 and Exhibits AG-2 through AG-6.<sup>30</sup>

### III.

#### **POSITIONS OF THE PARTIES**

##### **A. Consumers**

Consumers asserts that its 2018 PSCR costs were reasonably and prudently incurred, noting that the company removed the MISO sanction charge that it inadvertently included in its initial filing.<sup>31</sup> Consumers disagrees with the Attorney General's proposed disallowances for outages at the Karn and Zeeland units, contending that the company's actions were appropriate in the case of all three outages. Specifically, Consumers maintains that it planned and executed the replacement battery project at Karn Unit 1 in a reasonable and prudent manner, and that the outages at the Zeeland Units were the result of low pressure events that caused the company to take Zeeland Unit 2, a combustion turbine (CT), offline while allowing the two Zeeland combined cycle (CC) units to continue to operate in manner that provided the lowest PSCR cost. Consumers therefore requests that the Commission reject the Attorney General's proposed disallowances and approve the company's 2018 PSCR reconciliation.

##### **B. Biomass Merchant Plants**

According to the BMPs, there is no dispute over the capped fuel and variable O&M costs for Cadillac, Genesee, Grayling, Hillman, Viking-Lincoln and Viking-McBain and that the only costs at issue at this point in the proceeding are those uncapped costs associated with MATS compliance at TES Filer.

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<sup>30</sup> Mr. Coppola's testimony is transcribed at 2 Tr 437-455. Mr. Coppola also filed confidential testimony.

<sup>31</sup> See, Corrected Exhibit A-14.

The BMPs explain that in their initial filing, TES Filer's natural gas costs, totaling approximately \$2.77 million, were split equally between the capped and uncapped recovery amounts. Subsequently, TES Filer explains that it revised its request to remove all natural gas costs from the capped recovery amount, leaving approximately \$1.4 million in natural gas costs as part of its uncapped costs only. TES Filer maintains that this is consistent with Staff's alternative proposal to allow half of MATS-related natural gas costs (plus MATS testing costs and NO<sub>x</sub> allowance costs) as part of uncapped costs.<sup>32</sup>

According to the BMPs, "This case presents an extraordinary request by the MPSC Staff. The Staff's initial request is that TES Filer . . . receive absolutely no cost recovery for any part of the \$2,774,396 in natural gas cost that TES incurred to generate 36,362.65 MWhs of electricity delivered to Consumers Energy Company and its customers pursuant to an MPSC approved Power Purchase Agreement."<sup>33</sup> The BMPs argue that Staff's primary recommendation, to disallow all MATS costs, is not consistent with the plain language of MCL 460.6a(10), which provides for uncapped recovery of environmental compliance costs.

Next, the BMPs assert:

The Staff's alternative position is that TES be permitted to recover \$1,387,198 in MATS compliance natural gas fuel costs and \$164,937 in MATS compliance emissions testing costs as well as \$6,000 in NO<sub>x</sub> seasonal allowances (which NO<sub>x</sub> allowances have been recovered in previous cost recovery proceedings). TES agrees with the Staff's alternative proposed cost recovery.<sup>34</sup>

In total, the BMPs seek Commission approval to recover \$15,603,665 in payments, including \$14,045,520 in capped payments and \$1,558,135 in uncapped payments for

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<sup>32</sup>BMP brief, pp. 3-4; Exhibit BMP-30.

<sup>33</sup> BMPs brief, p. 2.

<sup>34</sup> Id.

environmental costs. TES Filer specifically calculates \$5,521,020 in capped variable fuel and O&M costs, of which Consumers has paid \$3,573,295, and \$1,558,135 in uncapped costs.<sup>35</sup>

Citing testimony by Messrs. Guenthardt, Sutherland, Tondou, and Caudell, TES Filer maintains that the installation of the gas burners, the changes to plant operations, and the decision to flow natural gas full time were reasonable and prudent and were necessitated by the requirement that TES Filer comply with MATS regulations for minimizing emissions and operating the plant safely.<sup>36</sup> TES Filer reiterates that the CO emissions and clinker issues were the result of overfire air injected into the boiler and that TES Filer worked for two years to find a means to avoid burning natural gas, ultimately concluding that the only way to solve the emissions and safety problems was to reduce the amount of tire derived fuel (TDF) and coal being burned and replace it with natural gas.

Finally, TES Filer points out that its witnesses have vastly more training, education, and experience in “operating electric generating plants, retrofitting natural gas burners to existing generating facilities, operating generating plants with retrofit natural gas burners, blending solid and gaseous fuels, balancing generating plant operations including all safety and equipment specifications for both a spectrum of fuel combustion

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<sup>35</sup> Id. at 11 (Table).

<sup>36</sup> TES Filer notes that there was an existing boiler condition in 2018 that, when repaired in 2019, reduced the daily gas requirement from 2,200 Mcf to 1,100 Mcf. “Based upon that fact, TES fairly and reasonably attributed 1,100 MCF per day of natural gas to the operation of the burners and plant in order to comply with MATS (which excluded the amount attributable to then-existing plant conditions). . . . Given the foregoing, TES has requested reimbursement of only half (i.e., \$1,387,198) of those [\$2,774,396] fuel costs and \$164,937 in compliance testing costs as an uncapped cost pursuant to MCL 460.6a(10).” BMP brief, p. 21.

variations and air use permitting and compliance matters[]”<sup>37</sup> than Mr. Bodiford or Mr. Coppola, [whose] “testimony is erroneous and should be rejected.”<sup>38</sup>

In summary, the BMPs state:

The Company’s filed case includes the \$12,000,000 base amount of BMP cost recovery, but not the CPI adjustment and not TES’s NO<sub>x</sub> and MATS expenses, all of which are authorized by statute and reflected in Exhibits BMP-1, BMP-2 and BMP-7. The MPSC Staff agreed with the BMPs’ capped fuel and variable O&M cost recovery amount of \$14,045,520.19 The Staff also agreed with TES Filer’s City’s recovery of \$6,000 in NO<sub>x</sub> expenses and proposed that the Company’s filed figures be adjusted accordingly. Because TES is entitled to recover the costs it incurred as a result of its obligation to comply with Mercury and Air Toxics Standards (“MATS”) rules, which was enacted after October 6, 2008, the Commission should also accept TES’s claim for uncapped cost reimbursement. Accordingly, the Commission should accept the BMPs’ total requested capped recovery of \$14,045,520 and adjust the Company’s requested recovery as appropriate to also include TES’s uncapped costs in the amount of \$1,558,135.<sup>39</sup>

### C. Commission Staff

Staff explains that it made adjustments to Consumers’ overrecovery amount to reflect TES Filer’s NO<sub>x</sub> expense and the BMPs capped cost recovery amount. In addition, Staff recommended that the Commission direct the company to report whole kilowatt-hour (kWh) amounts, instead of using rounded megawatt-hours (MWh), in future PSCR reconciliations.<sup>40</sup> In all other respects, Staff had no issues with the company’s PSCR reconciliation.

With respect to TES Filer’s request for MATS costs, Staff first asserts that MATS compliance costs are not appropriate for recovery because uncapped costs under MCL

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<sup>37</sup> BMP brief, p. 22.

<sup>38</sup> Id. at 10.

<sup>39</sup> BMP brief, pp. 11-12 (fn omitted).

<sup>40</sup> As discussed in Ms. Wagner’s testimony, reporting unbilled current month sales in kWh, rather than MWh, is consistent with past practice and does not affect cost recovery here. See, 2 Tr 546. Consumers does not appear to dispute Staff’s recommendation. Consumers should therefore be directed to comply with Staff’s reporting recommendation in future proceedings.

460.6a(10) apply only to those costs associated with environmental regulations applied to wood or wood wastes. Alternatively, Staff contends that TES Filer's natural gas costs for MATS compliance were unreasonably and imprudently incurred through the inappropriate design and operation of its plant. Accordingly, Staff maintains that uncapped costs for natural gas should be disallowed.

In its reply brief, Staff takes issue with the BMPs characterization of Staff witnesses' expertise and the BMPs' claims about Staff's positions in this case. Staff points out that the BMPs' disagreement with Staff "goes well beyond disagreement with positions taken in testimony and amounts to ad hominem attacks against Staff witnesses in this proceeding[,]" adding, "[t]he[se] arguments can only be interpreted to mean that the BMPs believe only BMP witnesses who operate BMP facilities are qualified to comment on the plant's management[,]" despite the requirement that the proceeding be conducted as a contested case.<sup>41</sup>

Next, Staff disputes the BMPs' claim that capped cost recovery is no longer in issue, noting that Staff's position remains the same as it was presented in testimony and in Staff's brief: namely that all natural gas costs should be removed from both capped and uncapped costs. Staff also takes issue with the BMPs' list of "facts" that Staff purportedly accepts, noting that mere recitation of another witness' testimony by a Staff witness does not constitute acceptance or agreement.<sup>42</sup> Staff also argues that the BMPs mischaracterize Mr. Bodiford's testimony, reiterating that Staff's position was not based on TES Filer's failure to determine a proper fuel mix: According to Staff:

Staff made no such assertions in direct testimony and Staff's position has not changed since direct testimony was filed. Staff analyzed the

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<sup>41</sup> Staff brief, p. 4.

<sup>42</sup> Id. pp. 5-6.



circumstances (burner installation and operation) that led to the balance of plant problems at Filer City and then evaluated whether the course of action to correct the problems were systematically undertaken in a reasonable and verifiable manner.<sup>43</sup>

Staff concludes that TES Filer failed to address Staff's analysis and:

[It]presented no justification or reasonable explanation for leaving its clinker problem virtually unaddressed for 2 years and 4 months and then suddenly burning far more natural gas than its own witness asserts was necessary. TES Filer now seeks to shoehorn the costs of these unreasonable actions into the category of MATS compliance costs.<sup>44</sup>

#### D. Attorney General

The Attorney General contends that the Commission should disallow approximately \$3.4 million in replacement energy costs associated with three outages at Karn Unit 1 and Zeeland as well as \$103,849 in sanctions costs Consumers paid to MISO.<sup>45</sup> The Attorney General maintains that Consumers failed to meet its burden to show that the company's actions related to these outages were reasonable and prudent.

With respect to TES Filer's uncapped cost recovery, the Attorney General states that she prefers that TES Filer recover any incremental natural gas costs as part of the BMPs' capped cost recovery, asserting that "burden[ing] customers with additional costs outside of the \$12 million expense limitation by burning more expensive natural gas in the fuel mix in order to meet emission rules is not a reasonable cost recovery alternative."<sup>46</sup>

#### E. Residential Customer Group

The RCG concurs with the disallowances recommended by the Attorney General.

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<sup>43</sup> Id. at 9-10, quoting Staff brief at 13.

<sup>44</sup> Staff reply brief, p. 12.

<sup>45</sup> As noted above, these costs have been removed from Consumers' reconciliation and will not be addressed further.

<sup>46</sup> Attorney General's brief, p. 19, quoting 2 Tr 453.

#### IV.

#### **LEGAL REQUIREMENTS**

MCL 460.6j(12) provides for an annual PSCR reconciliation of revenues and expenses associated with a utility's PSCR plan and factors:

Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a utility's power supply cost recovery plan, the commission shall commence a proceeding, to be known as a power supply cost reconciliation, as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969. Reasonable discovery shall be permitted before and during the reconciliation proceeding in order to assist parties and interested persons in obtaining evidence concerning reconciliation issues including, but not limited to, the reasonableness and prudence of expenditures and the amounts collected pursuant to the clause. At the power supply cost reconciliation the commission shall reconcile the revenues recorded pursuant to the power supply cost recovery factors and the allowance for cost of power supply included in the base rates established in the latest commission order for the utility with the amounts actually expensed and included in the cost of power supply by the utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue was not considered adequately at a previously conducted power supply and cost review.

In addition, certain costs that must be disallowed, or that are not recoverable without prior Commission approval, are detailed in MCL 460.6j(13). Finally, the means for addressing over-and underrecoveries are set forth under MCL 460.6j(14)-(15).

In the case where a utility purchases energy from one or more BMPs under a power purchase agreement, the following additional provisions under MCL 460.6a apply:

(9) If, on or before January 1, 2008, a merchant plant entered into a contract with an initial term of 20 years or more to sell electricity to an electric utility whose rates are regulated by the commission with 1,000,000 or more retail customers in this state and if, before January 1, 2008, the merchant plant generated electricity under that contract, in whole or in part, from wood or solid wood wastes, then the merchant plant shall, upon petition by the merchant plant, and subject to the limitation set forth in subsection (10), recover the amount, if any, by which the merchant plant's reasonably and prudently incurred actual fuel and variable operation and maintenance costs

exceed the amount that the merchant plant is paid under the contract for those costs. This subsection does not apply to landfill gas plants, hydro plants, municipal solid waste plants, or to merchant plants engaged in litigation against an electric utility seeking higher payments for power delivered pursuant to contract.

(10) The total aggregate additional amounts recoverable by merchant plants under subsection (9) in excess of the amounts paid under the contracts shall not exceed \$1,000,000.00 per month for each affected electric utility. The \$1,000,000.00 per month limit specified in this subsection shall be reviewed by the commission upon petition of the merchant plant filed no more than once per year and may be adjusted if the commission finds that the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs exceed the amount that those merchant plants are paid under the contract by more than \$1,000,000.00 per month. The annual amount of the adjustments shall not exceed a rate equal to the United States consumer price index. The commission shall not make an adjustment unless each affected merchant plant files a petition with the commission. If the total aggregate amount by which the eligible merchant plants reasonably and prudently incurred actual fuel and variable operation and maintenance costs determined by the commission exceed the amount that the merchant plants are paid under the contract by more than \$1,000,000.00 per month, the commission shall allocate the additional \$1,000,000.00 per month payment among the eligible merchant plants based upon the relationship of excess costs among the eligible merchant plants. The \$1,000,000.00 limit specified in this subsection, as adjusted, does not apply to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008. The \$1,000,000.00 per month payment limit under this subsection does not apply to merchant plants eligible under subsection (9) whose electricity is purchased by a utility that is using wood or wood waste or fuels derived from those materials for fuel in their power plants. As used in this subsection, "United States consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

(11) The commission shall issue orders to permit the recovery authorized under subsections (9) and (10) upon petition of the merchant plant. The merchant plant is not required to alter or amend the existing contract with the electric utility in order to obtain the recovery under subsections (9) and (10). The commission shall permit or require the electric utility whose rates are regulated by the commission to recover from its ratepayers all fuel and variable operation and maintenance costs that the electric utility is required to pay to the merchant plant as reasonably and prudently incurred costs.

Thus, the BMPs petitioning in this case may receive additional fuel and variable O&M expenses, capped at \$1 million per month, adjusted for inflation. As discussed in more detail below, a merchant plant may also recover additional costs “that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008[]” pursuant to MCL 460.6a(10).

## V.

### **DISCUSSION**

According to Corrected Exhibit A-10, Consumers’ 2018 PSCR reconciliation results in a total net underrecovery of \$30,841,109. Including statutory interest in the amount of \$2,483,449, as shown in Corrected Exhibit A-11, and the 2018 overrecovery amount of \$29,919,993, results in an overrecovery for 2018 of \$1,562,333.

As indicated above, Staff adjusted the company’s beginning balance to reflect the Commission’s October 17, 2019 order in Case No. U-20068, which approved an overrecovery of \$31,730,557, including interest, to be reflected as Consumers’ beginning balance in this reconciliation.<sup>47</sup> Staff also included TES Filer’s \$6,000 uncapped NO<sub>x</sub> expense as part of Purchased, Interchange & Renewable Power costs, as well as the BMPs’ interest-adjusted, capped fuel and variable O&M expenses.<sup>48</sup> The result of Staff’s adjustments is an overrecovery of \$1,498,775, including interest.<sup>49</sup>

The Attorney General agreed with the BMPs’ calculation of \$14,045,520 in inflation-adjusted capped fuel and O&M costs and with the update to the beginning balance, as determined in the October 17, 2019 order in Case No. U-20068. As

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<sup>47</sup> See, 2 Tr 542; Exhibit S-1, line 48.

<sup>48</sup> See, 2 Tr 542, Exhibit S-1, line 26.

<sup>49</sup> Staff brief, p. 3.

addressed in detail below, the Attorney General made adjustments to the company's power supply costs, and she made recommendations with respect to the BMPs' requested uncapped cost recovery.

A. Attorney General's Recommended Disallowances for Plant Outages

The Attorney General recommended disallowances of replacement power costs, totaling \$3.4 million, resulting from three outages at Karn Unit 1 and Zeeland Unit 2. The specifics of these proposed disallowances are discussed below.

1. Karn Unit 1 Outage

Mr. Kapala explained that the unplanned outage at Karn Unit 1 began on September 27, 2018 and ended on November 20, 2018, as a result of the replacement of the 125 Volt DC batteries for Karn Units 1 and 2.<sup>50</sup> Mr. Kapala testified that the replacement was planned in 2017, and he described the planning activities and approvals for the project.

Mr. Coppola testified that, based on his review of the root cause analysis of the incident, Consumers acted unreasonably in installing the distribution block component without additional verification that the replacement part was the correct one.<sup>51</sup> According to Mr. Coppola:

Apparently, when replacing the distribution block component of the DC battery that controls certain aspects of two of the Karn generating units, the contractor installed a single pole distribution block instead of a two-pole distribution block. According to the Company's root cause analysis on page 9 of ST-CE-25 ATT 4 CONF, the contractor did not validate that the distribution block received was the one ordered. Additionally, Consumers Energy's and the contractor's employees did not verify that the terminals

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<sup>50</sup> 2 Tr 279, 291.

<sup>51</sup> See, Confidential Exhibit AG-1.

were isolated and the distribution block was a two-pole block before energizing the circuit by checking for shorts and grounds.<sup>52</sup>

In rebuttal, Mr. Kapala testified that the company ordered the correct distribution block, and “the part number on the two-pole distribution block packaging was verified to be correct by both the shipper and receivables check-in.”<sup>53</sup> However, “[d]espite the fact that the correct two-pole distribution block was ordered, and the fact that the package containing the distribution block received was labeled with the correct part number, the actual part inside the package was a single-pole distribution block. The single pole and two-pole distribution blocks have a similar appearance.”<sup>54</sup> Mr. Kapala added that the electrical circuit was tested prior to energization consistent with company procedures.

Mr. Kapala agreed with Mr. Coppola’s calculation of lost generation (314,260 MWh) during the outage, as well as his calculation of the replacement power cost of \$2,607,581; however, he testified that Consumers was able to undertake additional maintenance work during the outage period that would limit or avoid a future outage.<sup>55</sup> Mr. Kapala explained that before the outage, Consumers determined that the bearings in the intermediate pressure (IP) turbine were worn, and the company used the outage as an opportunity to send the bearings to the manufacturer to be refurbished. According to him, this potentially avoided an additional shutdown of 20 days and power replacement costs of approximately \$0.966 million.<sup>56</sup> Mr. Kapala further noted that Karn Unit 1

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<sup>52</sup> 2 Tr 444. It should be noted that although the Mr. Coppola’s testimony quoted above was marked confidential in his direct testimony, the testimony appears in the public record as part of Mr. Kapala’s rebuttal. See, Confidential 2 Tr 192.

<sup>53</sup> Id. at 292.

<sup>54</sup> Id. at 293.

<sup>55</sup> 2 Tr 293; Exhibit A-22.

<sup>56</sup> 2 Tr 294; Exhibit A-23.

delivered a positive net energy value (NEV) of \$7.24 million, despite the cost of replacement power.<sup>57</sup>

In her brief, the Attorney General disputes Consumers' claim that the Karn outage was mitigated by additional work performed on Karn Unit 2, contending that the incident that caused the shutdown in the first place was managed in an unreasonable and imprudent manner. She adds:

[T]he Company's analysis is speculative at best since the actual value of replacement cost for some unspecified time period is unknown. Third, it is possible that a future outage to address the Karn 2 issues could have been scheduled to coincide with other outages. Fourth, it is also possible that economics of the power market at some future time may be more favorable for the Karn 2 outage than at the time of the Karn 1 outage (e.g., power costs could be less than power generated by the plant if it was operating).<sup>58</sup>

While conceding that the precise amount of the costs avoided by the outage is unknown, and could be higher or lower than the amount the company calculated, Consumers points out:

The Attorney General seems to mistakenly believe that these additional repairs were performed on Karn Unit 2, and as a result questions the need for the repairs since it had been approximately five months since the previously scheduled outage for Karn Unit 2 had been postponed. Attorney General's Initial Brief, page 9. As discussed, the IP turbine bearing repairs took place on Karn Unit 1, not Karn Unit 2, and they were necessary to address an outage risk that existed during unit start up. See 3 TR 293-295, 313; Exhibits A-22 (NJK-8) and A-23 (NJK-9).

The Attorney General also contends that "the replacement cost of the energy lost from Karn 2 would have doubled the amount of cost disallowance proposed by the Attorney General for this incident" were it not for the Company taking advantage of the outage to perform work on Karn Unit 2. Attorney General's Initial Brief, page 9. The Attorney General is incorrect that the work performed on Karn Unit 2 during the Karn Unit 1 outage was performed because of the opportunity presented by the outage

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<sup>57</sup> 2 Tr 295. Mr. Kapala explained that NEV "essentially measures the difference between a unit's production cost and the price that the Company is paid in the . . . MISO energy market for the unit's generation. A positive NEV effectively reduces customer power supply costs by the NEV amount." Id.

<sup>58</sup> Attorney General brief, p. 10.

at Karn Unit 1. At the time of the Karn Unit 1 outage, Karn Unit 2 was already in a planned outage to perform several maintenance activities, including repair and replacement of Pulse Jet Fabric Filter bags and the Selective Catalytic Reduction catalyst and overhaul and maintenance of the Distributed Control System, NOx Analyzer, and Component Cooling Water Pump. 2 TR 278; Exhibit A-4 (NJK-3). These repair and maintenance activities were planned prior to and were not connected with the Karn Unit 1 outage.<sup>59</sup>

This PFD finds that Consumers' actions with respect to replacing the battery at the Karn plant were reasonable. The record reflects that Consumers ordered the correct part, and it reasonably relied on the representations by the supplier of the part, namely the label specifying that the box contained the part that was ordered. Moreover, as Mr. Kapala testified and Exhibit A-4 shows, the one pole and two pole distribution blocks are quite similar, if not identical, in appearance.<sup>60</sup> In addition, there is nothing in this record indicating that Consumers has encountered other instances where the correct part was ordered; it was sent in mismarked packaging, and both items (correct and incorrect) were indistinguishable. Thus, the company's plan to address the possibility that this unusual set of circumstances might occur in the future is appropriate, and it does not indicate that past validation procedures were inadequate or unreasonable as the Attorney General suggests. Based on the above discussion, no disallowance is warranted.

This PFD also agrees that Consumers took measures to mitigate the cost of the Karn Unit 1 outage by undertaking additional maintenance work on the unit, thus avoiding the possibility of a future outage and additional power replacement costs. The Attorney General's claim, that the IP turbine work was performed on Karn Unit 2, is mistaken as shown at the top of the Inspection Report in Exhibit A-22, which clearly references

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<sup>59</sup> Consumers' rely brief, p. 7.

<sup>60</sup> See 2 Tr 292-293, 306.



“Plant/Unit: Karn 1.” Thus, if the Commission finds that a disallowance is warranted, the ALJ recommends that the replacement power costs of \$2.607 million be reduced by \$.996 million to reflect the avoided cost of an additional outage for IP turbine repair. While the actual costs for power replacement, in the event that a second outage had occurred, cannot be determined, Consumers’ use of the same replacement power costs that were incurred during the actual outage at Karn Unit 1 is a reasonable approximation.

## 2. Zeeland Unit 2 Outages

Mr. Coppola also recommended a disallowance of \$762,000 associated with replacement power costs for two outages that occurred on January 13 and January 14-19, 2018 at Zeeland Unit 2.<sup>61</sup> According to Mr. Coppola, “[e]nsuring that a power plant has adequate supply of natural gas to operate all its generating units is a basic responsibility of Company management[.]”<sup>62</sup> noting that although Consumers has experienced problems with low pressure events since 2001, it only began to address these issues with SEMCO, the operator of the lateral pipeline, in 2007. Mr. Coppola testified that although SEMCO replaced the regulator valve, the low-pressure situation worsened before 2018. Mr. Coppola opined:

[I]f the Company was aware that the low-pressure problem was still occurring during the summer period of 2017, it should have directed SEMCO Energy to resolve the problem before the winter of 2018, thus preventing the two power outages in January 2018.

The Company did not act prudently in failing to take reasonable action steps to prevent the two outages. Customers should not be responsible to pay for costs that are the result of inaction by the Company or its suppliers to resolve problems which could lead to power outages and the purchase of more expensive power. As stated earlier, customers are already absorbing

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<sup>61</sup> This amount was calculated based on a discovery response from the company that was corrected after Mr. Coppola filed his direct testimony. The actual power replacement cost for the CT unit that was out was \$47,028. See, 2 Tr 299; 360-361.

<sup>62</sup> 2 Tr 447.

the incremental cost of more than 490 power outages and should not be responsible for higher power costs that are the result of persistent problems not adequately resolved by the Company and its suppliers. Also, the Company should not be allowed to shift the responsibility or blame for the problem to its supplier. Ultimately, the Company is responsible to ensure that its suppliers provide the required services it has contracted to receive.<sup>63</sup>

In response, Mr. Nadeau testified that there were two causes for the low-pressure events at Zeeland. First, SEMCO installed two new regulators on the line in 2017, which resulted in a slightly larger pressure drop when Zeeland was using the maximum volume of gas. Second, there was inadequate pressure on the ANR pipeline that delivers gas to the SEMCO lateral. Mr. Nadeau discussed the company's contracts with SEMCO and ANR, noting that although the contract with ANR (through a gas management services agent) and that with SEMCO require a maximum daily quantity (MDQ) of gas, the contract with ANR does not require that the gas be delivered to the interconnection with SEMCO at a pressure above 250 pounds per square inch gauge (psig). Mr. Nadeau further testified that the pressure at the interconnection point must be 620 psig for Zeeland to operate at full capacity.<sup>64</sup>

Mr. Nadeau stated that Consumers has evaluated adding a pressure guarantee to the ANR contract, explaining:

The [gas management services] Agent holds a portfolio of contracts with ANR which have enough capacity to serve all of its customers and specifically, provide the full daily volume requirements at Zeeland. This provides significant cost savings to the Company's customers since the Company and its customers (through the Agent) have full access to the Agent's portfolio of natural gas transportation contracts and only pays the Agent for the volume of natural gas transportation that Zeeland demands at any point in time. This avoids the Company [sic] being required to pay ANR for firm transportation for Zeeland's maximum daily volume requirements all the time, even when the entire contract volume is not being utilized. In order to implement a pressure guarantee with ANR, the Company or its Agent

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<sup>63</sup> 2 Tr 448.

<sup>64</sup> 2 Tr 334-336.

would need to establish a natural gas transportation contract with ANR specific to Zeeland for the maximum daily volume requirement, at a cost much greater than utilizing the Agent's portfolio of contracts combined with volume diversity associated with those contracts. The Company's customers would bear the full cost of such a contract with ANR.<sup>65</sup>

Mr. Nadeau estimated that a contract with ANR containing a pressure guarantee would cost customers approximately \$24 million per year above the current amount to supply gas to Zeeland.<sup>66</sup>

As an alternative to a pressure guarantee with ANR, Mr. Nadeau explained that SEMCO could install compressors, replace the lateral with one of a larger diameter, or loop the pipe, any of which could help decrease the number of low pressure events. However:

As Company witness Michael B. Shi states in his rebuttal testimony, the economic loss of generation for the two outages was corrected from \$762,088 to \$47,028. All of the above stated potential options would cost the Company's customers substantially more annually, and therefore would be unreasonable and imprudent for the Company to pursue.<sup>67</sup>

Finally, Mr. Nadeau testified that Consumers undertook an engineering study with SEMCO to determine how the new regulators and pressure relief valves on the line could be adjusted to compensate for the pressure drop. Once SEMCO and the company determined that adjustments could be made, work on changing the regulators was completed by April 2019.<sup>68</sup>

In her brief, the Attorney General notes that although there have been a few low-pressure events since the regulator set points were adjusted, none of them has led to a unit shutdown. According to her, "[t]his outcome highlights the Company's failure to

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<sup>65</sup> 2 Tr 336.

<sup>66</sup> Id. at 337.

<sup>67</sup> Id.

<sup>68</sup> Id. at 337-338.

conduct such a study or take a similar action earlier and possibly avoid the outages in this case.<sup>69</sup> She adds that although the remedies for the low pressure issue cited by the company are not economical, “it is unreasonable to cut-off further investigations that could lead to other possible options to eliminate the risk of additional outages from this known problem.”<sup>70</sup>

Consumers responds that the company has fully rebutted the Attorney General’s position on the record. Consumers does not own the SEMCO lateral, and any changes to the gas delivery system would have to be agreed to by both parties. The company reiterates that the occasional low-pressure situation at Zeeland involves both the SEMCO lateral and the ANR pipeline, neither of which contain pressure guarantees. Consumers again points out that although a pressure guarantee could be incorporated into the contracts, the cost would far exceed replacement power costs associated with infrequent outages from low-pressure events.

While adjusting the pressure regulator set points may not fully address the sporadic low-pressure problems at Zeeland, this PFD agrees with the Attorney General that Consumers unreasonably delayed undertaking an engineering study to evaluate changes to the regulators. As shown in the company’s discovery response (Exhibit AG-2, p. 5), Zeeland has a history of low-pressure events, dating from before the plant was converted from a peaker plant to operation as a baseload unit. The situation apparently worsened after SEMCO replaced the regulators in 2017, but Consumers waited until 2018 to carry out an engineering study to address the pressure drop that resulted from the new

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<sup>69</sup> Attorney General brief, p. 13.

<sup>70</sup> Id.

regulators. Thus, based on this record, a disallowance of \$47,028 for the Zeeland outages is warranted.

That said, the ALJ agrees with Consumers that the mitigation strategies identified by the company thus far (i.e., entering a firm contract with ANR containing a pressure guarantee or rebuilding or otherwise reconfiguring the SEMCO lateral to eliminate pressure drops) are not economical compared to the cost of replacement power under low-pressure conditions. Nevertheless, the Attorney General's recommendation that Consumers should continue to explore less costly alternatives to address the pressure issues at Zeeland is well-taken and should be adopted.

#### B. MATS Compliance Costs at TES Filer

As quoted above, MCL 460.6a(10), provides that the \$1 million per month limit on cost recovery by BMPs under Subsection (9) does not apply "to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008." Staff and the Attorney General take various positions regarding why MATS costs generally, or natural gas costs specifically should be disallowed under Subsection(10), or disallowed entirely. These arguments are addressed below.

##### 1. Applicability of MCL 460.6a(10) to MATS Compliance Costs

Staff argues that TES Filer's request for recovery of MATS costs should be denied because the uncapped environmental costs referenced in Subsection (10) apply only to environmental regulations that apply to the burning of wood or wood waste. According to Staff:

Filer City's utilization of natural gas does not comport with the express language in the applicable provisions specifying recovery for merchant plant

generation from wood or wood waste fuels. As explained by Staff witness Simpson, the “actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008,” in MCL 460.6a(10) means any changes to federal or state environmental laws or regulations specific to wood or solid wood wastes. (2 TR 533.) The MATS rule specifically creates rules for coal electric generation and although Filer City does have to comply with the requirements set forth by the MATS rule, Staff maintains that the provisions of MCL 460.6a(10) do not allow for such recovery because section (10) is addressing changes in federal or state environmental laws or regulations related to wood or solid wood fuel.<sup>71</sup>

In response, the BMPs assert that Staff’s legal interpretation of MCL 460.6a(9) and 6a(10) is erroneous and counter to the plain language of the statute. The BMPs contend:

The unambiguous language of MCL 460.6a (9) & (10) does NOT state that the ‘exception to the cap for newly enacted changes in state or federal environmental law only applies to such changes that are specific to wood or solid wood wastes.’ Indeed, the statute’s very use of the words “generated electricity . . . in whole or in part, from wood” in section (9) makes clear that the statute does not limit recovery of fuel costs to wood. The legislature recognized that BMPs burn fuels other than wood and entitled the BMPs to recover those other fuel costs so long as they also burned wood, in whole or in part. Moreover, subsection (9) makes clear that all subsection (10) does is establish the “limitations” on the dollar amounts that may be recovered. Nothing more. This is clearly seen in the language of subsection (9) which states that “the merchant plant shall . . . subject to the limitation set forth in subsection (10), recover” its shortfall.<sup>72</sup>

The PFD finds the BMPs’ argument persuasive. A plain reading of Subsections (9) and (10), *in pari materia*, makes clear that both the capped and uncapped costs apply to a specific class of merchant plants that “generate[] electricity . . . in whole or in part from wood or solid wood wastes.” Moreover, Staff’s contention, that the environmental regulations for which uncapped cost recovery is available pertain only to those regulations applicable to wood or wood wastes, is strained at best. There is no dispute that TES Filer is a merchant plant that burns wood “in part,” nor does Staff contest that the plant is

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<sup>71</sup> Staff brief, pp. 6-7.

<sup>72</sup> BMP brief, pp. 12-13.

subject to MATS. However, as the BMPs point out, if the Legislature had intended to limit uncapped fuel and O&M costs to only those caused by environment laws and regulations that apply to wood or wood waste, the Legislature could have said so, and it did not. Thus, Staff's request to disallow natural gas costs for TES Filer on grounds that Subsection (10) does not apply to MATS costs is denied. Consistent with this determination, the ALJ finds that MATS emissions testing costs of \$164,937 are reasonable, recoverable, and should be recovered, as uncapped costs under MCL 460.6a(10).

## 2. Natural Gas Fuel Costs as MATS Compliance Costs

Alternatively, Staff recommends that uncapped natural gas costs associated with MATS compliance at TES Filer be disallowed because these costs were not reasonably and prudently incurred. The Attorney General contends that recovery of natural gas costs should be included as part of the \$14,045,520 capped cost recovery amount and that uncapped cost recovery should be denied.

Mr. Tondu testified that, as shown in Exhibit BMP-7, TES Filer incurred \$23,957,459 in fuel and variable O&M expense in 2018. Of this amount, Consumers paid \$14,912,569 for actual fuel and variable O&M expense, leaving a shortfall of \$9,044,890.<sup>73</sup> Mr. Tondu testified that TES Filer is requesting recovery of \$5,521,020 in capped costs, further explaining that Consumers made partial payments to TES Filer of \$3,573,295, of the \$5,521,020 total capped fuel and variable O&M costs, leaving a balance of \$1,947,725 in capped costs.<sup>74</sup>

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<sup>73</sup> 2 Tr 121-122.

<sup>74</sup> 2 Tr 123; Exhibits BMP-1, BMP-2, and BMP-7.

Mr. Tondou added that:

TES is seeking to recover \$6,000 in CSAPR annual NOx allowance costs that were incurred in 2018 pursuant to (i) MCL.460.6a(10) which provides that “the \$1,000,000.00 limit specified in this subsection, as adjusted, does not apply to actual fuel and variable operation and maintenance costs that are incurred due to changes in federal or state environmental laws or regulations that are implemented after October 6, 2008” and (ii) the Cross State Air Pollution Rule, 40 CFR 97 Subparts AAAAAA to FFFFFF (“CSAPR”). TES is also seeking to recover \$1,387,198 in MATS compliance fuel costs and \$164,937 in MATS compliance testing costs pursuant to (i) MCL.460.6a(10)[.] . . . Thus, as reflected in Exhibit BMP-2, the remaining balance of both capped and uncapped fuel and variable O & M costs that TES claims is \$3,505,860.<sup>75</sup>

Mr. Tondou reiterated that TES Filer is requesting \$1,552,135 in uncapped costs associated with MATS compliance. This amount includes \$1,387,198 in actual fuel costs and \$164,937 in MATS compliance testing costs.<sup>76</sup> Mr. Tondou explained:

The Mercury and Air Toxics Standard (MATS) rule was promulgated by the US EPA on February 16, 2012 as 40 CFR Part 63, Subpart UUUUU. For existing units, the compliance date was April 16, 2015. 40 CFR 63.9984. TES Filer City Station sought and was granted a one-year compliance extension pursuant to Section 112 of the Clean Air Act, which extended Filer City’s compliance deadline to April 16, 2016.

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While the MATS rules did not change any of Filer City’s existing Air Use Permit emission limitations, they did add new limitations for particulate matter (PM), sulfur dioxide (SO<sub>2</sub>) and mercury. Specifically, the MATS Rules augmented the existing emission limits by adding unique MATS specific emission limits for particulate matter (PM), sulfur dioxide (SO<sub>2</sub>) and mercury. The MATS rules also imposed new work practice requirements on Filer City, which changed the requirements during startup and shut down of the boilers. TES is required to fire clean fuels, which are defined in 40 CFR 63.10041 as “natural gas, synthetic natural gas that meets the specification necessary for that gas to be transported on a Federal Energy Regulatory Commission (FERC) regulated pipeline, propane, distillate oil, synthesis gas that has been processed through a gas clean-up train such that it could be used in a system’s combustion turbine, or ultra-low-sulfur diesel (ULSD) oil, including those fuels meeting the requirements of

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<sup>75</sup> 2Tr 124. TES Filer’s recovery of \$6,000 in CSAPR allowance costs is not at issue.

<sup>76</sup> Id. at 147.



40 CFR part 80, subpart I.” This differs significantly from TES’s historic practice of starting up on solid fuels and oils.<sup>77</sup>

Mr. Tondou testified that in order to comply with MATS emissions requirements TES Filer installed four new Coen natural gas burners. Mr. Tondou explained that although the installation of the burners allowed TES Filer to comply with MATS, the management of the plant had to change to accommodate the operating characteristics of the burners, specifically the 1000° F limit on the operating temperature of the burners. Given the temperature limit, Mr. Tondou testified that TES Filer was unable to operate its boilers using the traditional fuel mix of coal, wood, and TDF and historical combustion parameters. And, plant operators had to introduce more air into the boilers to reduce the temperature of the burners.<sup>78</sup> After that step was taken, Mr. Tondou explained:

Increasing the amount of air in the boilers led to various balance of plant impacts, including a significant reduction in fuel combustion efficiency, as well as more severe slagging and periodic wall drops which created a safety issue. The diminished fuel combustion efficiency also led to increased CO emissions such that there was a greatly reduced compliance margin with the associated emission limits and a greater risk of permit non-compliance.

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The only effective way to reduce the slag buildup and improve combustion and CO emissions performance was to reduce the amount of TDF and coal being burned and to burn more natural gas.<sup>79</sup>

Mr. Tondou concluded that this series of actions corrected the operational, environmental, and safety concerns with the plant.<sup>80</sup>

As described above, to comply with the MATS rules, CO emissions limits, and the burner temperature requirements, TES Filer burned an average of about 2,200 thousand

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<sup>77</sup> 2 Tr 147, 148-149.

<sup>78</sup> 2 Tr 150-151.

<sup>79</sup> 2 Tr 151.

<sup>80</sup> Id.

cubic feet (Mcf) per day of natural gas beginning in June 2018. However, Mr. Tondu noted that not all of this amount could be ascribed to the MATS burners:

[T]he Filer City plant had existing boiler condition and maintenance issues in 2018 that increased the amount of combustion air in the boiler beyond the intentional increases made by the plant in order to keep the MATS burners within permissible operating temperature limits. Those boiler conditions were repaired in 2019 at a cost of \$1,442,095.

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After the boiler maintenance conditions were corrected in 2019, the plant was able to reduce the amount of natural gas that it needed to burn in order to keep the burners within temperature requirements and ensure compliance with the CO emission limits without unacceptable balance of plant impacts.<sup>81</sup>

Specifically, Mr. Tondu testified that TES Filer was able to reduce its natural gas requirements by approximately half, from 2,200 Mcf per day to 1,100 Mcf per day in 2019. On this basis, Mr. Tondu estimated that “50% of Filer City’s 2018 natural gas costs can be attributed to the installation and operation of the MATS required natural gas burners and the need to minimize unacceptable balance of plant impacts and permit issues.” Consistent with this estimate, Mr. Tondu testified that TES Filer is requesting \$1,387,198 in MATS fuel costs as uncapped costs under MCL 460.6a(10), with the condition that:

If, however, those fuel costs are disallowed as “uncapped costs”, which would be inconsistent with Act 286, Filer City would claim them as “capped costs.” In such case Filers City’s costs would be as set forth in Exhibit BMP-24 and the allocation of the cost recovery amount among the BMPs would be as set forth in Exhibits BMP-25 and BMP-26. In either event, TES would still be entitled to the \$6,000 in NOx allowance costs and the \$164,937 in MATS testing costs.<sup>82</sup>

Mr. Bodiford agreed that the installation of the natural gas burners “introduced several operational complications that made operation of the boilers using Filer City’s

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<sup>81</sup> 2 Tr 152.

<sup>82</sup> 2 Tr 154. It should be noted that Exhibits BMP-24, BMP-25, and BMP-26 were withdrawn. See, 2 Tr 264.

traditional fuel mix and methods unsustainable and increasingly unsafe.”<sup>83</sup> Quoting Exhibit S-2.0, p. 2 and citing the diagram in Exhibit S-2.1, Mr. Bodiford described the location of the burners, the boilers, and the burner grate and the impact on the operation of the boilers after the burners were installed.<sup>84</sup> He then explained that:

The design of the Coen burners included powerful fans that introduce a steady flow of ambient temperature air around each individual burner thus providing a “protective air cocoon” to insulate them from the damaging heat. This design feature is typical for burners in other boiler applications and is commonly referred to as over-fire-air. Staff’s analysis concluded that while the high temperatures at the burner levels in the boilers were not ideal, given the unique configuration of Filer City’s stoker boilers, these high temperatures were not only expected but were also planned for.<sup>85</sup>

According to Mr. Bodiford, the introduction of air to the boilers affected the efficiency of fuel combustion when using the historical fuel mix, increased NO<sub>x</sub> and CO emissions, and increased the amount of uncombusted or partly combusted fuel (i.e. clinkers), which in turn would fall from the boilers damaging the grate and producing safety concerns for workers in the plant.<sup>86</sup> Mr. Bodiford noted however, that clinker problems predated the installation of the gas burners in 2016, as shown in Exhibit S-2.2, pp. 15, 30, and 44. The annual reports in this exhibit, from 2015-2016, 2016-2017, and 2017-2018, indicate that TES Filer needed to evaluate and modify its fuel mix to address the clinker issue. According to Mr. Bodiford:

Despite the annual audits and continuous feedback indicating that clinkers were still a problem, Filer City only made minor changes to the fuel blends burned in the boilers in an attempt to optimize the plant conditions as well as the safety issues created by the development and subsequent “wall drops” of clinkers in Filer City’s boilers. It should be noted that none of the fuel blend iterations that were tried in the boilers included the addition of

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<sup>83</sup> 2 Tr 506.

<sup>84</sup> Id.

<sup>85</sup> Id. at 506-507.

<sup>86</sup> 2 Tr 507; Exhibit S-2.0, p. 2.

natural gas to the plant's traditional fuel mix, as noted by Filer City witness Todd Guenthardt in response to discovery labeled Exhibit S-2.0, page 3:

3. If the burners were installed and operational in April 2016, why didn't the Company notice the boiler issues before July 2018? Please explain in detail.

Answer: The Company did notice the boiler issues long before July 2018. The plant operators first tried to address the impact of the Coen burners on the boiler by burning numerous different fuel mixes, not including natural gas... The Company did not want to burn natural gas because it is more expensive than all of the historical fuels that had been burned... The Company made every effort to not burn natural gas before July 2018 when it concluded that it had no choice but to do so.<sup>87</sup>

Mr. Bodiford pointed to Confidential Exhibit S-2.3, which, he testified, shows that:

Filer City was essentially a zero-use natural gas operation. Staff's understanding of the plant's operations was that natural gas was only used **after** the installation of the Coen burners; and **only** to comply with the clean-fuel startup requirements under the MATS regulations. Filer City operated the plant in this manner, beginning in April of 2016, for a full two years and four months after the installation of the Coen burners to comply with the new MATS regulations. It was not until late June 2018 that operational and business partners of Filer City made the decision to significantly increase the amount of natural gas used to generate electricity. Natural gas usage at the plant increased from zero billed hundred cubic feet (Ccf) per month to an average of over 750,000 Ccf per month for the last 6 months of 2018. Witness Tondou testified that an average of 2,200 thousand cubic feet (Mcf) per day of natural [gas] flowed to the burners during this period (Filer City witness Tondou's testimony at page 38, lines 1-5). Filer City is requesting recovery of fuel costs at these average flow rates for July 2018 through the end of December 2018.<sup>88</sup>

Mr. Bodiford testified that plant operators indicated that as the operational and safety issues at the plant worsened, they determined that the only solution was to flow gas to the four burners continuously.<sup>89</sup>

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<sup>87</sup> 2 Tr 508.

<sup>88</sup> 2 Tr 509.

<sup>89</sup> Id. at 510, quoting Exhibit S-2.0. p. 4.

Mr. Bodiford stated that TES Filer's decision to dramatically increase the amount of gas it was burning was unreasonable, and it appears that the decision was contrary to the fact that there was a preexisting problem with boiler clinkers, and there were no safety or environmental issues with the plant for the 28 months prior to June 2018. Mr. Bodiford testified that Staff believes that a fatality at another BMP may have contributed to TES Filer's decision to flow gas full time. According to Mr. Bodiford:

It is Staff's belief that this incident and the mounting pressures to operate all of CMS Energy's jointly owned affiliated Michigan BMPs under the safest possible conditions following this tragedy dictated that Filer City no longer operate its facility as it had traditionally. Immediate operational changes were made to ensure that the worsening clinker problem that was caused by the installation of the Coen burners was mitigated. Filer City made the decision to increase its natural gas usage exactly 14 days after the incident at the Genesee plant on June 28, 2018.

Flowing gas to the burners continuously was the only immediate solution to fix the problem of un-combusted or under-combusted fuel accumulation, due to over fire air protection of the Coen burners on their boiler walls.<sup>90</sup>

Mr. Bodiford explained that reducing the amount of coal and TDF burned reduced emissions and slag build up and improved combustion. Mr. Bodiford noted, nevertheless, that "reductions in the amount of TDF fuel had been tried several times before the decision to flow natural gas full-time. In fact, the amount of TDF fuel used in Filer City's fuel mix continued to vacillate up and down even after the decision to flow natural gas full-time was made. The decision to burn less TDF fuel in the fuel mix was not made in conjunction with the decision to burn natural gas full-time[.]"<sup>91</sup> Mr. Bodiford added that "Data also seems to indicate that Filer City's decision to flow gas to the Coen burners at an average of 2,200 Mcf per day was made without consideration to determine the correct flow rate

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<sup>90</sup> 2 Tr 511-512.

<sup>91</sup> Id. at 512.

that would optimize fuel combustion in their boilers and provide an acceptable level of safety to its employees.”<sup>92</sup> Based on Mr. Tondu’s testimony that TES Filer now operates at a gas flow rate of 1,100 Mcf per day, Mr. Bodiford opined:

This would suggest that the decision to flow gas at 2,200 Mcf per day on June 28, 2018 was hastily made at an additional and unnecessary cost that should not be borne by ratepayers of Consumers Energy.

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Staff has shown that Filer City knew about its clinker problem and associated safety concerns going back to 2016 and chose not to address it for over two years. Due to the operational decisions made prior to late June 2018, Filer City was then “forced” to make an immediate and drastic decision to flow excessive amounts of natural gas to its burners to address the worsening safety concerns in their boilers, only after a tragic fatality at another CMS Energy affiliated Michigan BMP.<sup>93</sup>

Based on his conclusion that TES Filer operated its natural gas burners and boilers in an unreasonable and imprudent manner, Mr. Bodiford stated, “Filer City should not be allowed to recover natural gas fuel costs of in the amount of \$1,387,198, identified by Staff witness Wagner (Exhibit S-1.3, line 11), in relation to natural gas purchases for purported MATS compliance.”<sup>94</sup>

Mr. Coppola testified that TES Filer provided two alternatives for cost recovery of what it believes are appropriate emissions costs. Under the first alternative, TES Filer would recover \$1,558,135 of uncapped environmental costs, as shown in Exhibit BMP-2, column H. Under the second alternative, TES Filer would recover only \$170,937 in uncapped costs, with any additional fuel costs subject to the \$12 million cap under MCL 460.6a(9). Mr. Coppola explained that:

Prior to the introduction of natural gas in the fuel mix, the plant burned 85% coal, 10% Tires Derived Fuel (TDF) and 5% wood waste. Subsequent to the change in fuel mix in July 2018, the plant now burns on average 87%

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<sup>92</sup> Id. at 513.

<sup>93</sup> 2 Tr 514-515.

<sup>94</sup> Id. at 515.

coal, 2% TDF, 4% wood and 7% natural gas. The company in effect increased the use of coal, lowered the use of TDF and replaced the reduction in TDF with natural gas.<sup>95</sup>

Mr. Coppola opined that TES Filer's problem with meeting the MATS rules seemed to arise from the fact that the plant burns a significant amount of coal, noting that the other six BMPs primarily burn wood and TDF and have no issue with MATS compliance. He further observed that the fuel cost at TES Filer in 2018 was 20% to 40% higher than fuel costs at the other BMPs.<sup>96</sup> Mr. Coppola agreed with Mr. Tondu's recommendation that TES Filer continue to explore alternative fuel mixes in order reduce both emissions and fuel costs.

Mr. Coppola concluded that:

To burden customers with additional costs outside of the \$12 million expense limitation by burning more expensive natural gas in the fuel mix in order to meet emission rules is not a reasonable cost recovery alternative. The best solution for 2018 is for the company to recover whatever incremental fuel costs it has incurred in burning natural gas by including those costs with all other fuel costs within the \$12 million inflation adjusted expense cap.<sup>97</sup>

Consistent with his testimony, Mr. Coppola recommended that all of TES Filer's fuel costs should be recovered as capped costs under MCL 460.6a(9).

In rebuttal, Mr. Guenthardt testified that Mr. Bodiford's claims were misplaced, asserting that the increased CO emissions and clinker build up at TES Filer were not the result of the fuels or fuel mix at the plant. Instead, according to Mr. Guenthardt:

The primary cause of the CO emissions and clinker problems that forced TES to burn natural gas was as follows: (i) coal, wood and TDF, which are solid fuels, are primarily burned on a grate (similar to a charcoal grill) that is 15 feet below the natural gas burners, (ii) in order to protect the natural gas burners from the extreme heat of the furnace portion of the boiler, a

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<sup>95</sup> 2 Tr 452; Exhibit AG-4.

<sup>96</sup> 2 Tr 452-453.

<sup>97</sup> 2 Tr 453.

continuous forced stream of cooling air was injected into the boiler in order to cool the burners. This continuous stream of cooling air (sometimes, 'overfire air') was being injected into the boiler at a point 15 feet above the grate and at a point where the stream of fuel fines and ash from the solid fuels being burned below was rising and still in the process of combusting, (iii) the continuous stream of cooling air was entering the furnace portion of the boiler at point where the temperature was 2100 Deg F to 2700 Deg F. That much cooler air had a significant detrimental impact on the combustion gases from the solid fuels being burned below, and (iv) operating the natural gas burners introduced heat into the furnace portion of the boiler at the very same point where the cooling air was being injected, thus minimizing the problem created by the cooling air.<sup>98</sup>

Mr. Guenthardt added that Mr. Bodiford failed to take all of the relevant facts into account, noting that, contrary to Mr. Bodiford's claim, there were in fact excessive CO emissions, which were reported to the State of Michigan, prior to the decision to burn natural gas.<sup>99</sup> And, while there was clinker build-up before the installation of the natural gas burners, the size of the clinkers increased significantly after the burners were installed. Moreover, TES Filer did try various fuel blends, within planning and operational limits, to avoid having to burn natural gas: "[B]ut those efforts failed to correct the CO and clinker problems because the cause of those problems was not the fuel but the impact of the forced stream of cooling air on the temperature profile in the boiler[.]"<sup>100</sup>

Mr. Guenthardt also took issue with Mr. Bodiford's statement that no consideration was given to the proper flow rate when the decision was made to increase the use of natural gas. According to Mr. Guenthardt, it was not possible to determine a correct flow rate in advance, and the flow rate was immediately adjusted to optimize the efficient operation of the plant. And, contrary to Mr. Bodiford's contention that the decision to flow

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<sup>98</sup> 2 Tr 200-201; Figure p. 202.

<sup>99</sup> CO emissions at TES Filer exceeded limits on February 11-12, 2017, and April 15, 2018. See, 2 Tr 228; Exhibit BMP-28.

<sup>100</sup> 2 Tr 204.



gas was a hasty one, and that the amount of gas burned was excessive, Mr. Guenthardt testified that TES Filer spent over two years trying other methods to avoid burning gas,<sup>101</sup> and that the amount of gas consumed “was sufficient to mitigate the CO and clinker problems and cease burning an mmBTU equivalent amount of solid fuels, generally coal and TDF.”<sup>102</sup> Finally, Mr. Guenthardt disputed Mr. Bodiford’s contention that the decision to burn gas was motivated by the death of an employee at another plant, emphasizing that worker safety has always been a paramount concern at TES Filer.

Mr. Sutherland testified that the boilers installed at TES Filer are reliable and flexible when using a variety of solid fuels as have traditionally been used at the plant. However, “introducing overfire air into Stoker Boilers of this vintage, as TES did to comply with the U.S. EPA’s Mercury and Air Toxics Standards (“MATS”) creates significant complications and balance of plant impacts.”<sup>103</sup>

Mr. Sutherland reiterated the effects of retrofitting the boilers with natural gas burners, including more rapid clinker formation, which was ameliorated by operating the gas burners continuously.<sup>104</sup> Noting that slag buildup on furnace walls due to uneven temperatures is recognized in the industry, he added that the buildup in the boilers could not have been addressed by burning a different fuel mix because “[t]he critical factor that caused the increase in the frequency, size and danger of the clinkers was the overfire air which was being injected into the boiler to cool and protect the burners.”<sup>105</sup> Finally, Mr.

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<sup>101</sup> Those methods are listed at 2 Tr 218-219.

<sup>102</sup> Id at 204-205.

<sup>103</sup> 2 Tr 248.

<sup>104</sup> 2 Tr 249-250.

<sup>105</sup> Id. at 251.

Sutherland testified that in 2018, the natural gas burners at TES Filer provided 34,362.70 MWh of electricity to Consumers, or about 6.8% of the electricity TES Filer generated.<sup>106</sup>

In response to Mr. Coppola, Mr. Tondu clarified that TES Filer is requesting cost recovery for all of the BMPs as set forth in Exhibits BMP-1, BMP-2, and BMP-7, adding, “[t]he BMPs are only requesting, in the alternative, that the Commission approve the cost recovery reflected in exhibits BMP-24, 25 and 26 if there is a lawful reason for denying the request as set forth in exhibits BMP-1, 2 and 7.”<sup>107</sup> And, in response to Mr. Coppola’s concerns about fuel at TES Filer, Mr. Tondu echoed Mr. Guenthardt’s testimony that fuel mix was not the main issue at the plant, it was the introduction of cooling air to keep the gas burners below their maximum operating temperature.

In response to Mr. Coppola’s concerns about the economics of coal usage at TES Filer and his observation that TES Filer’s fuel costs are the highest of any of the BMPs, Mr. Tondu explained that TES Filer has always been primarily coal-fired, and that the plant is a cogeneration facility under Public Utility Regulatory Policies Act of 1978, 16 USC 824a-1 (PURPA). As such, TES Filer produces steam for a nearby manufacturer, and it cannot simply reduce the amount of coal it burns, or replace it with wood or TDF, to reduce its fuel costs.

In its brief, Staff argues that the installation of the natural gas burners coupled with preventative maintenance efforts “have resulted in a piecemeal design.”<sup>108</sup> Specifically, Staff contends that TES Filer provided no evidence that the installation of the gas burners was optimized to ensure the proper operation of the boilers and combustion chamber. In

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<sup>106</sup> Id. at 252.

<sup>107</sup> 2 Tr 259.

<sup>108</sup> Staff brief, p. 4.

addition, Staff maintains that TES Filer misunderstands Staff's position, observing that its claims are not based on whether TES Filer was sufficiently diligent in determining an appropriate fuel mix but rather, "Staff analyzed the circumstances (burner installation and operation) that led to the balance of plant problems at Filer City and then evaluated whether the course of action to correct the problems were systematically undertaken in a reasonable and verifiable manner."<sup>109</sup>

Staff also takes issue with Mr. Guenthardt's claim that Staff disregarded MATS compliance issues with respect to CO emissions, pointing to Exhibit S-2, p. 6 wherein TES Filer only described safety concerns as potentially noncompliant with MATS and omitted any mention of two reported excess CO instances. And with respect to TES Filer's claim that optimal natural gas flow rates could not be determined in advance, Staff responds:

Mr. Guenthardt noted that it is "not possible to accurately calculate or otherwise predict a flow rate in advance." (2 TR 204.) He went on to state that initially the flow rate of natural gas to Filer City's burners was set at 30% of the maximum burner output. *Id.* Based on the testimony provided, and the absence of any evidence to the contrary, Staff concluded that the beginning natural gas flow rate appeared arbitrary. No discernable strategy or processes for verification were put forth as evidence for consideration for the proper natural gas flow rates. The only information provided to Staff were volumetric natural gas consumption numbers as part of a data dump of information from Filer City's monitoring system. Alone, this information does not suggest a concerted, considerate approach to Filer City's initial use of natural gas volumes in operation of its burners. In the absence of further information or explanation from Filer City's witnesses, Staff concluded that the initial volumetric flow rates of natural gas to Filer City's burners when they began continuously flowing it in June of 2018 was determined at random or as a best guess based on Filer City operators' years of expertise.<sup>110</sup>

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<sup>109</sup> *Id.* 13.

<sup>110</sup> Staff brief, pp. 15-16.

Similarly, with respect to TES Filer's litany of attempts to address operational issues caused by installation of the natural gas burners, Staff points out that TES Filer provided:

no verifiable records, test results, study results, consultation reports, maintenance records, updated/adjusted maintenance schedules, process documentation, design modifications or personnel records (hiring numbers) related to most of the actions Filer City claimed to have undertaken during the 28 month period in which it was experiencing considerable plant and safety issues with the operation of its burners. In the absence of corroborating information or records detailing the outcomes of each of Filer City's actions Staff is left to decide about reasonableness and prudence based upon the information at hand.<sup>111</sup>

The Attorney General argues that TES Filer "has offered inconsistent and less than convincing explanations to support its claim for recovering \$1.5 million in uncapped costs[,]" noting that the plant was able to comply with MATS in 2016 and 2017 without burning significant amounts of natural gas. The Attorney General maintains that TES Filer should be able to recover incremental natural gas costs as part of the inflation-adjusted capped costs under MCL 460.6a(9), "because by its own admission it still had not resolved the fuel mix issue. Because of this uncertainty, and Filer City's prior history of compliance with the MATS requirements, the BMPs cannot demonstrate that its choice of fuel mix for 2018 is truly necessary to comply with MATS."<sup>112</sup>

The Attorney General concurs with Staff's position on TES Filer's faulty boiler design, stating:

Commission Staff's brief did a thorough job of addressing this issue, including that apparent piecemeal design of the facility and that the addition of the Coen burners seemed to increase the operational problems without any evidence those particular boilers or that particular design was the best to accomplish Filer City's goals and that the burning of natural gas was not reasonable or prudent. The burden is on BMPs to support their request and

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<sup>111</sup> Id. at 17.

<sup>112</sup> Attorney General reply brief, p. 13.

there is just too much uncertainty about Filer City's approach to support its request to recover such cost outside of the cap.<sup>113</sup>

The BMPs respond that Staff's brief raises arguments that are outside the record or that are otherwise unsupported, noting in particular that Staff failed to address Exhibit BMP-30, which is a revised discovery response from Ms. Wagner that in turn, purportedly, revised Staff Exhibit S-1.0. Referencing Exhibit BMP-30, the BMPs contend:

In her Corrected Answer, Staff witness Wagner revised her alternative cost recovery proposal to remove TES's capped recovery and to also allow an uncapped recovery as follows: **"The amount on line 17 should include all of the MATS fuel testing costs totaling \$1,387,198 and the amount on line 18 should include all of the MATS testing fees and total \$164,937."** See also, Exhibit BMP-30, page 5 of 12, and page 10 of 12 lines 17, 18 & 19, in which Staff witness Wagner revised her alternative cost recovery proposal to permit TES to recover \$1,387,198 in uncapped natural gas fuel costs and \$164,937 in MATS air emissions testing costs. TES agreed to and amended its cost recovery request to mirror Staff witness Wagner's revised cost recovery proposal as set forth in her corrected answer in Exhibit BMP-30.<sup>114</sup>

The BMPs maintain that despite the correction to Staff's own discovery response, Staff's initial brief fails to acknowledge its updated position, and "[t]he foregoing position changes and inconsistencies highlight the lack of coherent and consistent Staff analysis and position."<sup>115</sup>

Next, the BMPs highlight Staff concerns about design problems, material integrity and preventative maintenance issues that the BMPs claim were first raised in Staff's brief. The BMPs add that there was no testimony from the Staff concerning the design of the natural gas burners, nor were any maintenance failures identified in the record. In support of its claim that the unit does not suffer from design problems, TES Filer points to

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<sup>113</sup> Id. at 14-15 (fn omitted).

<sup>114</sup> BMP reply brief, pp. 2-3 (fns omitted).

<sup>115</sup> BMP reply brief, p. 3.

Commission orders that approved TES Filer's 1987 contract with Consumers under PURPA, noting that the unit upon which TES Filer's avoided costs were based had an assumed availability factor of 80% and capacity factor of 76.8%, whereas TES Filer has demonstrated capacity and availability factors in excess of 90% over 20 years. Thus, according to TES Filer, "it is simply not credible for Staff to argue that the TES plant or any of its equipment was improperly designed or maintained. Staff's argument is inconsistent with the Commission's order in Case Nos. U-8562 and U-8871."<sup>116</sup>

TES Filer insists that in its initial brief, it did not misunderstand or misstate Staff's position, reiterating that Mr. Bodiford's critiques, as set forth in his testimony, were in fact based on a belief that the operational problems at the plant were based on an improper fuel mix, rather than on the need for overfire air to avoid damage to the burners. TES Filer adds that Staff's position focuses solely on the MATS clean-fuel startup and shutdown requirements, ignoring the other regulatory requirements that the plant must operate safely and minimize emissions.

Finally, TES Filer contests the accuracy of Staff's claim that it provided no studies, test results, or reports on TES Filer's efforts to address operational issues in the two years before it began burning natural gas in significant quantities. According to TES Filer, Staff's exhibits exclude voluminous material that was provided as part of discovery. TES Filer requests that if the ALJ chooses to rely on Staff's claim about a lack of information, the record should be reopened to admit numerous additional documents that it maintains were provided over the course of the proceeding.

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<sup>116</sup> Id. at 7.

In response to the Attorney General, the BMPs contend that she, like the Staff, ignores or misunderstands the numerous, complex reasons why TES Filer is required to burn natural gas for MATS compliance, reiterating that plant operators spent over two years testing alternative fuel blends to avoid the need to burn natural gas.

### Discussion

As briefly noted above, on April 21, 2020, the BMPs filed a motion to strike<sup>117</sup> a portion of Staff's reply brief which states:

First, on pages 2-3 of the BMPs' Initial Brief, the BMPs assert that TES Filer's capped cost recovery is no longer disputed. This is false and presents a misleading summary of Staff's position. . . . Therefore, the BMPs' statement that there is no longer a dispute regarding TES Filer's capped cost recovery is false, misleading and should be ignored.<sup>118</sup>

According to the BMPs, after a meeting with Staff on February 14, 2020, Staff revised a discovery response, purportedly to reflect an agreement to remove all natural gas costs from the capped fuel cost amount and include only 50% of natural gas costs, plus MATS testing costs, as uncapped costs. This revised discovery response was admitted in a ruling issued on March 3, 2020, as Exhibit BMP-30. Consistent with this exhibit, the BMPs argue that two sentences referencing the BMPs' statement about capped natural gas cost recovery, be stricken from Staff's brief.

Staff responds that the BMPs' motion constitutes an attempt to limit Staff's arguments on the positions it has taken in this case, and, "[w]hile it is true that its removal does not prevent another party or the ALJ from reaching the same conclusion, Staff believes the two sentences at issue are entirely appropriate."<sup>119</sup>

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<sup>117</sup> Alternatively, the BMPs requested to file a sur-reply brief. This request was denied. See, 3 Tr 568.

<sup>118</sup> BMP motion, p. 1, quoting Staff reply brief, p. 4.

<sup>119</sup> Staff response to BMP motion, p. 2.

The ALJ finds that the BMPs' motion to strike should be denied. While the transcript of the motion hearing provides some clarity on what transpired at the meeting on February 14, the fact remains that Exhibits S-1.1, S-1.2, and S-1.3, which were purportedly replaced by Exhibit BMP-30, are still part of the record, even if TES Filer's cost recovery request has been revised. In addition, contrary to the BMPs' claim, capped cost recovery is still in issue because the Attorney General (who apparently did not participate in the February 14 meeting) is advocating that MATS fuel costs be recovered under MCL 460.6a(9) and not 6a(10), while Staff's primary position (addressed above) remains that no MATS costs are recoverable under either subsection.

Turning to the central issue of the recovery of natural gas costs by TES Filer, although the positions of the parties at this juncture are not entirely clear, it does appear that TES Filer is now requesting that 50% of its total natural gas costs (\$1.38 million of a total of \$2.77 million) be recovered as uncapped, environmental compliance costs under MCL 460.6a(10). As was explained at the motion hearing on May 1, 2020, TES Filer originally requested recovery of half of its natural gas costs under MCL 460.6a(9) and the other half under Subsection 10. Subsequently, TES Filer removed all natural gas costs from the capped recovery amount, leaving the uncapped recovery amount unchanged.<sup>120</sup> TES Filer maintains that this alternative request is consistent with Staff's corrected discovery request in Exhibit BMP-30. In its reply brief, TES Filer claims that:

Staff witness Wagner revised her alternative cost recovery proposal to permit TES to recover \$1,387,198 in uncapped natural gas fuel costs and \$164,937 in MATS air emissions testing costs. TES agreed to and amended its cost recovery request to mirror Staff witness Wagner's revised cost recovery proposal as set forth in her corrected answer in Exhibit BMP-30.<sup>121</sup>

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<sup>120</sup> See, 3 Tr 554-557.

<sup>121</sup> BMP reply brief, pp. 2-3 (emphasis supplied).



This ALJ observes that if the BMPs were relying on Exhibit BMP-30 as a purported agreement between the BMPs and Staff to “permit” recovery of uncapped natural gas costs, it does not follow that the BMPs would spend some 30 pages of their initial brief contesting the basis for Staff’s alternative proposal to deny uncapped natural gas costs. Moreover, despite the changes to Staff’s initial discovery response, Ms. Wagner’s testimony was not revised:

Q. Does Staff have an alternative proposal if the Commission does not approve Staff’s cost reduction recommendations as discussed above?

A. Yes. Staff witness Raushawn Bodiford supports excluding, for recovery, the uncapped MATS compliance fuel costs included by TES on its BMP-7, line 17 of \$1,387,198. This amount was removed from Staff’s exhibit S-1.2, line 17 and was not included in Staff’s cost used to calculate Consumers PSCR over recovery because both Staff witnesses Simpson and Bodiford recommend that it be removed from recoverable fuel costs.<sup>122</sup>

Although Staff revised its response to the BMPs’ third discovery request, Staff did not address this revision in its brief, nor was it discussed in Staff’s reply brief. Instead, Staff relies on Ms. Simpson’s, Mr. Bodiford’s, and Ms. Wagner’s testimony as filed. Staff’s primary contention is that all natural gas costs for MATS compliance be disallowed as inconsistent with statutory language. This argument was rejected above. Staff’s alternative recommendation is to disallow \$1.4 million in uncapped costs on grounds that TES Filer’s actions in addressing MATS compliance were not reasonable and prudent. The Attorney General recommends that TES Filer be permitted to recover \$1,387,198 million in natural gas costs as part of capped fuel costs, “because by its own admission it still had not resolved the fuel mix issue.”<sup>123</sup>

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<sup>122</sup> 2 Tr 545.

<sup>123</sup> Attorney General reply brief, p. 13.

This PFD finds that for whatever reason TES Filer decided to reduce its natural gas cost recovery request by 50%, the reduction is warranted. As Mr. Tondu explained, the 2,200 Mcf per day of natural gas usage in 2018 could not all be attributed to MATS compliance due to “existing boiler condition and maintenance issues in 2018 that increased the amount of combustion air in the boiler beyond the intentional increases made by the plant in order to keep the MATS burners within permissible operating temperature limits.”<sup>124</sup> As Mr. Tondu further testified, the boiler condition was repaired in 2019, and as a result, TES Filer was able to reduce its gas usage by 50%. This ALJ finds that TES Filer’s failure, over the course of almost two and a half years, to recognize and repair the boiler condition that in part caused the plant to burn significantly more gas, was unreasonable. Thus, the cost of this additional gas should be disallowed.

The only remaining issue for this PFD is whether the \$1.4 million in natural gas costs, purportedly for MATS compliance, should be recovered at all, whether it should be recovered as a capped cost under MCL 460.6a(9), as the Attorney General advocates, or whether it should be recovered as an uncapped cost under MCL 460.6a(10), as the BMPs claim.

As the BMPs correctly summarize, MATS compliance for BMPs that burn coal requires all of the following:

- Satisfy specific emission limits for particulate matter (PM), sulfur dioxide (SO<sub>2</sub>) and mercury;
- Burn clean fuels, which are defined in 40 CFR 63.10042 as “natural gas, synthetic natural gas. . . , propane, distillate oil, synthesis gas . . . , or ultra-low-sulfur diesel (ULSD) oil,” on start-up and shutdown. 40 CFR Appendix Table 3.

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<sup>124</sup> 2 Tr 152.

-“At all times, . . . operate and maintain any affected source, including associated air pollution control equipment . . . , in a manner consistent with safety and good air pollution control practices for minimizing emissions.” 40 CFR 63.10000(b).

-“Optimize combustion to minimize generation of CO and NOX. This optimization should be consistent with the manufacturer’s specifications, if available, or best combustion engineering practice for the applicable burner type. NOX optimization includes burners, overfire air controls, concentric firing system improvements, neural network or combustion efficiency software, control systems calibrations, adjusting combustion zone temperature profiles, and add-on controls such as SCR and SNCR; CO optimization includes burners, overfire air controls, concentric firing system improvements, neural network or combustion efficiency software, control systems calibrations, and adjusting combustion zone temperature profiles.” 40 CFR 63.10021(e)(6).

-Demonstrate continuous compliance with each emissions limit, operating limit, and work practice standard . . . . 40 CFR 63.10021.

-Conduct quarterly stack tests for particulate matter (PM) and annual 30-day tests for mercury. 40 CFR Appendix Table 5.<sup>125</sup>

The record shows that in April 2016, TES Filer installed four natural gas burners, inside of its existing boilers, to comply with the MATS requirement that clean fuels be used for startup and shutdown. However, as Confidential Exhibit S-2.3 shows, the amount of natural gas needed for starting up and shutting down was so minimal that TES Filer did not include any gas in its costs until June 2018. At the end of that month, and for the remainder of 2018, TES Filer began burning significant amounts of gas, purportedly to address CO emissions problems and safety concerns.

As discussed below, this PFD finds that Staff and the Attorney General provided persuasive testimony that TES Filer’s request for uncapped natural gas costs should be denied on grounds that TES Filer failed to meet its burden to show that these additional

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<sup>125</sup> BMP initial brief, pp. 8-9 (emphasis omitted).

costs were incurred for MATS compliance.<sup>126</sup> However, this PFD also concludes that the natural gas costs were incurred for the generation of electricity and are therefore recoverable as part of the \$14,045,520 in capped costs under MCL 460.6a(9).

As Staff and the Attorney General point out, TES Filer's own testimony demonstrates that the installation of the gas burners ultimately led to a series of secondary operational problems, most significantly safety issues from the increased amount of slag, which in turn were the result of air introduced to the boilers. In addition, there were two instances where CO emissions exceeded air permit limits. However, the preponderance of the evidence shows that the need to significantly increase natural gas use to address these issues was the result of TES Filer's imprudent actions.

The BMPs dispute Staff's claim that the volumes of gas required to operate the plant consistent with MATS was the result of "a piecemeal design."<sup>127</sup> According to the BMPs, issues with plant design were not raised in Staff's testimony, thus Staff's conclusion is unsupported.<sup>128</sup> The BMPs further rely on the Commission's approval of TES Filer's PURPA contract as evidence that the plant design was previously approved and cannot be revisited here. This obfuscates the Staff's and Attorney General's concerns about how TES Filer decided to comply with MATS. First, the subject presented here is not the original design of TES Filer, but rather the modifications to the plant in 2016. Second, while the Commission does approve power supply contracts, as it did for

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<sup>126</sup> This PFD does not intend to foreclose the collection of natural gas costs as uncapped costs in future PSCR reconciliations, provided that TES Filer provides more evidence that its actions were consistent with, and required by, MATS.

<sup>127</sup> Staff brief, p. 4.

<sup>128</sup> Staff's reference to additional effects from TES Filer's modification to its plant, including issues concerning materials integrity, preventative maintenance, and embrittlement problems were first raised in Staff's brief (pp. 9-10), without citation to any testimony or exhibits. These references were therefore disregarded.

the PURPA contract between TES Filer and Consumers, it has no authority to approve or disapprove the blueprint for any merchant plant. Third, Mr. Bodiford testified that “Staff’s analysis concluded that while the high temperatures at the burner levels in the boilers were not ideal, given the unique configuration of Filer City’s stoker boilers, these high temperatures were not only expected but were also planned for.”<sup>129</sup> Thus, Mr. Bodiford’s testimony establishes that Staff’s position was not wholly based on TES Filer’s failure to find an appropriate fuel mix, but rather on the modifications to the plant design to comply with MATS. Moreover, the ALJ finds that the succession of problems described in TES Filer’s own testimony could certainly lead to a conclusion that TES Filer’s decisions made with respect to the design, installation, and operation of the four burners was the reason that natural gas had to be burned in significant quantities.<sup>130</sup>

The BMPs also take issue with Staff’s claim that TES Filer provided limited records on the company’s efforts to comply with MATS in the months prior to making the decision to increase the amount of gas consumed. TES Filer counters Staff’s contention with a list of discovery responses that it supplied to Staff, which Staff did not include as exhibits in this case. TES Filer enumerates the information it claims it provided, including daily, hourly, and rolling average emission’s data, flame temperature data, annual combustion reports, and “an incredibly detailed spreadsheet containing 78 columns for every hour showing vast amount of emissions, fuel and pressure data for 2018.”<sup>131</sup>

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<sup>129</sup> 2 Tr 507.

<sup>130</sup> The ALJ further notes that Mr. Bodiford’s testimony was based on, and responsive to, Mr. Tondu’s direct testimony. However, the great majority of information on the operation of TES Filer for MATS compliance was not presented until the BMPs filed rebuttal testimony. Initial briefing, therefore, was the first opportunity Staff had to address this new information.

<sup>131</sup> BMP reply brief, p. 21.

The BMPs arguments are rejected. First, TES Filer's own description of this information indicates that it is mostly raw data and not the "test results, study results, consultation reports, maintenance records, updated/adjusted maintenance schedules, process documentation, design modifications or personnel records" that might have supported a claim that TES Filer undertook a measured approach to addressing MATS compliance through modifying plant operations. Second, if TES Filer felt that this information supported its case for cost recovery, it could have included it in its own exhibits.

Finally, this ALJ agrees with Staff and the Attorney General that the BMPs' personal criticisms of Mr. Bodiford and Mr. Coppola are unwarranted and go well beyond mere disagreement with their respective positions. As the Attorney General points out, "based on the BMPs' narrow reasoning, no one without a certain degree of occupation would be qualified to pass judgment on whether the it costs met the requisite standard for recovery of uncapped costs (and taken to its logical conclusion would have to include the ALJ and Commission).<sup>132</sup> The ALJ notes that the BMPs and their counsel should be mindful that this tribunal, or the Commission, has authority to strike "redundant, immaterial, impertinent, scandalous, or indecent matter, or may strike all or part of a pleading not drawn in conformity with these rules."<sup>133</sup>

## **VI.**

### **CONCLUSION**

Consistent with the above discussion, this PFD recommends:

1. The Commission should approve Consumers 2018 PSCR reconciliation as set forth in the company's testimony and exhibits, as adjusted by Staff to reflect the

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<sup>132</sup> Attorney General reply brief, pp. 10-11.

<sup>133</sup> See, e.g., March 18, 2010 order in Case No. U-15699, p. 10, quoting MCR 2.115(B).

correct beginning balance, and including a disallowance of \$47,028 from power supply costs for the outages at Zeeland, as recommended by the Attorney General.

2. In future reconciliations, Consumers should report the unbilled current month sales in whole kilowatt-hour amounts.
3. The Commission should approve \$14,045,520 total in capped fuel and O&M expense in accordance with MCL 460.6a(9), to be included in the company's beginning balance.
4. TES Filer should be authorized to collect \$1,387,198 in natural gas costs as provided under MCL 460.6a(9).
5. Consumers' beginning balance should be adjusted to include uncapped expense amounts of \$6,000 for NO<sub>x</sub> emissions allowances and \$164,937 for MATS emissions testing costs incurred by TES Filer under MCL 460.6a(10).
6. TES Filer's request for cost recovery of \$1,387,198 in natural gas costs under MCL 460.6a(10) should be denied.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

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Sally L. Wallace  
Administrative Law Judge

June 29, 2020  
Lansing, Michigan