

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 approval to implement)	Case No. U-20525
a power supply cost recovery plan for the)	
12-months ending December 31, 2020)	
_____)	

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 January 27, 2021.

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 February 17, 2021, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before March 3, 2021.

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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January 27, 2021
Lansing, Michigan

Sally L. Wallace
Administrative Law Judge

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On September 30, 2019, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting approval of a power supply cost recovery (PSCR) plan and factors for the 12 months ending December 31, 2020. In addition, Consumers filed a five-year forecast. In its application, Consumers requested approval to implement a uniform maximum PSCR factor of \$0.00008 per kilowatt-hour (kWh) of electricity.

A prehearing conference was held on December 10, 2019, at which Consumers and the Commission Staff (Staff) appeared. Petitions to intervene filed by the Department of the Attorney General, Michigan Power Limited Partnership/Ada Cogeneration LP, Energy Michigan, the Association of Businesses Advocating Tariff Equity, Residential Customer Group (RCG), Midland Cogeneration Venture LP, and the

Independent Power Producers Coalition were granted. A protective order was entered on May 19, 2020.

Consistent with an amended schedule, Staff and the RCG filed direct testimony and exhibits on June 11, 2020, and Consumers filed rebuttal testimony on July 17, 2020. A hearing was held on August 18, 2020, at which all testimony was bound into the record, and exhibits were admitted, without the need for witnesses to appear.¹

On September 25-26 and October 23, 2020, Consumers, Staff, and the RCG filed briefs and reply briefs, respectively. The record in this case is comprised of 224 pages of transcript and 64 exhibits admitted into the record. Certain exhibits are designated confidential and are not part of the public record.

II.

OVERVIEW OF THE RECORD AND POSITIONS OF THE PARTIES

A. Consumers

Consumers presented the testimony of 10 witnesses.

Daniel S. Alfred, Senior Rate and Business Support Analyst in the Transmission and Regulatory Strategies Department of Consumers' Energy Supply Operations,² discussed the transmission and energy market expenses for the plan year along with generation-related reactive service credits to offset PSCR costs (Schedule 2 reactive revenues), and Consumers' efforts to manage transmission costs. Mr. Alfred testified that total transmission and energy market administration expense for 2020 is \$468,668,867, including \$461,733,160 of transmission expenses (Exhibit A-1, line 29,

¹ Due to the COVID-19 pandemic emergency, the evidentiary hearing was conducted via telephone/ videoconference.

² Mr. Alfred's testimony and rebuttal testimony are transcribed at 2 Tr 25-38.

column (o)) and \$6,935,707 for energy market administration expenses (Exhibit A-1, line 30, column (o)). Mr. Alfred explained that the company expects to receive revenues of \$4,500,000 for Schedule 2 services and that Consumers actively participates in Midcontinent Independent System Operator (MISO) stakeholder processes for transmission to ensure that new transmission investments are justified and costs are allocated using cost-causation principles.

In his rebuttal testimony, Mr. Alfred explained that in 2018, the Michigan Electric Transmission Company (METC) addressed the Tax Cuts and Jobs Act (TCJA) through reduced transmission costs that have been carried through to this case. Mr. Alfred noted that the Commission has previously addressed concerns related to the TCJA and transmission costs. Mr. Alfred sponsored Exhibit A-1 (Transmission and Energy Market Administration Expense).

Eugène M.J.A. Breuring, a Senior Rate Analyst II in Consumers' Planning, Budgeting and Analysis Department,³ presented the company's electric deliveries, generation requirements, and peak demand forecasts for the years 2020 to 2024, based primarily on weather, the economy, and demographics. He explained that electric deliveries have increased at a 0.3% compound annual growth rate, with most of the gain occurring in the industrial class. Mr. Breuring testified that total electric deliveries are expected to decrease 0.2% per year from 2020-2024, in part due to ongoing energy waste reduction (EWR) efforts. Similarly, Consumers' peak demand forecast is reduced by 256 megawatts (MW) in 2020, and by 453 MW in 2024, as a result of demand response programs; the company's EWR programs are forecast to reduce peak

³ Mr. Breuring's testimony and rebuttal testimony are transcribed at 2 Tr 41-55.

demand 623 MW in 2020 increasing to 861 MW in 2024, and the conservation voltage reduction programs are expected to reduce peak demand by 24 MW in 2020 increasing to 72 MW by 2024.

In rebuttal, Mr. Breuring testified that an update to its five-year forecast, in light of the COVID-19 pandemic, is not appropriate as part of this proceeding given that the impacts of the pandemic on electric deliveries and generation requirements are as yet unknown. Mr. Breuring sponsored Exhibits A-2 (2020 Forecast of Calendar Total Electric Deliveries); A-3 (Forecast of Annual Calendar Deliveries); A-4 (Forecast of Total Monthly Generation Requirements); A-5 (Forecast of Total Monthly Peak Demand); and A-6 (Forecasted System Load Factor Based on Summer Peak Demand).

Joshua W. Hahn, a Senior Engineer in the Electric Supply Operations and Power Supply Cost Recovery Section of Consumers' Electric Grid Integration Department,⁴ forecast the cost of fuel and purchased and net interchange power for the 2020 plan year. Mr. Hahn testified that his projection was derived using PROMOD IV modeling, "which simulates the dispatch of the Company's generating resources and purchased and interchange power resources to meet projected customer electric demand requirements."⁵ He also noted that the company included updated generation capacity for Lundington pumped storage plant upgrades, three new wind farms, additional solar energy, and the retirement of D.E. Karn units 1 and 2 in its plan and forecast. Mr. Hahn sponsored Exhibits A-7 (Monthly Summary for 2020 of Fuel and Purchased and Net Interchange Power Expenses); A-8 (Annual Summary for Years

⁴ Mr. Hahn's testimony is transcribed at 2 Tr 58-71.

⁵ 2 Tr 63.

2020-2024 of Fuel and Purchased and Net Interchange Power Expenses); and A-9 (Purchased Power Agreements – Projected 2020 Rates).

Norman J. Kapala, Executive Director of Coal Generation,⁶ identified the major fossil and Ludington outages for the plan year, the company's periodic outage plans, and random outage rate projections based on five years of historical outages. Mr. Kapala also projected the availability of generating units for the five-year forecast period, and estimated urea, aqueous ammonia, lime, and activated carbon expenses for the 2020 plan year and for the five-year forecast. Mr. Kapala sponsored Exhibits A-10 (Major Outages in the 2020 PSCR Plan); A-11 (2020 PSCR Random Outage Rate Projections); A-12 (2020-2024 Urea Expense); A-13 (20-2024 Aqueous Ammonia Expense); A-14 (2020-2024 Lime Expense); and A-15 (2020-2024 Activated Carbon Expense).

Kevin C. Lott, Fuels Transportation & Planning Director in Consumers' Electric Grid Integration Department,⁷ projected as-burned costs and volumes of coal, oil, and natural gas used for electric generation for the plan year and five-year forecast.

In his rebuttal testimony, Mr. Lott explained why the company should not be required to renegotiate its existing coal transportation contracts after the TCJA, noting that the Commission has previously addressed this issue in Consumers' 2019 PSCR plan case. Mr. Lott sponsored Exhibits A-16 (Projected As-Burned Coal Costs – 2020); A-17 (Projected As-Burned Coal Costs (2021 – 2024)); A-18 (Projected As-Burned Oil &

⁶ Mr. Kapala's testimony is transcribed at 2 Tr 74-91.

⁷ Mr. Lott's testimony and rebuttal testimony are transcribed at 2 Tr 94-106.

Gas Costs – 2020); and Exhibit A-19 (Projected As-Burned Oil & Gas Costs (2021 – 2024)).

Adam J. Moritz, a General Engineer II in the Integrated Resource Planning and Analytics section of Consumers' Electric Grid Integration Department,⁸ testified regarding the appropriate capacity planning reserve margin for 2020, along with the resources needed to meet the capacity requirement. Mr. Moritz discussed the generating resources included in the plan, both those that have been previously approved and those that have not, as well as resources remaining to be purchased for the plan period. Finally, Mr. Moritz testified regarding Consumers' long-term capacity planning options and how MISO capacity market costs are treated in the PSCR plan. Mr. Moritz sponsored Exhibit A-20 (Planning Reserve Margin Requirements and Planning Resources to be Acquired (ZRC)).

Stephen J. Nadeau, the Manager of Natural Gas Supply for Generation in Fossil Fuel Supply,⁹ testified regarding Consumers' oil and natural gas commodity price forecasts and procurement strategy for electric generation. Mr. Nadeau explained that, due to uncertainty about the timing and amounts needed, oil and natural gas for the company's Karn units are purchased in part on a spot basis and the remainder by a gas management services contract with spot pricing terms. Mr. Nadeau also discussed the company's methods for reducing natural gas costs, including utilizing storage when gas prices are low, and the company's approach to sourcing fuel for the Jackson and Zeeland gas plants.

⁸ Mr. Moritz's testimony is transcribed at 2 Tr 109-121.

⁹ Mr. Nadeau's direct and rebuttal testimony are transcribed at 2 Tr 124-143.

In his rebuttal testimony, Mr. Nadeau responded to concerns about the costs associated with the Zeeland and Jackson lateral pipelines, noting that the Commission has previously addressed these issues.

Angela K. Rissman, the Manager of Coal Procurement in Fossil Fuel Supply,¹⁰ testified concerning Consumers' coal purchases and coal procurement strategy for the plan and five-year forecast periods. Ms. Rissman filed rebuttal testimony regarding the company's existing coal contracts and the TCJA, noting that the Commission has previously addressed this issue. Ms. Rissman sponsored Exhibit A-21 (2020-2024 Coal Contract & Purchase Data).

Keith G. Troyer, Director of Electric Grid Integration Contracts and Settlements in the Electric Supply Section of Consumers' Electric Grid Integration Department,¹¹ discussed the power purchase agreement (PPA) resources included in the plan that have not yet been approved along with changes to PPA resources that have been approved by the Commission. Mr. Troyer also testified regarding Consumers' Blackstart Resource Agreement with METC, the treatment of MISO revenue and expenses in the PSCR plan, and the portion of expenses associated with the company's renewable resources included in the plan. In his rebuttal testimony, Mr. Troyer addressed issues concerning the renegotiation of PPAs to reflect the effects of the TCJA, noting that the Commission has previously addressed this matter. Mr. Troyer also disagreed with the recommendation that the company refile its plan and forecast in light of the COVID-19 pandemic.

¹⁰ Ms. Rissman's testimony and rebuttal testimony are transcribed at 2 Tr 146-156.

¹¹ Mr. Troyer's direct and rebuttal testimony are transcribed at 2 Tr 159-178.

Andrew G. Volansky, a Senior Rate Analyst II in the Revenue Requirement and Analysis Section of Consumers' Rates and Regulation Department,¹² presented the calculation of the company's 2020 PSCR factor of \$0.00008 per kWh, as shown in Exhibit A-22.

B. Staff

Raushawn D. Bodiford, a Public Utilities Engineer in the Commission's Energy Operations Division,¹³ testified on behalf of Staff. Mr. Bodiford stated that Staff reviewed Consumers' PSCR plan filing to determine the approvals the company was requesting, to assess known versus projected costs, and to evaluate the reasonableness and prudence of the plan. Staff also looked at the extent to which this plan is consistent with previous plans and Commission orders.

Mr. Bodiford testified that except for one new PPA, which was approved in Case No. U-20604, Consumers did not introduce any new issues in this case. Mr. Bodiford explained that compared to the company's 2019 PSCR plan, Consumers forecasts a \$44.3 million decrease in system power supply costs in 2020, with a \$30 million increase in net transmission expense, resulting in an overall decrease of \$21.4 million in total power supply costs.¹⁴ Mr. Bodiford testified that Staff found Consumers' PSCR requests reasonable based on Staff's evaluation of the plan and underlying assumptions. Mr. Bodiford sponsored Exhibit S-1 (Discovery responses).

¹² Mr. Volansky's testimony is transcribed at 2 Tr 181-184.

¹³ Mr. Bodiford's testimony can be found at 2 Tr 187-201.

¹⁴ 2 Tr 200. The net \$21.4 million decrease includes a decrease in environmental expenses. See, Table 2, 2 Tr 199.

C. Residential Customer Group

Geoffrey C. Crandall, Principal and Vice President of MSB Energy Associates, Inc., testified on behalf on the RCG.¹⁵ Mr. Crandall explained that he has significant concerns with Consumers' five-year forecast considering the effects of the COVID-19 pandemic, which arose after the company filed its application in this case. In addition, Mr. Crandall took issue with the extent to which Consumers has addressed reduced fuel and purchased power expense as a result of the TCJA, and he testified that Consumers has not justified the costs associated with the Zeeland interconnection pipeline that are included in the plan and forecast. Finally, Mr. Crandall maintained that the costs associated with the Jackson pipeline have not been supported and that the company should provide additional evidence in the reconciliation of this plan to establish the reasonableness and prudence of the pipeline costs. Mr. Crandall sponsored Exhibits RCG-1 (Crandall Resume); RCG-2 (U.S. Bureau of Labor Statistics Local Area Unemployment Statistics); RCG-3 (PUCO Weekly Report of COVID-19 Impacts by Electric Transmission Zone (5/13/20)); RCG-4 (Consumers Energy Company's Comments on Covid-19 Related Impacts to Regulatory Activities (4/30/20)); RCG-5 (FERC News Release dated March 15, 2018 addressing tax law changes for electricity, natural gas, oil companies and electricity); RCG-6 (MPSC Issue Brief on Tax Cuts and Jobs Act dated February 22, 2018); RCG-7 (MPSC News Release dated June 28, 2018 related to Tax Cuts and Jobs Act); RCG-8 (Press Release from U. S. Chamber of Commerce dated August 16, 2018 related to Energy Rate Savings and Economic Growth from Tax Cuts and Jobs Act); RCG-9 (News Release from American Gas

¹⁵ Mr. Crandall's testimony is transcribed at 2 Tr 205-221.

Association regarding Natural Gas Utility Customers Benefit from Tax Reform); RCG-10 (CECO discovery responses to RCG discovery questions regarding the Tax Cuts and Jobs Act); RCG-11 (CECO discovery responses to RCG discovery questions regarding the Zeeland plant and Jackson plant interconnection pipelines); Exhibits RCG-12 through RCG-18 (Consumers Discovery Responses from Case No. U-20219); and Confidential Exhibits RCG-19 and RCG-20 (Confidential Discovery Responses admitted in Case No. U-20219); RCG-21 (Contract letter admitted in Case No. U-20219); RCG-22 (First Amendment to Transportation Agreement between SEMCO Energy Gas Company and Consumers Energy Company dated December 17, 1999 admitted in U-20219); RCG-23 (Act 9 Gas Transportation Agreement between Consumers Energy Company and Alphagen Power LLC dated March 14, 2002 admitted in U-20219); and RCG-24 through RCG-28 (Discovery responses from Case No. U-20219).¹⁶

D. Positions of the Parties

Noting that only the RCG raised any issues with the company's plan and five-year forecast, Consumers maintains that the Commission should approve the plan and forecast as reasonable and prudent, and it should authorize the company to charge a maximum PSCR factor for 2020 of \$0.00008 per kWh of electricity. Consumers further asserts that the RCG's recommendations should be dismissed as without merit, urging the Commission to:

. . . apply the Pennwalt doctrine and direct RCG to not present identical evidence and raise identical issues which have been repeatedly rejected by the Commission – such as the impact of the TCJA, the charges paid pursuant to the natural gas transportation agreement with SEMCO, and

¹⁶ At the hearing, Exhibits RCG-30 through RCG-33, RCG-35 through RCG-37, and RCG-40 were admitted, as were Confidential Exhibits RCG-29 and RCG-34, RCG-38, RCG-39, and RCG-41.

the Company's use of natural gas management services agents and agreements, which were all addressed by the Commission in the Company's 2019 PSCR Plan, Case No. U-20219 – without a change in circumstances or the production of new evidence.¹⁷

Staff indicates that after a review of Consumers' application, testimony, and exhibits, Staff supports the company's proposed PSCR factor. Staff observes that the plan includes only one new item and "[a]ll other requested approvals of projections stem from prior cases where they were found to be reasonable and prudent, and the actual costs will be evaluated in the reconciliation case."¹⁸

The RCG contends that the transportation costs associated with the Jackson lateral pipeline result from an affiliate transaction and that these costs have never been justified or supported. The RCG argues that the costs should be disallowed on grounds that Consumers' gas division owns the pipeline, and the costs are therefore already recovered through base gas rates. Similarly, the RCG asserts that the costs associated with lease payments for the Zeeland lateral should be disallowed because Consumers should have exercised its option to purchase the pipeline and because the company has failed to demonstrate that these costs are reasonable and prudent. The RCG contends that the Commission should either disallow these costs as part of the plan, or it should issue a Section 7 warning that Zeeland lease costs may be disallowed in future plan and reconciliation cases.

Next, the RCG takes issue with Consumers' use of a third-party agent to secure, transport, and store gas supplies for the Zeeland, Jackson and Karn units. The RCG argues that these services could be more economically obtained internally through the

¹⁷ Consumers reply brief, p. 2, citing *In re Consumers Energy*, 291 Mich App 102, 122; 804 NW2d 574 (2010) and *Pennwalt Corp v Pub Serv Comm*, 166 Mich App 1, 9; 420 NW2d 156 (1988).

¹⁸ Staff brief, p. 3, citing 2 Tr 190-191.

company's gas division. The RCG also asserts that Consumers should reevaluate the company's fuel and purchase power contracts to ensure that PSCR customers realize savings from the TCJA. The Commission should require Consumers to detail these efforts in the company's reconciliation.

Finally, the RCG notes that because the COVID-19 pandemic occurred some months after Consumers' filed its plan and forecast, the company should be required to revise and resubmit its 2020 plan and 2020-2024 forecast incorporating the impacts of the virus.

III.

DISCUSSION

A. Legal Standards

Act 304, MCL 460.6j et seq., provides for a PSCR clause that requires the utility to "annually . . . file . . . a complete power supply cost recovery plan describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period specified by the commission and requesting for each of those 12 months a specific power supply cost recovery factor." MCL 460.6j(3). In addition, a PSCR plan must:

[D]escribe all major contracts and power supply arrangements entered into by the utility for providing power supply during the specified 12-month period. The description of the major contracts and arrangements shall include the price of fuel, the duration of the contract or arrangement, and an explanation or description of any other term or provision as required by the commission. For gas fuel supply contracts or arrangements, the description shall include whether the supply contracts or arrangements include long-term firm gas transportation and, if not, an explanation of how the utility proposes to ensure reliable and reasonably priced gas fuel supply to its generation facilities during the specified 12-month period. The plan shall also include the utility's evaluation of the reasonableness and prudence of its decisions to provide power supply in the manner

described in the plan, in light of its existing sources of electrical generation, and an explanation of the actions taken by the utility to minimize the cost of fuel to the utility. MCL 460.6(j)(3).

With the PSCR plan, pursuant to MCL 460.6j(4), a rate-regulated electric utility must also file:

[A] 5-year forecast of the power supply requirements of its customers, its anticipated sources of supply, and projections of power supply costs, in light of its existing sources of electrical generation and sources of electrical generation under construction. The forecast shall include a description of all relevant major contracts and power supply arrangements entered into or contemplated by the utility, and any other information the commission may require.

For the PSCR plan, the Commission shall:

[C]onduct a proceeding, to be known as a power supply and cost review, for the purpose of evaluating the reasonableness and prudence of the power supply cost recovery plan filed by a utility pursuant to subsection (3), and establishing the power supply cost recovery factors to implement a power supply cost recovery clause incorporated in the electric rates or rate schedule of the utility. MCL 460.6j(5).

In its final order in a power supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the power supply cost recovery plan filed by an electric utility under subsection (3), and shall approve, disapprove, or amend the power supply cost recovery plan accordingly. In evaluating the decisions underlying the power supply cost recovery plan, the commission shall consider the cost and availability of the electrical generation available to the utility; the cost of short-term firm purchases available to the utility; the availability of interruptible service; the ability of the utility to reduce or to eliminate any firm sales to out-of-state customers if the utility is not a multi-state utility whose firm sales are subject to other regulatory authority; whether the utility has taken all appropriate actions to minimize the cost of fuel; and other relevant factors. The commission shall approve, reject, or amend the 12 monthly power supply cost recovery factors requested by the utility in its power supply cost recovery plan. The factors shall not reflect items the commission could reasonably anticipate would be disallowed under subsection (13). The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events. MCL 460.6j(6).

Finally, for the five-year forecast, the Commission must:

[E]valuate the decisions underlying the 5-year forecast filed by a utility under subsection (4). The commission may also indicate any cost items in the 5-year forecast that, on the basis of present evidence, the commission would be unlikely to permit the utility to recover from its customers in rates, rate schedules, or power supply cost recovery factors established in the future. MCL 460.6j(7).

B. Uncontested Matters

Although the RCG raises concerns about certain costs and assumptions included in Consumers' plan and forecast, it does not recommend any specific adjustment to the PSCR factor.¹⁹ Thus, this PFD finds that Consumers' proposed PSCR factor of \$0.00008 should be approved. The issues raised by the RCG are addressed below.

C. Contested Issues

As outlined above, the RCG makes recommendations related to five issues: (1) the need for Consumers to undertake (and demonstrate) efforts to reduce supplier costs in light of the corporate tax reduction resulting from the TCJA; (2) a recommendation that the Commission disallow costs for the Zeeland lateral pipeline; (3) a recommendation that the Commission disallow costs for the Jackson lateral pipeline; (4) a recommendation that the Commission disallow costs for third-party gas management service agents to secure gas supply for the Zeeland, Jackson, and Karn units; and (5) that Consumers be required to revise and refile its plan and forecast in light of the impacts of COVID-19.

The Staff and Consumers point out that four of the five issues described above have been addressed by the Commission before, most recently in the April 15, 2020

¹⁹ 2 Tr 214. The RCG's recommendation that Consumers revise and refile its PSCR plan, which could change the PSCR factor, is addressed below.

order in Case No. U-20219 (April 15 order), and the RCG provides no new evidence or change of circumstance that would merit revisiting these matters. As discussed in more detail below, this PFD agrees.

First, the RCG argues that Consumers “in this case, as in U-20219, admits that it has not undertaken any efforts to even seek supplier cost savings to reflect the savings suppliers have realized due to the 40% reduction in federal corporate income taxes effective with the adoption of the Tax Cuts and Jobs Act (TCJA) effective January 1, 2018.”²⁰ The RCG contends that although the federal Energy Regulatory Commission (FERC) and Midcontinent Independent System Operator (MISO) provide for automatic tariff adjustments when tax laws change, “CECO’s PSCR cost claims in this case include far more and different costs for coal, gas, oil, chemical additives, among other supplier costs[,]” as well as costs for gas management agents, PPAs, and the Zeeland and Jackson laterals.²¹ Mr. Crandall therefore recommended that the Commission direct Consumers to “re-examine its fuel and purchase power, and other supplier contracts, and re-negotiate contracts and take what actions are necessary to downwardly adjust the costs for coal, fuel, purchase power, transportation and other costs which are proposed to be included in the PSCR factor and five-year PSCR forecast.”²²

In response, Consumers points to testimony by Mr. Troyer that the company lacks a means to renegotiate its PPAs, any renegotiation would be unlikely to result in changes to the contract, and renegotiation could potentially result in higher contract

²⁰ RCG brief, p. 19, citing Exhibits RCG-13 through RCG-17, and RCG-30.

²¹ RCG brief, p. 20.

²² 2 Tr 220.

costs. Consumers notes that the two coal transportation contracts it has in place for 2020 were negotiated after the TCJA, and that its competitively-bid coal contracts are “layered” with various amounts, prices, and term lengths, thereby limiting risk and incorporating underlying changes in costs.²³ With respect to oil and gas purchases, Consumers cites testimony by Mr. Nadeau “that such costs were a combination of spot purchases and competitively bid contracts that would already account for the effect of lower tax rates[.]”²⁴ Finally, Consumers and Staff contend that this issue was addressed in the April 15 order, p. 7, where the Commission found:

Contract agreements take into account numerous complex matters considered in their entirety to arrive at mutually agreeable terms and conditions. Requiring Consumers to renegotiate agreements solely for potential savings from the TCJA ignores this reality, particularly when the agreements provide no mechanism for such renegotiation. Accordingly, the Commission declines to require Consumers to attempt to renegotiate its supplier and vendor contracts to pursue potential TCJA savings and finds the current expenses to be reasonable and prudent.

In its reply brief, the RCG maintains that Consumers’ rationale for failing to renegotiate its various supply contracts is speculative, or in some cases disingenuous, noting that Consumers has renegotiated its contract with SEMCO for use of the Zeeland pipeline, as well as its PPA with Entergy Nuclear Palisades (ENP), which was approved in Case No. U-20734.

As quoted above, the RCG’s concerns related to the TCJA were addressed by the Commission in the April 15 order and the only new argument that the RCG raises here is that Consumers has amended its PPA with ENP for capacity and energy from the Palisades nuclear plant. Thus, according to the RCG, Consumers has

²³ Consumers brief, p. 17.

²⁴ Id. at 18, citing 2 Tr 142-143.

demonstrated that it is possible for the company to renegotiate supplier agreements and PPAs to benefit ratepayers.

This ALJ disagrees, finding the RCG's reference to the amendment of the ENP PPA inapposite. The amendment was made almost two years after the TCJA was enacted, and it appears to have nothing to do with any changes to the federal corporate income tax rate. According to the order approving a settlement agreement, the amendment extended the PPA by 51 days (until May 31, 2022) to "mitigate[] the potential that Consumers would be required to purchase replacement capacity for Midcontinent Independent System Operator, Inc. planning year 2021 (June 1, 2021 through May 31, 2022) and establishes a fixed price for energy in lieu of the variable price that Consumers would otherwise be exposed to."²⁵ Thus, although some contracts (like the ENP PPA) may be renegotiated under certain circumstances, it does not follow that every contract can or should be modified as a result of a single underlying change in costs. This is particularly true where, as several company witnesses explained, Consumers makes efforts to control contract costs. And, as the Commission found in the April 15 order, "[c]ontract agreements take into account numerous complex matters considered in their entirety to arrive at mutually agreeable terms and conditions."

Next, the RCG maintains that the Commission should disallow the payments for use of the SEMCO lateral for the transportation of gas to the Zeeland plant, on grounds

²⁵ August 20, 2020 order in Case No. U-20734, pp. 1-2.
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that Consumers has not demonstrated that “the lease arrangement is less costly than an outright purchase of the pipeline under the Option to Purchase contract.”²⁶

Consumers responds first by clarifying that the July 24, 2018 order on rehearing in Case No. U-18142 disallowed \$1.0 million in costs for the purchase of the SEMCO lateral, finding that those costs were more appropriate for recovery in a rate case. The Commission however allowed \$700,000 in demand charges for the pipeline to be recovered through the PSCR plan. Consumers adds that in subsequent PSCR plan cases, Case Nos. U-18402 and U-20219, the Commission rejected the RCG’s recommended disallowance of these demand charges, finding them reasonable and prudent.

Further, quoting his testimony in Case No. U-20068 (Consumers’ 2017 PSCR reconciliation), Mr. Nadeau explained that Consumers compared SEMCO’s proposal to extend the agreement at a lower demand charge to ownership of the pipeline, finding that “it was more cost effective to forgo the purchase of the pipeline and instead extend the transportation contract for another five years and pay the lower annual demand charge.”²⁷

The PFD finds that the RCG’s recommended disallowance of the charges for the Zeeland lateral should be rejected. As Consumers observes, the company has provided ample evidence, including a benefit cost analysis in Case No. U-20219, which demonstrates that it is more cost-effective for customers to pay the reduced demand charges for the pipeline rather than the cost if Consumers were to own, operate and

²⁶ 2 Tr 221.

²⁷ 2 Tr 137, quoting Case No. U-20068, 2 Tr 275.

maintain the pipeline. Moreover, the Commission addressed this concern in the April 15 order stating:

The Commission agrees with the ALJ and Consumers on this issue and declines to disallow the Zeeland lateral demand charges included in the PSCR plan and forecast as suggested by RCG. Confidential Exhibit A-23 provides a thorough and clear analysis that payment of an annual demand charge is more cost-effective than the purchase of the lateral, especially considering costs related to the maintenance of the pipeline. Accordingly, the Commission finds the demand charges are reasonable and prudent and approves the expense.²⁸

The RCG does not cite any changes to facts, underlying circumstances, or new evidence that merit a different finding or outcome on this issue.²⁹

The RCG also disputes the reasonableness and prudence of the demand charges associated with the Jackson lateral, contending that these charges have not been justified or fully supported. The RCG further argues that, because Consumers' affiliated gas utility owns the pipeline, and it recovers ownership and O&M costs through base gas rates, the company is double recovering pipeline costs. The RCG points out that Consumers refused to respond to discovery requests on the amounts included in gas rates for the Jackson lateral.³⁰

In response, the company points out that when the 50-year transportation agreement was signed, Consumers did not own the gas plant. Thus, there was no affiliate transaction and no Code of Conduct issue that pertained to the agreement, which has not changed since it was signed. Second, the Commission addressed the RCG's arguments regarding the Jackson lateral in the April 15 order, finding that the transportation charges for the pipeline were reasonable and should be included as part

²⁸ April 15, 2020 order in Case No. U-20219, pp. 8-9.

²⁹ See, e.g., *In re Consumers*, 291 Mich App

³⁰ RCG brief, p. 4, quoting RCG-11, p.12.

of PSCR costs. Finally, Consumers points out that although the order in Case No. U-20219 directed the company to provide more information on the Jackson lateral in future PSCR plan and reconciliation cases, that order was issued over six months after the company filed its application in this case.

This PFD agrees with Consumers and Staff that the Commission addressed this issue in the April 15 order, and that the Commission's directive to provide more information about the Jackson lateral agreement and transactions between the gas and electric divisions should be addressed in future plans and reconciliations, and not this case. As for the RCG's claim that the company is recovering pipeline costs both through gas rates and through the PSCR factor, this PFD agrees with Consumers that, "[i]f RCG desires to challenge the recovery of pipeline costs in the base rates of the Company's natural gas utility, the appropriate place to do so would be in one of the Company's natural gas rate cases, not in this PSCR proceeding."³¹

Fourth, the RCG highlights Consumers' use of a gas management services agent to secure gas supply, transportation, and storage for the Jackson and Zeeland plants, as well as two of the Karn units. Noting that it has raised this issue before, the RCG asserts that the Commission should disallow additional costs for gas management agents (or fashion some other appropriate remedy) because the company's gas division is able to acquire gas using internal resources. The RCG contends that "the more enhanced confidential and non-confidential testimony and exhibits in this case provide a strong case to support Commission remedies to protect ratepayers with respect to this

³¹ This issue appears to be most easily resolved through an audit or discovery request in a gas rate case to determine how Consumers' gas business accounts for Jackson lateral demand charge revenues from Consumers' electric business.

issue.”³² The RCG also points to testimony and exhibits from Case No. U-20210, DTE Gas Company’s gas cost recovery (GCR) reconciliation, wherein that company stated that it undertook all arrangements for gas supply acquisition, transportation, and storage using internal resources.³³ According to the RCG:

CECO in this case has provided no explanation or specifics as to why it would circumvent its own gas division in relying on an expensive third party gas agent to secure its gas supplies, transportation, and gas storage when CECO’s gas division has decades of experience in undertaking these functions. CECO has not explained why it would pay a gas agent a high fee for these services, and incur gas costs for its Zeeland, Jackson, and Karn plants that far exceed the prevailing GCR cost that has been established in its contemporaneous GCR case U-20541 as approved by the Commission.³⁴

In response, Consumers points out that Mr. Crandall provided no testimony on this issue, and the RCG first raises the matter in its initial brief. Further, Consumers contends that the Commission has consistently approved costs associated with gas management services, going back to Case No. U-16045-R in 2010, up to the April 15 order where the Commission again found these costs reasonable and prudent.

Staff likewise recommends that the Commission reject the RCG’s arguments about gas management services agents, noting that the RCG provides no detailed explanation regarding why DTE Gas’s management practices justify a different outcome from Consumers’ previous PSCR cases.

This PFD agrees that aside from some evidence from a DTE Gas GCR case, the relevance of which to a PSCR plan case is unclear,³⁵ the RCG presents nothing new for

³² RCG brief, p. 31.

³³ RCG brief, p. 32, citing Exhibit RCG-4.

³⁴ RCG brief, p. 33.

³⁵ Consumers Gas, like DTE Gas, also manages gas supply, transportation and storage, using internal resources.

the Commission's consideration. And, based on essentially the same arguments presented here, the Commission rejected the RCG's recommendation in the April 15 order, p. 12, finding:

The Commission is not persuaded by RCG's arguments and agrees with the ALJ that Consumers' use of gas management service agents has been addressed in past PSCR plan and reconciliation cases and no new issues were raised in the instant case. As the ALJ stated in the PFD, "RCG's claim that it would be more economical for the gas side of the company to undertake these services for the electric side of the company is speculative and without any evidentiary support in [the] record." PFD, p. 31. Further, Consumers provided testimony that the gas side of the company does not offer commercial gas procurement services. *Id.*; 2 Tr 66. In addition, as the ALJ pointed out, the "reasonableness of gas management services agreements can be addressed in the PSCR reconciliation." PFD, p. 31. And finally, RCG fails to make any persuasive argument as to why it would be reasonable for gas customers to forego the profit from providing gas procurement services and, potentially, suffer higher gas rates, so that electric customers can enjoy a lower power supply cost. Therefore, the Commission finds the gas management service expenses to be reasonable and prudent, but expects that the contracts and expenses to be adequately examined in the reconciliation case.

Although the RCG makes a slightly different argument here, namely that the cost of gas management services is too high,³⁶ the company still does not offer gas managements services on a commercial basis, and the issue is still more appropriately addressed in a reconciliation rather than a plan proceeding.

Finally, the RCG argues that because this case was filed several months before the onset of the COVID-19 pandemic, Consumers should be required to revise and resubmit its plan and forecast to reflect the ongoing and projected impacts of COVID-19. In its reply brief, however, the RCG modifies its stance and now recommends:

³⁶ In Case No. U-20219, the RCG suggested that Consumers Gas should provide this service to Consumers Electric at no cost. The Commission rejected this position, as quoted above.

RCG supports the continuation of further investigation and review of the impact of the COVID-19 virus crisis on PSCR costs and on customer rates, which can be accomplished in upcoming PSCR plan and reconciliation cases, and other dockets.³⁷

Consumers points out that at the time of the company's rebuttal filing in July 2020, the effect of COVID-19 on power supply costs and revenues was still unknown, and therefore the company's plan and forecast could not have reflected the impacts from the pandemic. Moreover, Consumers contends:

RCG's position also ignores the fact that the Company has the ability, and incentive under the PSCR law, to manage the maximum PSCR factor to ensure that the Company does not significantly over-recover PSCR costs. Company witness Troyer explained that, to account for the changes that may occur in the time between Plan approval and the subsequent year's Plan, the Company adjusts its PSCR factor on a monthly basis to avoid over- or under-recovery as the Plan year occurs. 2 TR 177. Adjustments throughout the year are an attempt to match revenue recovered from customers to the actual PSCR expense so that at the end of the year the Company has not over or under collected. The Company is incentivized to make these adjustments to avoid statutory interest on over-recoveries, as provided in MCL 460.6j. PSCR Reconciliation proceedings also serve as a vehicle for cost adjustments. 2 TR 177-178. In those proceedings, the Company presents the PSCR amounts recovered from customers compared to the actual costs incurred. To the extent that the Company over-recovers or under-recovers, that difference is then addressed through the Reconciliation case and is carried over to the following year.³⁸

Staff states that it is not making any recommendations with respect to including COVID-19 information in future plan cases.

This PFD agrees with Consumers that the appropriate place to address the effects of the pandemic on 2020 PSCR costs is in the company's reconciliation. Future forecasts may be updated to include pandemic-related projections if appropriate.

³⁷ RCG reply brief, p. 12.

³⁸ Consumers brief, pp. 13-14.

IV.

CONCLUSION

This PFD recommends that the Commission adopt the following findings of fact and conclusions of law:

- (1) Consumers' PSCR plan for 2020-2021 is reasonable and prudent and should be approved.
- (2) Consumers should be authorized to implement a maximum PSCR factor of \$0.00008 per Mcf.
- (3) Consumers' five-year forecast should be accepted.

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

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Sally L. Wallace
Administrative Law Judge

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