

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of Consumers)
Energy Company for reconciliation of its power)
supply cost recovery plan (Case No. U-20525))
for the 12 months ended December 31, 2020.)
_____)

Case No. U-20526

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 May 17, 2022.

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 June 7, 2022, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before June 21, 2022.

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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May 17, 2022
Lansing, Michigan

Sally L. Wallace
Administrative Law Judge

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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In the matter of the application of Consumers)
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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On March 31, 2021, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, requesting authority to reconcile its power supply cost recovery (PSCR) expenses and revenues for 2020.

Pursuant to due notice, a prehearing conference was held on May 12, 2021,¹ at which the company and Commission Staff (Staff) appeared. Petitions to intervene filed by Cadillac Renewable Energy, LLC (Cadillac), Genesee Power Station Limited Partnership (Genesee), Grayling Generating Station Limited Partnership (Grayling), Hillman Power Company, LLC (Hillman), T.E.S. Filer City Station Limited Partnership (TES Filer), Viking Energy of Lincoln, LLC (Viking Lincoln), and Viking Energy of McBain, LLC (Viking McBain) (collectively, the biomass merchant plants (BMPs)), Midland Cogeneration Venture LP, the Association of Businesses Advocating Tariff

¹ The prehearing conference and evidentiary hearing in this case were held via video/teleconference.

Equity (ABATE), and the Residential Customer Group were granted. The Department of the Attorney General (Attorney General) filed a notice of intervention.

On August 26, 2021, the BMPs filed direct testimony and exhibits, and on November 5, 2021, a protective order was entered. On December 16, 2021, Staff, the Attorney General, and ABATE filed testimony and exhibits, and on January 21, 2022, Consumers, Staff, the Attorney General, and ABATE filed rebuttal testimony. An evidentiary hearing was held on February 15, 2022, at which all testimony was bound into the record and exhibits admitted, without the need for witnesses to appear.

On March 17, 2022, Consumers, Staff, the Attorney General, the BMPs, and ABATE filed briefs, and Consumers, Staff and the Attorney General filed reply briefs on April 7, 2022. The record in this case is comprised of 483 transcript pages and 74 exhibits admitted into evidence. Portions of testimony and certain exhibits are designated confidential under the protective order and are not available in the public record.

II.

OVERVIEW OF THE RECORD

This section provides a brief overview of the topics addressed by each witness. The testimony and exhibits relevant to the disputed issues are addressed in more detail in Section V.

A. Consumers

Consumers presented the testimony of nine witnesses.

Leanna E. Feazel, a Senior Accounting Analyst I in the Electric Revenue and Fuel Reconciliation section of Consumers' General Accounting Department,² provided the methodology and calculation of the company's over- or under-recovered amounts related to its PSCR clause during 2020. As shown in Exhibit A-1, Ms. Feazel testified that Consumers calculates the monthly over- and under-recovered amounts by comparing PSCR revenues to PSCR expense for that month.³ Ms. Feazel described the calculation of PSCR revenue,⁴ and she testified that PSCR costs include the company's fuel and purchased power costs, transmission costs, urea and aqueous ammonia costs, costs for lime, costs for activated carbon, net oxides of nitrogen (NOx) and sulfur dioxide (SO₂) emission allowance costs, and transfer costs associated with renewable energy, minus the cost to supply non-PSCR sales.⁵ Ms. Feazel testified that Consumers calculated a total net under-recovery of \$3,795,571, including statutory interest. Including the 2019 overrecovery of \$17,841,440, the total under-recovery for 2020 is \$1,961,152.⁶ As it has done in the past, Consumers proposes to roll the total under-recovered amount into its calculation of 2021 PSCR factors.⁷

Joshua W. Hahn, a Senior Engineer in the Electric Supply Operations - Forecasting Section of Consumers' Electric Supply Department,⁸ addressed the PSCR costs projected in Case No. U-20525 (the company's 2020 PSCR Plan Case) and the actual generation requirements and purchased and interchange expenses incurred in

² Ms. Feazel's testimony is transcribed at 2 Tr 26-32.

³ 2 Tr 27.

⁴ 2 Tr 30-31; Exhibit A-1, lines 13-16.

⁵ 2 Tr 28.

⁶ Id. at 29, 30.

⁷ Id. at 29.

⁸ Mr. Hahn's testimony is transcribed at 2 Tr 34-43.

2020; the renewable energy transfer price included in PSCR expense, and the costs and revenues associated with Consumers' participation in the Midcontinent Independent System Operator, Inc.'s (MISO) Financial Transmission Rights (FTR) and Auction Revenue Rights (ARR) markets.

As shown in Exhibit A-3, line 14, column d, the total amount of electric energy required to provide service to Consumers' customers in 2020 was 6.57% lower than forecasted, as a result of decreases in steam, gas and oil, and combustion turbine generation, and utilization of the Ludington Pumped Storage Plant (Ludington) Units, coupled with increases in interchange received and delivered energy.⁹

Mr. Hahn discussed transfer price, estimating that for 2020, the transfer price was \$81.19, and the actual transfer cost, which flowed through the PSCR, was \$161,720,983, as shown in Exhibit A-4. Mr. Hahn also explained that consistent with the August 22, 2006 order in Case No. U-14701, Consumers included FTR and ARR revenues and costs in the PSCR reconciliation. Mr. Hahn testified that the company projected FTR and ARR expense of \$305,116 in its PSCR plan case, and it incurred an actual FTR and ARR expense net of congestion charges of \$1,236,855, as shown in Exhibit A-5. Lastly, in accordance with the settlement agreement approved in the June 28, 2018 order in Case No. U-17918-R, Mr. Hahn provided calculations of economic loss MWhs for outages at Ludington as shown in Exhibit A-6.

Norman J. Kapala, the Executive Director of Fossil and Renewable Generation for Consumers,¹⁰ provided a list of all 2020 outages in Exhibit A-7. Mr. Kapala

⁹ 2 Tr 37-38; Exhibit A-3.

¹⁰ Mr. Kapala's direct and revised rebuttal testimony are transcribed at 2 Tr 45-89.

explained that there were 459 outages in 2020, 39 fewer than the number that occurred in 2019.¹¹ Mr. Kapala also described Exhibit A-9, which provides more detail on each outage, including the cause of the outage, efforts undertaken to determine and address the root cause of the outage, and additional work undertaken during the outage, among other things.¹²

Mr. Kapala testified that there were 11 outages of 28 days or more projected for 2020, however, one of the 11 outages was moved forward to 2019, after the PSCR plan case was filed.¹³ And there were three additional outages that exceeded 28 days in 2020, that were not included in the plan, as shown in Exhibit A-10.¹⁴ Mr. Kapala discussed the 13 outages that occurred in 2020,¹⁵ noting that three of the outages exceeded 90 days including the Ludington Unit 3 outage (366 days), the Campbell Unit 1 outage (132 days) and the Karn Unit 4 outage (195 days) during 2020. The Ludington outage was projected to last 140 days and Campbell Unit 1 and Karn Unit 4 outages were scheduled to last 84 days and 135 days respectively.¹⁶ Mr. Kapala then provided details on the Ludington, Campbell, and Karn outages that exceeded 90 days.¹⁷

Mr. Kapala testified that Consumers did not project any NOx allowance expenses in 2020, nor did the company need to purchase any allowances. Mr. Kapala added that the company received revenue for a portion of the company's SO2 allowances, and that

¹¹ 2 Tr 47.

¹² Id. at 49-50.

¹³ 2 Tr 50.

¹⁴ Id.

¹⁵ Id. at 51-56.

¹⁶ Id. at 56.

¹⁷ Id. at 57-59.

costs for urea, aqueous ammonia, lime, and activated carbon were lower than projected.¹⁸

Mr. Kapala provided rebuttal testimony in response to Staff and Attorney General witnesses concerning disallowances of replacement power costs for extended outages at the Campbell and Ludington plants.

Kristopher L. Koster, a Senior Project Manager within Consumers' Enterprise Project Management organization,¹⁹ also provided rebuttal testimony in response to recommended disallowances for replacement power costs at Ludington Unit 3.

Stephen J. Nadeau, Consumers' Manager of Natural Gas Supply for Generation in Fossil Fuel Supply,²⁰ testified regarding 2020 projected and actual volumes and costs of oil and gas used for electric generation, as shown in Exhibit A-15. Mr. Nadeau explained that both the volumes and cost of oil and gas were less than projected because Zeeland burned less gas than forecasted and the cost of oil and gas were less than projected. Mr. Nadeau also provided information related to the Jackson Lateral pipeline, which supplies gas to the Zeeland plant.

Jenny L. Rickard, the Non-Utility Generation Settlements Supervisor in the Electric Grid Integration Contracts and Settlements section of Consumers' Electric Supply Department,²¹ addressed power purchase agreement (PPA) settlements with BMPs, purchases and sales with third parties in 2020, and 2020 interchange delivered by counterparties to MISO. Ms. Rickard explained that Exhibit A-17 shows the booked expense from November 2019 through October 2020, adding that based on invoices

¹⁸ Id. at 65-68.

¹⁹ Mr. Koster's rebuttal testimony is transcribed at 2 Tr 91-131.

²⁰ Mr. Nadeau's testimony is transcribed at 2 Tr 133-138.

²¹ Ms. Rickard's testimony is transcribed at 2 Tr 140-144.

received, Consumers believes that the BMPs are allowed to recover \$11,874,762 for expenses incurred in 2020. Ms. Rickard also described Exhibit A-18, which details the energy delivered to the MISO energy market and revenue received from each of the company's renewable energy purchase agreement generators for 2020.

Angela K. Rissman, Consumers' Manager of Coal Procurement in Fossil Fuel Supply,²² testified regarding the projected and actual volumes and costs for coal in 2020. Ms. Rissman testified that, as shown in Exhibit A-18, the company had 1,187,791 fewer tons of western coal delivered, than the amount projected, at a cost that was 8% less than the forecasted price of \$2.082 per million British thermal units (MMBtu) due to lower transportation costs and higher Btu content of the coal.²³

Raymond T. Scaife, MISO Settlements Manager of the Electric Transactions & Wholesale Settlements section of Consumers' Electric Supply Department,²⁴ testified regarding purchased power supply costs and the settlement of market transactions and transmission expenses incurred with MISO. Mr. Scaife discussed Exhibit A-21, which includes energy and capacity from PPAs with cogenerators and small and independent power producers, purchases from renewable energy providers for compliance with 2008 PA 295 (Act 295), volumes and costs/revenues for energy and capacity purchased or sold to other counterparties, volumes, costs, and revenues for energy and capacity sold to or received from MISO, and transmission costs.²⁵ In addition, Exhibit A-21 provides detail on Consumers' purchase of zonal resource credits (ZRCs) and the sale of ZRCs

²² Ms. Rissman's testimony is transcribed at 2 Tr 146-152.

²³ 2 Tr 149.

²⁴ Mr. Scaife's testimony is transcribed at 2 Tr 154-161.

²⁵ 2 Tr 155-158.

and Zonal Deliverability Benefits (ZDBs) in the MISO planning reserve auction (PRA), resulting in net revenues of \$6,033,249.²⁶

Mr. Scaife also discussed Exhibit A-22, which summarizes MISO market charges and credits for 2020, including transmission charges and accruals and adjustments. Finally, he described Exhibit A-23, which shows the reconciliation of the of the amounts forecasted under MCL 460.6w(3)(b) against actual amounts.²⁷

Troy S. Smith, the Manager of Supply Contracts in Consumers' Electric Grid Integration Contracts and Settlements Department,²⁸ testified regarding the administration of requests for proposals (RFPs) to procure renewable capacity consistent with the company's integrated resource plan (IRP). Mr. Smith discussed the independent administrator for the competitive procurement process and the treatment of costs associated with the company's voluntary Green Power Program. Mr. Smith provided a summary of renewable energy PPA contract rates in Exhibit A-24.

B. Staff

Staff presented the testimony of two witnesses.

Raushawn D. Bodiford, an engineer in the Act 304 and Sales Forecasting Section of the Commission's Energy Operations Division,²⁹ reviewed the company's filing, noting that many of the company's PSCR expenses were lower than forecasted and that Consumers appropriately adapted to the unusual market conditions that were the result of the Covid-19 pandemic.³⁰ Mr. Bodiford also reviewed the company's

²⁶ 2 Tr 158-159.

²⁷ Id. at 159-161.

²⁸ Mr. Smith's testimony is transcribed at 2 Tr 163-170.

²⁹ Mr. Bodiford's testimony and rebuttal testimony are transcribed at 2 Tr 463-482.

³⁰ 2 Tr 467-468.

outages, testifying that the great majority of them were reasonably and prudently managed. However, Mr. Bodiford explained that two extended outages, specifically, Outage Event No. 59 at Campbell Unit 1 and Outage Event No. 2 at Ludington Unit 3, were the result of contractor errors or inadequate company procedures. As such, the replacement power costs, totaling \$1,380,536, resulting from these outages should not be borne by ratepayers and should therefore be disallowed from the PSCR reconciliation.³¹

Mr. Bodiford also filed rebuttal testimony in response to ABATE.

Dolores A. Midkiff-Powell, the Manager for Act 304 Reconciliations Section of the Commission's Energy Operations Division,³² presented Staff's recommendation for the cumulative PSCR reconciliation for 2020, as shown in Exhibit S-1.0. Ms. Midkiff-Powell explained that Staff made four adjustments to Consumers reconciliation: (1) Staff adjusted the over-recovery beginning balance to \$20,396,497, to reflect the October 13, 2021 order in Case No. U-20220 and erratum filed on October 26, 2021; (2) Staff added the amounts owed to the BMPs, noting that Staff changed the way this information was presented; (3) Staff included a \$1,380,536 total disallowance for two 2020 outages, as discussed by Mr. Bodiford; and (4) Staff made an adjustment for the flow-through effect of the other changes on the monthly over- and under-recovery balances and interest amounts.³³ Ms. Midkiff-Powell recommended that the

³¹ Id. at 471-475.

³² Ms. Midkiff-Powell's testimony is transcribed at 2 Tr 454-461.

³³ 2 Tr 459-460.

Commission adopt an under-recovery of \$1,197,064, including interest, to be used as the company's beginning balance in its 2021 PSCR reconciliation.³⁴

C. Biomass Merchant Plants

The BMPs presented the testimony of nine witnesses.

Chase D. Shepherd, the plant manager of Cadillac Renewable Energy, LLC,³⁵ described the Cadillac merchant plant, as a 38 MW qualifying facility that sells electricity to Consumers under a PPA. Mr. Shepherd testified that Cadillac met the requirements for cost recovery under MCL 460.6j(9)-(10),³⁶ and he discussed Cadillac's fuel procurement activities, fuel costs, and fixed and variable O&M costs totaling \$2,420,939, as shown in Exhibit BMP-3. Mr. Shepherd also described the amounts Consumers paid to Cadillac under its PPA. According to Mr. Shepherd, Cadillac is seeking to recover \$774,531 in this proceeding, a portion of which has already been paid by Consumers, as shown in Exhibits BMP-1, BMP-2, and BMP-3.

Kenneth A. DesJardins, the Plant General Manager of the Genesee Power Station,³⁷ described Genesee, as a 40 MW merchant plant qualifying facility, located in Flint, Michigan, that sells electricity to Consumers under a PPA. Mr. DesJardins testified that Genesee met the requirements for cost recovery under Section 6j(9)-(10), and he discussed Genesee's fuel procurement activities, fuel costs, and fixed and variable O&M costs totaling \$4,958,182, as shown in Exhibit BMP-4. Mr. DesJardins also described the amounts Consumers paid to Genesee under its PPA. According to Mr. DesJardins, Genesee is seeking to recover a total of \$1,711,574 in this proceeding,

³⁴ Id. at 461.

³⁵ Mr. Shepherd's testimony is transcribed at 2 Tr 175-188.

³⁶ 2 Tr 178-180.

³⁷ Mr. DesJardin's testimony is transcribed at 2 Tr 190-211.

a portion of which has been paid by Consumers, as shown in Exhibits BMP-1, BMP-2, and BMP-4.³⁸ Mr. DesJardins also discussed the inflation adjustment to the \$1 million monthly cap on BMP cost recovery as shown in Exhibit BMP-10.³⁹

Edward A. Going, Sr., the Plant General Manager for Grayling Generating Station,⁴⁰ described Grayling as a 38 MW qualifying facility that sells electricity to Consumers under a PPA. Mr. Going testified that Grayling met each of the requirements for cost recovery under Section 6j(9)-(10), and he discussed Grayling's fuel procurement activities, fuel costs, and fixed and variable O&M costs totaling \$5,296,270. Mr. Going also described the amounts Consumers paid to Grayling under its PPA. According to Mr. Going, Grayling is seeking to recover a total of \$2,231,958 in this proceeding, a portion of which has been paid by Consumers, as shown in Exhibits BMP-1, BMP-2, and BMP-5.

Harry Davis, Jr., the Operations Manager of Hillman Power Company, LLC,⁴¹ described Hillman as an 18 MW merchant plant qualifying facility that sells electricity to Consumers under a PPA. Mr. Davis testified that Hillman met each of the requirements for cost recovery under Section 6j(9)-(10), and he discussed Hillman's fuel procurement activities, fuel costs, and fixed and variable O&M costs totaling \$92,730. Mr. Davis also described the amounts Consumers paid to Hillman under its PPA. According to Mr. Davis, Hillman is seeking to recover a total of \$79,733 in this proceeding, a portion of which has been paid by Consumers, as shown in Exhibits BMP-1, BMP-2 and BMP-6.

³⁸ 2 Tr 197-198.

³⁹ Id. at 206-209.

⁴⁰ Mr. Going's testimony is transcribed at 2 Tr 213-230.

⁴¹ Mr. Davis's testimony is transcribed at 2 Tr 232-247.

Robert Joe Tondou, owner and president of Tondou Corporation and an owner of T.E.S. Filer City Station Limited Partnership,⁴² described TES Filer as a 72.54 MW cogeneration facility that burns coal, wood waste, scrap tires, and natural gas. TES Filer generates electricity as well as steam, which is sold to a local packaging plant.⁴³ Mr. Tondou testified that TES Filer met each of the requirements for cost recovery under Section 6j(9)-(10), and he discussed TES Filer's fuel procurement activities, fuel costs, and fixed and variable O&M costs totaling \$23,693,093. Mr. Tondou also described the amounts Consumers paid to TES Filer under its PPA. According to Mr. Tondou, TES Filer is seeking to recover a total of \$6,634,744 in capped fuel and O&M expense, a portion of which has been paid by Consumers, as shown in Exhibits BMP-1, BMP-2 and BMP-7.⁴⁴ In addition, TES Filer is requesting recovery of \$890 in uncapped NOx allowance costs that were incurred in 2020 as a result of the Cross State Air Pollution Rule, 40 CFR 97 Subparts AAAAAA to FFFFFF. TES is also seeking to recover \$1,026,246 in fuel costs and \$74,791 in compliance testing costs incurred under the Mercury and Air Toxics Standards (MATS), 40 CFR Part 63, Subpart UUUUUU, and as provided under MCL 460.6a(10).⁴⁵

Todd Guenthardt, the Plant Manager for TES Filer,⁴⁶ testified in support of the recovery of uncapped natural gas costs, as required for MATS compliance. Mr. Guenthardt discussed TES Filer's natural gas project, and he described the plant's efforts to minimize the use of natural gas.

⁴² Mr. Tondou's testimony is transcribed at 2 Tr 249-288.

⁴³ 2 Tr 250.

⁴⁴ Id. at 257-258.

⁴⁵ Id. at 258-259; Exhibit BMP-7.

⁴⁶ Mr. Guenthardt's testimony is transcribed at 2 Tr 310-356.

John F. Caudell, the owner of As-Needed Resources. LLC,⁴⁷ testified on behalf of TES Filer. Mr. Caudell discussed the design of the boilers at TES Filer and the reasonableness and prudence of the decision to install natural gas burners for MATS compliance.

Andrew W. Sutherland, a Senior Project Manager, Senior Mechanical Engineer, and Associate Vice President of HDR Engineering, testified on behalf of TES Filer.⁴⁸ Mr. Sutherland discussed the impact of the addition of gas burners to the TES Filer plant and described the maintenance practices at the plant.

Todd K. Tolkinen, the General Manager for both the Viking Energy of Lincoln and McBain Power Stations,⁴⁹ described Viking Lincoln and Viking McBain as 18 MW (each) qualifying facilities that sell electricity to Consumers under PPAs. Mr. Tolkinen testified that Viking Lincoln and Viking McBain met all of the requirements for cost recovery under Section 6j(9)-(10), and he discussed the facilities' fuel procurement activities, fuel costs, and fixed and variable O&M costs totaling \$5,768,859 for Viking Lincoln and \$7,590,911 for Viking McBain. Mr. Tolkinen also described the amounts Consumers paid to Viking Lincoln and Viking McBain under their respective PPAs. According to Mr. Tolkinen, Viking Lincoln is seeking to recover a total of \$656,616 in this proceeding, and Viking McBain seeks recovery of \$2,110,084. A portion of these amounts has been paid by Consumers, as shown in Exhibits BMP-1, BMP-2, BMP-8 and BMP-9.

⁴⁷ Mr. Caudell's testimony is transcribed at 2 Tr 358-363.

⁴⁸ Mr. Sutherland's testimony is transcribed at 2 Tr 365-375.

⁴⁹ Mr. Tolkinen's testimony is transcribed at 2 Tr 290-308.

D. Attorney General

Sebastian Coppola, an independent business consultant specializing in financial and business issues in energy and utility regulation, testified on behalf of the Attorney General.⁵⁰ Mr. Coppola described Outage Event No. 26 at Campbell Unit 1, which, according to him, resulted from imprudent procedures and actions by the company. Mr. Coppola testified that because the company's actions caused the extended outage, replacement power costs for the outage at Campbell Unit 1 should not be recovered from ratepayers.⁵¹

Next, Mr. Coppola addressed Outage Event No. 2 at Ludington Unit 3. Mr. Coppola testified that the extended six-month outage at the unit was the result of contractor errors in design, manufacture, and installation, along with performance delays. Like the Campbell Unit 1 outage, Mr. Coppola testified that ratepayers should not be responsible for replacement power costs resulting from problems caused by the contractor.⁵²

Finally, Mr. Coppola provided an updated beginning balance for the 2021 PSCR reconciliation based on the Commission's determination of the 2019 over-recovery balance in the October 13, 2021 order in Case No. U-20220.

Mr. Coppola also filed rebuttal testimony in response to ABATE's witness.

⁵⁰ Mr. Coppola's direct and rebuttal testimony are transcribed at 2 Tr 379-423. Portions of Mr. Coppola's testimony, and two of his exhibits, are confidential and thus not part of the public record.

⁵¹ 2 Tr 385-389.

⁵² Id. at 389-394.

E. Association of Businesses Advocating Tariff Equity

James R. Dauphinais, a Managing Principal with Brubaker & Associates, Inc., and a consultant in utility regulation,⁵³ testified that the \$1.36 million in replacement power costs caused by the outage at Ludington Unit 3 should not be borne by ratepayers, further noting that the outage is expected to last through 2021. Mr. Dauphinais explained that it was the company's responsibility to ensure that its contractors correctly performed the overhaul and installation of the Ludington upgrade.⁵⁴ However, he observed that the cost of replacement power for the Ludington outage in 2020 was offset by additional capacity revenues and the sale of ZRCs and ZBD credits, as shown in Exhibit AB-2.⁵⁵ Because of this offsetting revenue, Mr. Dauphinais did not recommend a disallowance of the cost of replacement power for the extended outage at Ludington Unit 3.

III.

POSITIONS OF THE PARTIES

A. Consumers

Consumers argues that the Commission should approve the company's PSCR reconciliation as filed, contending that the company's case was supported by substantial evidence. Consumers maintains that the Commission should reject the disallowances for outages at Ludington Unit 3 and Campbell Unit 1 proposed by Staff and the Attorney General on grounds that neither party provided evidence that the company's actions were negligent or unreasonable and imprudent in causing or extending these outages.

⁵³ Mr. Dauphinais' revised direct testimony is transcribed at 2 Tr 428-450.

⁵⁴ 2 Tr 439-440.

⁵⁵ Id. at 442-443.

Specifically, Consumers argues that the outage at Ludington was the result of errors by the company's contractor, as all parties acknowledge, and that disallowing replacement power costs is "[an] attempt to graft a strict liability standard onto Act 304 where it does not actually exist."⁵⁶ Consumers adds that Staff, the Attorney General, and ABATE failed to provide evidence that the company engaged in any actions that were negligent or otherwise unreasonable and imprudent, as required for a disallowance under MCL 460.6j(13)(c). Consumers adds that it made every effort to minimize the cost of the Ludington overhaul to the benefit of customers, including engaging a third-party to evaluate the defective part and exercising its rights under the contract.

In addition to the requirements under MCL 460.6j(13)(c), Consumers maintains that its position on the proposed disallowance is supported by Commission precedent, pointing to the June 16, 1987 order in Case No. U-7785-R. Consumers argues that in that case, as was the circumstance here, the Commission declined to impose a disallowance for replacement power costs when the outage was caused by faulty equipment from the manufacturer, and where there was no evidence that the company was negligent or unreasonable in selecting the manufacturer or installing the defective part. Consumers points to additional orders, including the December 6, 2011 order in Case No. U-15664-R, the June 3, 2010 order in Case No. U-15415-R, and the August 31, 1999 order in Case No. U-11180-R, where the Commission approved replacement power costs due to outages caused by manufacturer error. Consumers further observes that in the February 10, 2022 order on rehearing in Case No. U-20220, p. 8, the Commission found that "replacement power costs are not inherently

⁵⁶ Consumers brief, p. 21.

inappropriate[.]” provided that the record demonstrates ““the necessity, reasonableness, and prudence of passing these expenses onto ratepayers[.]”⁵⁷

Finally, Consumers argues that ratepayers have not been harmed by the costs of the extended outage because the company has collected \$9 million in liquidated damages, which will be used to reduce the overall cost of the Ludington overhaul. Consumers also points to Mr. Dauphinais’ testimony regarding the offsetting revenue from the MISO capacity market that exceeded the cost of replacement power. Consumers cites the language in Section 6j(13)(c) referencing the disallowance of “net increased costs” for replacement power in support of Mr. Dauphinais’ contention that no disallowance is warranted due to the additional revenue from the sale of ZRCs and ZDBs.⁵⁸

Turning to Outage Event No. 26 at Campbell Unit 1, Consumers maintains that the Attorney General did not present evidence of negligence or imprudence on the company’s part that either caused or extended the outage. Consumers observes that the root-cause analysis (RCA) of the event preceding the outage was inconclusive as to the cause and noted that the RCA, on which Mr. Coppola relied, included a significant error in the assumed time that the auxiliary oil pump operated in a deadhead condition.⁵⁹ Accordingly, Consumers urges the Commission to reject the Attorney General’s disallowance.

Lastly, Consumers addressed Outage Event No. 59 at Campbell Unit 1, contending that Staff did not identify any action by the company, rather than the

⁵⁷ Consumers brief, p. 28.

⁵⁸⁵⁸ Consumers brief, pp. 29-30.

⁵⁹ Id. at 33-35.

contractor, that amounted to negligence or unreasonableness and imprudence. Therefore, Consumers recommends that Staff's disallowance be rejected.

B. Biomass Merchant Plants

The BMPs request approval of their reasonably and prudently incurred fuel and variable O&M costs that exceeded the amount that the BMPs were paid for those costs pursuant to their PPAs with Consumers. Specifically, the BMPs request that the Commission approve \$14,199,240 (less \$9,487,553 already paid) as the capped amount to be paid to the BMPs for 2020, with the allocation to each BMP as set forth in Exhibits BMP-1 and BMP-2. In addition, the BMPs request that the Commission approve TES Filer's request for \$1,026,246 in MATS compliance fuel costs, \$74,791 in MATS compliance testing costs and \$890 in NOx allowance costs as uncapped costs. Finally, the BMPs request that the Commission direct Consumers to release the 20% hold-back, plus interest, to the BMPs within five business days of a final order issued in this proceeding, consistent with the procedures approved in Case No. U-16048.⁶⁰

C. Staff

Staff asserts that it accepts Consumers' PSCR reconciliation as filed, except for certain Staff-supported adjustments. First, Staff adjusted the 2020 beginning balance consistent with the determinations in the October 13, 2021 order and October 26, 2021 erratum issued in Case No. U-20220, which reflects a beginning balance over-recovery of \$20,396,497, inclusive of interest. Next, Staff adjusted the BMP expense, and lastly

⁶⁰ BMP brief, pp. 15-16.
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Staff adjusted the beginning balance to reflect two disallowances of replacement power costs totaling \$1,380,536, as Mr. Bodiford recommended.⁶¹

With respect to Outage Event No. 59 at Campbell Unit 1, Staff contends that the extended outage was the result of lack of planning and insufficient operating procedures, arguing that Mr. Kapala admitted as much in his rebuttal testimony. Staff adds that the RCA of the event indicates that the failure to develop an implementation plan led to a lack of communication between the company and the contractors, which in turn led to the wrong breaker being tripped and the ensuing outage.⁶²

Turning to Outage Event No. 2 at Ludington Unit 3, Staff argues that the Commission's October 13, 2021 order in Case No. U-20220 supports Staff's position that it is unreasonable to expect ratepayers to cover the cost of the Ludington upgrade as well as the cost of replacement power, noting that the cause of the outage addressed in Case No. U-20220 was the same discharge ring defect and contractor errors addressed here. Given the similarity of the circumstances, Staff maintains that a disallowance of replacement power costs is likewise warranted here.⁶³

In response to ABATE, Staff counters that Consumers' revenue from market sales, which was the result of the MISO PRA clearing at the cost of new entry (CONE), cannot be solely attributed to the outage at Ludington. Thus, Mr. Dauphinais' claim that the revenues more than offset the costs of the outage should be rejected. Staff adds that the PSCR reconciliation process requires that costs and revenues for market purchases and sales be addressed as costs or credits to customers, whereas outages

⁶¹ Staff brief, pp. 2-3.

⁶² Id. at 4-6; Exhibit S-2.1 p. 10.

⁶³ Staff brief, pp. 9-10.

are evaluated based on reasonableness and prudence.⁶⁴ Staff contends that offsetting imprudent costs for replacement power with market revenues sends an inappropriate regulatory signal that unreasonable or imprudent actions can be disregarded in the event there are offsetting sales.

Finally, Staff explains that it simplified the recording of NOx and SOx expense so that the expense is reflected in the calculation of uncapped BMP expense in December, as shown in Exhibit S-1.0 line 36. Staff notes that TES Filer had NOx expenses of \$840 in 2020, and Staff's modification only made a \$54 change in the over- under-recovery amount.⁶⁵

D. Attorney General

Pointing out that Consumers bears the burden to show that its actions were reasonable and prudent, the Attorney General argues that the replacement power costs for Outage Event No. 26 at Campbell Unit 1 and Outage Event No. 2 at Ludington Unit 3 should be disallowed. The Attorney General described the outage at Campbell Unit 1, observing that the RCA found that the auxiliary oil pump ran for over 10 hours in a deadhead state (i.e., without any oil flowing), which in turn led to excessive heat and vibration causing a cascade of failures resulting in a fire and unit shutdown. The Attorney General observes that, despite numerous discovery requests seeking additional information on the event (on which Mr. Coppola relied in his assessment), Mr. Kapala revised his rebuttal testimony on February 14, 2022, to state that the auxiliary pump was only deadheaded for one hour and 47 minutes. The Attorney General

⁶⁴ Id. at 11-12.

⁶⁵ Id. at 12-13.

argues that Mr. Kapala's late revision should be given no weight, noting that the RCA was not revised to reflect this new information; something clearly out of the ordinary happened to cause a fire, and even if the pump had operated without oil flow for a shorter period, it was sufficient to have caused the outage given that there is no period during which an oil pump can safely operate in a deadhead state.⁶⁶ As such, the Attorney General recommends that the replacement power costs for Outage Event No. 26 be disallowed.

Like Staff, the Attorney General recommends a disallowance of costs associated with Outage Event No. 2 at Ludington 3. Referencing Mr. Kapala's testimony and discovery responses from the company, the Attorney General asserts that there is no question that the contractor was responsible for the defective part and the delays in the schedule for completing the upgrade. The Attorney General maintains that because the contractor was hired by Consumers, it operates as an extension of the company. As such, the company, and not ratepayers, should be required to cover the costs of the extended Ludington outage. The Attorney General also cites the October 13, 2021 order in Case No. U-20220, wherein the Commission found that it was unreasonable for ratepayers to pay for both the Ludington upgrade and the cost of replacement power necessitated by the contractor's errors. The Attorney General adds that although Consumers maintains that ratepayers will not be harmed by the extended outage due to contractual protections, "any claims to hold customers harmless ring hollow as it does not appear that the contract terms include remedies for the incremental cost of power

⁶⁶ Attorney General brief, pp. 8-10.
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incurred by the Company and there does not appear to be any other remedy available.”⁶⁷

Finally, the Attorney General asserts that the Commission should reject ABATE’s position that revenues from capacity sales and ZBD credits from MISO should be used to offset replacement power costs. According to the Attorney General, ABATE witness Dauphinais appears to believe that the increase in capacity price in the 2020/2021 MISO PRA was directly attributable to the Ludington outage. The Attorney General contends that there are a number of problems with Mr. Dauphinais’ assumptions and analysis such that any claim that capacity sales can be tied to the Ludington outage are erroneous.⁶⁸

E. Association of Businesses Advocating Tariff Equity

ABATE points out that Outage Event No. 2 at Ludington Unit 3, which began in May 2019, has continued for almost two years now. ABATE contends that Consumers’ shareholders, not ratepayers, should be responsible for contractor errors in the design, manufacture, and installation of the parts needed for the Ludington upgrade. ABATE argues that, unlike ratepayers, Consumers is able to seek damages from the contractor, and absent a disallowance, the company would have no incentive to aggressively pursue compensation for costs caused by contractor error.⁶⁹ Further, ABATE cites Commission orders in Case Nos. U-17678-R, U-7785-R, and U-15001-R, noting that the Commission has consistently found that “replacement power costs incurred as a result

⁶⁷ Attorney General brief, p. 15, citing 2 Tr 129 and Exhibit AG-8.

⁶⁸ Attorney General brief, pp. 18-22.

⁶⁹ ABATE brief, p. 1.

of the negligence of the utility or the employee or agent of the utility acting within the scope of its employment or agency are not recoverable.”⁷⁰

Summarizing Mr. Dauphinais’ testimony, ABATE argues that although Consumers realized a net reduction in PSCR costs in 2020, and therefore no disallowance is required, the Commission should nevertheless make clear that future replacement power costs for the extended Ludington outage may be disallowed.⁷¹

IV.

LEGAL REQUIREMENTS

Act 304 provides for a PSCR process that allows a utility “to charge customers for the anticipated costs associated with the supply of electric power, such as the cost of coal or other fuel burned by generating plants.” *Attorney General v Michigan Public Service Commission*, 237 Mich App 27, 30; 602 NW2d 207 (1999). Under that process, a utility is obligated to annually file a PSCR plan and five-year forecast of its power supply requirements. MCL 460.6j(3)-(5). After a contested case, the Commission approves, disapproves, or modifies the plan for the upcoming year, and evaluates the forecast. MCL 460.6j(6)-(7). At the conclusion of the plan year, the actual costs incurred are reviewed through the reconciliation process:

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

⁷⁰ Id. at 9, quoting March 2, 2010 order in Case No. U-15001-R, p. 8.

⁷¹ ABATE brief, pp. 11-12.

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. MCL 460.6j(12).

Under this provision, projected PSCR costs in an approved PSCR plan are reviewed to determine whether recovery is warranted because they were incurred based on reasonable and prudent actions or were beyond the utility's ability control by those actions. MCL 460.6j(15). In addition, MCL 460.6j(13)(c)-(j) provide for a number of disallowances, some of which may be overcome by clear evidence that the utility was not negligent or imprudent. Finally, the mechanisms for refunding over-recovered costs or collecting under-recovered costs, along with the method for calculating interest on either, are set forth under MCL 460.6j(14), (15), and (16).

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

A. Uncontested Matters

The parties did not take issue with Consumers’ calculations of PSCR sales revenues or PSCR costs, including fuel costs; net purchase, interchange and renewable power costs; transfer cost; transmission; or chemical costs. In addition, the parties did not dispute the calculation or reasonableness of capped and uncapped costs associated with the BMPs. Accordingly, the Commission should approve the PSCR reconciliation in this respect, and it should update the beginning balance consistent with the final orders in Case No. U-20220 and this proceeding.⁷²

Consumers reported that there were 459 outages in the 2020 plan year, three of which were contested by Staff, the Attorney General, and ABATE. The proposed disallowances for replacement power costs for these outages are discussed below.

⁷² Although Consumers indicates disagreement with the Commission’s conclusions in the order and errata issued in Case No. U-20220, it accepts Staff’s adjustment to the beginning balance. Consumers also agrees with Staff’s recommendation to increase the amount to be recovered by the BMPs by \$3,426,395. Consumers reply brief, pp. 2-3.

B. Contested Issues

1. Outage Event No. 59 (Campbell Unit 1)

Outage Event No. 59 resulted from the installation of new bus protection at Campbell Unit 1, with the work performed by a contractor (Newkirk) under the supervision of CMS Energy's Startup and Testing Group (SU&T), contractors who were previously CMS Electric Field Lab personnel.⁷³ As shown in Exhibit A-9, p. 11, the outage lasted 15.30 hours resulting in a 3,978 MWh loss of energy. The North American Electric Reliability Company (NERC) Cause Code Description was Contractor Error due to "Lack of planning" and "Lack of awareness to isolate affected relay inputs from scheme." The event was specifically explained as: "[w]hile working on the bus protection relays for the 299 Breaker, workers unknowingly broke the loop of the white bus totalizing protection scheme, dropping the white bus and the 199 Breaker, resulting in unit 1 trip."⁷⁴

According to Mr. Bodiford, "[u]pon further investigation through examination of supplemental discovery responses Staff confirmed that the underlying cause of this Contractor Error was insufficient standard operating procedures and inadequate planning/execution of the planned outage[.]" Quoting Exhibit S-2.1, p. 1, Mr. Bodiford explained:

During this event, a contractor was performing work and needed to check the system to ensure the circuit was not live before starting work. In this process, the wrong breaker was tripped and the unit was inadvertently removed from service. This caused a chain of events that took the whole unit off-line.⁷⁵

⁷³ Exhibit S-2.1, pp. 3, 4.

⁷⁴ Exhibit A-9, p. 11.

⁷⁵ 2 Tr 471.

Mr. Bodiford testified that Consumers' RCA determined that the sources of risks in performing the upgrade were not identified, there was no written implementation plan, and the worker did not verify that the circuit was deenergized before lifting the wire. Mr. Bodiford concluded that because the contractors were supervised by the company and because the company provided insufficient documentation for performing the upgrade, the replacement power costs of \$21,372 should be disallowed.⁷⁶

In rebuttal, Mr. Kapala testified that Consumers hired the most knowledgeable contractors to perform the upgrade and the work was not undertaken in a negligent manner.⁷⁷ According to Mr. Kapala:

The CMS Startup and Testing Group . . . had responsibility for isolating the circuit for work on the breaker (299) associated with Campbell Unit 2 while Campbell Unit 2 was in its planned outage. Newkirk lifted a wire for a circuit which was thought to be dead pursuant to the protection provided by SU&T. However, the circuit was not dead and, as a result of lifting the wire, the breaker (199) for Campbell Unit 1 was tripped, leading to shutdown of the unit.⁷⁸

Mr. Kapala added that the company's procedures did not require verification that "that there was no current in the wire for current transformer ("CT") circuits[,]" noting that the company has subsequently revised its procedures to require verification for these circuits.⁷⁹ Mr. Kapala concluded that because the contractor followed the procedure existing at the time the work was performed, there was no negligence.

In its brief, Staff argues that Mr. Kapala acknowledged that the CMS SU&T Group failed to isolate the circuit and that the Newkirk technicians did not check the status of the wire. Staff reiterates that "[the] lack of proper documentation led to the

⁷⁶ Id. at 472-473.

⁷⁷ 2 Tr 87.

⁷⁸ Id.

⁷⁹ Id. at 87-88.

lack of communication between CMS SU&T and the contractors from Newkirk who were performing the bus relay upgrade,” adding that the relays were not identified as risks and Newkirk did not check the wire, as set forth in Mr. Bodiford’s testimony and Exhibit S-2.1. Staff maintains that contrary to the company’s claims, the series of imprudent actions on the company’s and contractors’ parts caused the outage.

The PFD agrees with Staff that the company’s actions with respect to the bus upgrade at Campbell 1 were unreasonable. As Staff points out, the RCA determined the main causes of the outage included a failure to identify the CT circuits as a risk, Consumers’ lack of an implementation plan for the upgrade, and the contractor’s failure to check the wire, which was not required under the company’s procedures at the time. However, Mr. Kapala explained that the company’s procedures have been updated to require verification that CT circuits are not energized.

A similar event was presented in Case No. U-20202, where the company installed a mislabeled part after failing to verify that the part was the correct one, resulting in an outage. Relying on the RCA, the Commission agreed with the Attorney General’s disallowance of replacement power costs, finding:

Upon reviewing the record on this issue, the Commission is concerned with the numerous short-comings outlined in the company’s own RCA and the overall design, effectiveness, and application of the company’s processes and procedures for plant modifications. The safe and reliable operation of the company’s generation fleet is a critical component to ensuring safe, reliable, and affordable energy to its customers. The company’s failure to develop and implement robust processes and procedures for plant modifications that recognize the critical nature of these plants led to the outage that resulted in additional costs. While the company contends that the process the company had developed prior to the event was reasonable, the RCA . . . shows that it was critically flawed in its design and implementation. While the company may be able to seek

remedies for the erroneously labeled part, the cost of the company not following procedures should not fall on customers.⁸⁰

As was the circumstance in Case No. U-20202, the RCA in this case demonstrates that the company's inadequate procedures, specifically the lack of an appropriate plan and procedures for performing the upgrade, led to insufficient communication and ultimately to a 15-hour outage. Therefore, Staff's recommended disallowance of \$21,372 should be adopted.

2. Outage Event No. 26 (Campbell Unit 1)

Mr. Coppola described Outage Event No. 26 at Campbell Unit 1 as a 24-day outage extension that began on July 4, 2020. Noting that Mr. Kapala did not discuss the outage in detail in his direct testimony, referencing the RCA of the event on page 7 of Exhibit A-9, Mr. Coppola explained that "the lower motor bearing failed due to a loss of lubrication causing excess vibrations and high temperatures, and resulting in the shutdown of the generating unit and the 24-day outage in order to rebuild the pump and replace the motor."⁸¹ Mr. Coppola added:

In response to a discovery request inquiring about the cause for the loss of lubrication to the Auxiliary Oil Pump, the Company stated that vibrational load generated by deadheading the pump led to failure of the bearing and bearing housing. Deadheading means that the oil pump was operating with no oil flow. The bearing housing contains the oil supply to provide lubrication to the bearing. When the bearing housing failed, the oil drained from the bearing causing a failure. Apparently, the Auxiliary Oil Pump was running while the turbine was at full speed with no generating load and the Main Oil Pump was also running at full speed, which activated the check valve between the two pumps. The check valve closed the oil flow to the Auxiliary Oil Pump deadheading the oil pump.⁸²

⁸⁰ October 29, 2020 order in Case No. U-20202, p. 5.

⁸¹ 2 Tr 385-386.

⁸² Id. at 386; Exhibit AG-1.

Mr. Coppola testified that the procedures at the time of the incident involved shutting off the auxiliary oil pump after the turbine was synced to the grid. Instead, the turbine ran for an extended time with no load, and the auxiliary pump ran for over 10 hours with no oil flow, causing excessive heat and vibration resulting in a bearing failure and unit shutdown. Pointing to pages 21-22 of the RCA,⁸³ Mr. Coppola stated that because of the outage several procedures were changed in 2020 to avoid allowing the pump to run in a deadhead condition for an extended period. However, according to Mr. Coppola, “the Company’s failure to act and prevent the prolonged running of the Auxiliary Oil Pump without oil flowing which led to the failure of the oil pump bearing and housing rises to the level of imprudence. Customers should not pay for the incremental cost of replacement power due to the Company imprudent behavior.”⁸⁴ Mr. Coppola therefore recommended that \$650,212 in replacement power costs be disallowed.

Mr. Kapala disagreed, testifying that the oil pump system at Campbell Unit 1 had operated without incident since it was installed in 1962, adding that the company’s changes to its procedures after the pump failed does not indicate that the company acted unreasonably or imprudently before the incident.⁸⁵

Mr. Kapala described the purpose and operation of the main and auxiliary oil pumps, which provide oil for the turbine bearings and control system. He explained that the auxiliary oil pump functions when the turbine is at less than full speed, and the system switches to the main pump when the turbine reaches full speed. Mr. Kapala testified that there are no sensors or controls that indicate when the auxiliary pump is

⁸³ Exhibit AG-1, pp. 29-30.

⁸⁴ 2 Tr 388.

⁸⁵ 2 Tr 77.

operating without any oil flow, noting that an operator manually shuts off the auxiliary pump, per plant procedures, once the turbine is synchronized to the grid.⁸⁶

Mr. Kapala testified that the planned Campbell Unit 1 turbine outage began in February 2020, but it did not end until early July of that year due to delays from the Covid-19 pandemic. According to Mr. Kapala, “[d]uring the turbine outage, work was performed on the exciter to upgrade the controls. As a result of the exciter controls upgrade, additional checkouts were required once the turbine achieved full speed prior to synchronization of the unit to the electrical grid. As such, the auxiliary oil pump operated in a deadheaded condition for one hour and 47 minutes, versus the typical 30 minutes or less.”⁸⁷ He noted that the RCA assumed that the auxiliary pump operated for over 10 hours in a deadhead state, but the company determined in February 2022 that the pump was deadheading for a much shorter period.⁸⁸

Finally, Mr. Kapala disputed Mr. Coppola’s claim that inappropriate procedures for the operation of the auxiliary pump caused excessive heat and vibration leading to the failure of the bearing. Mr. Kapala testified that the RCA did not definitively conclude that the operation of the auxiliary pump caused the vibration and heat issues, observing that the damage was too significant to determine the extent to which the pump contributed to the shutdown. He added that the company’s operating procedures for the auxiliary pump were based on the manufacturer’s recommendations, although the

⁸⁶ Id. at 77-78.

⁸⁷ Id. at 79-80.

⁸⁸ Id. at 80.

procedures have been updated to ensure that the auxiliary oil pump will not operate in a deadhead state in the future.⁸⁹

In her brief, the Attorney General argues that Mr. Kapala's claim that the time the auxiliary pump operated in a deadhead state was less than two hours, rather than 10.5 hours, should be given no weight. She points out that this change was first raised in Mr. Kapala's revised rebuttal testimony submitted February 14, 2022, and that "[t]his revision stands in direct contrast to multiple discovery responses provided by the Company and relied upon by the Attorney General, its own investigation of the outage as documented in the RCA, and its originally filed rebuttal testimony."⁹⁰ The Attorney General adds that Consumers provides no documentation to support its new claim; the company did not revise the RCA with this new information, and "something out of the ordinary occurred to cause smoke, fire, and flying motor components. Other than its RCA (and some other discovery responses) which documented its imprudent operation of the auxiliary oil pump in a deadhead condition for a prolonged period of time, the Company has failed to explain how such a failure occurred."⁹¹

In its reply brief, Consumers responds that Mr. Coppola's assessment of the outage event consisted solely of reviewing the RCA from August 2020, adding that Mr. Kapala's expert testimony is sufficient to support the company's assertion that the auxiliary pump operated less than two hours in a deadhead state. Consumers emphasizes that the RCA did not come to any conclusion about whether vibration and heat from the auxiliary pump caused the bearing failure, reiterating that the pump only

⁸⁹ Id. at 81-82.

⁹⁰ Attorney General brief, p. 9.

⁹¹ Attorney General brief, p. 10, citing Exhibits AG-1 and AG-9.

operated in a deadhead state for one hour and 47 minutes as stated in Exhibit AG-9, p. 1, ¶ 3 of the company's response.⁹² Lastly, Consumers argues that:

The Attorney General's third argument asserts that "something out of the ordinary" caused the failure, and that "the Company has failed to explain how such a failure occurred." Attorney General's Initial Brief, page 10. The unsupported argument does not validate the Attorney General's position. The equipment at issue was about 58 years old. The mere fact that a failure occurred, without more, does not provide any basis to assume that the Company acted unreasonably or imprudently in connection with the outage. The Attorney General must prove such claims with record evidence. She has not done so.⁹³

As an initial matter, under MCL 460.6j(13)(c), the Commission must disallow increased costs resulting from outage of more than 90 days "unless the utility demonstrates by clear and satisfactory evidence that the outage, or any part of the outage, was not caused or prolonged by the utility's negligence or by unreasonable or imprudent management." Under the plain language of the statute, it is the utility's burden to show that its actions were not negligent or unreasonable and imprudent. The onus is not on the Attorney General or other participants to the case to demonstrate that the company's actions in managing the outage were unreasonable, imprudent, or negligent, as the company suggests. Thus, Consumers' efforts to shift the burden of proof to the Attorney General should be rejected.

This PFD agrees with the Attorney General that the company's revision to the time the auxiliary pump was operating without oil flow should be given little weight. Consumers does not explain why this information was presented so late in the

⁹² Consumers reply brief, p. 11. The cited response states: "Based upon a review of the 5-minute operating data for the Campbell Unit 1 auxiliary oil pump which was provided in response to discovery question U20526-AG-CE-083 as well as 5-second operating data for the Campbell Unit 1 auxiliary oil pump, the Company's operators took action to shut down the auxiliary oil pump after it had been operating in a deadhead condition for one hour and 47 minutes."

⁹³ Consumers reply brief, pp. 11-12.

proceeding, given that it appears to have been recorded at the time the event occurred almost two years ago. Moreover, the PFD agrees with the Attorney General that even if the auxiliary pump operated for a much shorter period than assumed in the RCA, it still operated over three times longer than it typically does, which could have resulted in excessive vibration and heat. As Consumers will likely point out, this may be speculative, but no less so than the company's claim that because the pump operated for less time than originally assumed, the operation of the pump probably did not cause the bearing to fail.

With respect to the evidence in this record, as Consumers points out, the RCA is inconclusive as to the cause of the event, a finding that does not provide "clear and satisfactory evidence" that the outage was not the result of negligent or unreasonable and imprudent utility management. Therefore, the PFD finds that \$650,212 in replacement power costs for Outage Event No. 26 should be disallowed.

3. Outage Event No. 2 (Ludington Unit 3)

Mr. Koster offered extensive testimony on the cause of Outage Event No. 2 at Ludington Unit 3, providing background on the Ludington Plant overhaul project and the reasons for the selection of Toshiba America Energy Systems (TAES) as the contractor to manufacture and install the new parts for the upgrade. Mr. Koster explained that the Ludington Unit 3 outage was extended in 2020, largely due to a defective discharge ring extension (DRE) manufactured and installed by TAES. He also discussed the actions taken by Consumers and DTE Energy (together, the Owner)⁹⁴ to address the problems

⁹⁴Consumers owns 51% of Ludington and DTE Energy owns 49% of the unit per a 1969 ownership agreement between the two utilities. 2 Tr 96.

that caused the outage as well as actions taken to minimize costs for customers and hold TAES accountable for the underlying issues.

Providing a detailed timeline of events, Mr. Koster testified that in October 2019, during non-destructive testing, the Owner discovered cracks along a component of the DRE, which the Owner deemed a “rejectable indication.”⁹⁵ The Owner next issued a nonconformance report to document the condition of the DRE and begin the process of repair and resolution of the defect.⁹⁶ After determining that repair was the most reasonable course of action to return the unit to service as quickly as possible, the Owner authorized TAES to attempt to repair the DRE.⁹⁷ However, despite repeated efforts and revisions to the repair plan, the repairs were unsuccessful, as determined by a third-party expert.⁹⁸ Mr. Koster testified that on March 31, 2020, the Owner formally rejected the DRE and “demanded that TAES ‘re-do or replace’ its work” in accordance with the terms of the contract.⁹⁹ From May 2020 until April 2021, the Owner worked with TAES on the contractor’s redesign, manufacture, and installation of a replacement DRE.¹⁰⁰ According to Mr. Koster, a new DRE was successfully installed in April 2021, although it was not yet in service at the time of Mr. Koster’s testimony.

Mr. Bodiford testified that performance issues with TAES are not new, noting that the Commission disallowed replacement power costs for a similar issue (DRE cracking) at Ludington Unit 2 in Case No. U-20220. Mr. Bodiford stated:

⁹⁵ Id. at 98-99.

⁹⁶ Id. at 99-103.

⁹⁷ Id. at 104-105.

⁹⁸ Id. at 104-112.

⁹⁹ Id. at 116-117; Confidential Exhibit A-26.

¹⁰⁰ 2 Tr 119-120,

Consistent with the Commission's decision in the order for Case No. U-20220 Consumers 2019 PSCR Reconciliation, it is Staff's position that it is unreasonable to expect ratepayers to pay for the agreed upon upgrade (finalized over a decade ago and currently being recovered through rates), as well as the additional replacement power costs of \$1,359,164 that Consumers indicated were the result of a DRE defect and OEM complications that occurred.¹⁰¹

Mr. Coppola described the Ludington Unit 3 outage, testifying that it was apparent from Mr. Kapala's testimony and numerous discovery responses, that the contractor, TAES, was responsible for manufacturing and installation errors that resulted in the extended outage. However, Mr. Coppola testified that:

The contractor is working on behalf of the Company. Ultimately, the Company is responsible for the contractors it hires to perform services. The Commission cannot hold contractors responsible for cost increases or disallowances. It can only hold the Company accountable for the defective parts provided by and work performed by contractors it chose to engage.

* * *

As highlighted above in response to discovery request AB-CE-038, the Company is protected by various contract terms with the contractor and plans to pursue contract options to hold its customers harmless from errors of the contractor. It is not clear if the contract terms include remedies toward the incremental cost of power incurred by the Company. However, irrespective of whether remedies can be obtained through contract terms or not, customers should not pay the incremental cost of power resulting from this outage. The Company's promise to hold customers harmless must extend to the incremental cost of power, which the Company seeks to recover in this reconciliation case.¹⁰²

Mr. Dauphinais also testified that the cost of replacement power for the Ludington outage should not be assigned to customers and should instead be paid by the company and its shareholders. According to Mr. Dauphinais:

It is the responsibility of Consumers, not its ratepayers, to ensure that contractors on the Ludington Unit 3 overhaul and upgrade perform their

¹⁰¹ 2 Tr 475.

¹⁰² 2 Tr 392-393.

work correctly. This determination is consistent with regulatory principles. Consumers was clearly involved in the implementation of the overhaul and upgrade of Ludington Unit 3, from the selection of the contractor to the supervision of the contractor's work. By contrast, ratepayers played no role in and had no control over either selecting the contractor for the Ludington Unit 3 overhaul and upgrade or in overseeing the contractor's fabrication and installation of the Ludington Unit 3 DRE. Therefore, it was Consumers, not ratepayers, that were in a position to ensure the Ludington Unit 3 overhaul and upgrade was properly implemented including the proper design, fabrication and installation of the Ludington Unit 3 DRE.¹⁰³

Mr. Dauphinais added that Consumers is in a position to seek damages from the contractor, and "if responsibility for contractor failures were assigned to ratepayers, Consumers would have no incentive to aggressively pursue its contractor for reimbursement of costs resulting from their actions, nor would it have an incentive to ensure proper performance of contractor actions, as Consumers could simply pass all costs of such actions on to its ratepayers."¹⁰⁴

However, Mr. Dauphinais testified that although the Ludington outage increased PSCR costs by \$1.36 million, these increased costs were more than offset by additional capacity revenues totaling \$6.033 million.¹⁰⁵ Mr. Dauphinais posited that, "[t]he additional capacity revenues and ZDB credits would not have been realized but for the extended outage of Ludington Unit 3, which caused MISO Zone 7 to clear at a much higher capacity price (the MISO CONE price of \$257.53 per MW-day) than the surrounding MISO zones."¹⁰⁶

In response to Mr. Bodiford and Mr. Coppola, Mr. Kapala testified that the extended outage at Ludington was also attributable to delays from the Covid-19

¹⁰³ 2 Tr 439-440.

¹⁰⁴ Id. at 440.

¹⁰⁵ Id. at 441-443; Exhibit AB-2.

¹⁰⁶ 2 Tr 441.

pandemic and shut-down orders and that the company has already taken steps to recover costs from TAES, and it will continue to do so. Mr. Kapala added that throughout the Ludington Unit 3 upgrade and extended outage Consumers has acted reasonably and prudently.¹⁰⁷ Mr. Koster pointed out that neither Mr. Bodiford nor Mr. Coppola cited any instance where the company acted in an unreasonable or imprudent manner over the course of the outage.¹⁰⁸ Mr. Koster emphasized that the Owner has pursued, and will continue to pursue, monetary compensation for the delays in the Ludington Unit 3 overhaul, noting that to date, the Owner has received \$9 million under the liquidated damages clause of the contract between TAES and the Owner.¹⁰⁹

In response to Mr. Dauphinais, Mr. Bodiford testified that the outage at Ludington was not the sole factor in the increase in the MISO PRA price, explaining:

Within the context of the MISO's Resource Adequacy Construct each individual MW of unforced capacity within a particular zone is equally important. The capacity position of a Zone is dependent on many factors. These factors include load forecasts, planning reserve margin percentages, capacity import limits, unit retirements, unit additions, historical unit performance and unit availability. Ludington Unit 3 represents approximately 337 MW of MISO Zone 7 capacity, of which 51% (or approximately 172 MW) is owned by Consumers. This is a small percentage of the total capacity required within MISO Zone 7. The total Planning Reserve Margin Requirement for MISO Zone 7 in 2020/2021 was 21,945.3 MW and the Local Clearing Requirement was 21,850.7 MW.¹¹⁰

Mr. Coppola also provided an extensive critique of Mr. Dauphinais' approach to determining the alleged offset from capacity sales.¹¹¹ According to him:

¹⁰⁷ 2 Tr 85-86.

¹⁰⁸ 2 Tr 125.

¹⁰⁹ Id. at 127.

¹¹⁰ 2 Tr 480.

¹¹¹ Id. at 417-420.

Assigning the entire share of credits received by CECo to the Ludington 3 outage is inappropriate. As stated earlier, there is no direct link between the ZDB credits received by CECo and the Ludington 3 extended outage. MISO has not issued any reports attributing the 2020/2021 PRA price of \$257.23 or any portion of the capacity shortage to Ludington 3. Also, in response to several questions posed to CECo in discovery inquiring as to the reasons for the \$257.53 auction price and what role Ludington 3 and other factors may have played in the high auction price and resulting ZDB credits, the Company answered as follows:

It is the Company's understanding that the cause was a shortage of available generation capacity in MISO Local Resource Zone 7 ("LRZ 7") which participated in MISO's annual Planning Resource Auction ("PRA").

The Company cannot speak to the entire Zone 7 PRMR or capacity resources, only Consumers Energy's portion of the Zone 7. The auction clearing price going to CONE is a result of the Offer Submitted (Including FRAP) totaling 21,727.5, which was less than the LCR of 21,850.7 as shown on page 7 of the report referenced in part (b) above.

It is the Company's understanding that the capacity auction price clearing at \$257.53 was due to the local clearing requirement (LCR) being higher than the total capacity offered or committed through a Fixed Resource Adequacy Plan by all market participants, collectively, in Zone 7. CIL is an input to the LCR calculation and would impact the minimum amount of capacity needed in Zone 7.

Ludington Unit 3 was ineligible to participate in the MISO PRA for Planning Year 2020-2021 due to the terms of MISO's tariff. As a result, Ludington Unit 3 capacity was unavailable to LRZ 7.¹¹²

In its brief, Consumers asserts that the record overwhelmingly demonstrates that the cause of the outage was the result of TAES's errors and that company managed the Ludington Unit 3 outage in a reasonable and prudent manner. According to Consumers, no party points to evidence of any act, or failure to act, on the part of the company that indicates that Consumers did not minimize costs to customers. Thus,

¹¹² 2 Tr 419-420, Exhibit AG-6.

Consumers maintains that it met the statutory requirement to show by clear evidence that the outage was not caused or prolonged by the company's negligence or unreasonable and imprudent management. Consumers adds that there is no evidence that customers will be financially harmed by the outage because the company will use its portion of liquidated damages to reduce the cost of the project, an amount that will more than offset the cost of replacement power.

It is readily apparent from this record and arguments made in briefing that the parties do not dispute the company's explanation of the cause of the outage or that the extended outage was the result of contractor error in the manufacture and installation of the DRE component. In recommending a disallowance of replacement power costs, Staff and the Attorney General rely in part on the Commission's decision in Case No. U-20220. In its October 13, 2021 order in that case, p. 31, the Commission addressed a concern about a similar defective part installed at another Ludington unit:

Consumers provided evidence showing that the discharge ring was installed during the prior 2013-2015 upgrade, was inspected in the factory and in the field during installation, was inspected in 2019 and in 2020, and the defects in it were identified only after the upgraded unit had been in operation for 4.5 years. 2 Tr 69-70; Exhibit A-6, p. 115. However, the fact remains that the discharge ring failed after just 4.5 years, when the company expected it to last 40 years. More concerningly, even when it learned of the defect, Consumers unreasonably failed to pursue any remedy from the original manufacturer of the discharge ring in a way that could potentially have reduced the costs to customers. Under these circumstances, the Commission agrees with the Staff that:

it is unreasonable to expect ratepayers to pay for the agreed upon upgrade as well as the additional costs that Consumers conceded were the result of a discharge ring defect that occurred, which was due to internal stresses attributed to the manufacturing process, and that the part failed requiring replacement long before its full-service life.

As quoted above, the Commission's primary concern in Case No. U-20220 was the company's perceived failure to pursue any remedy from the manufacturer of the defective part. In this case however, Consumers presented extensive evidence of the company's actions to hold TAES accountable. As a result of the company's efforts, as Mr. Koster testified, Consumers and Ludington co-owner DTE Energy have thus far collected \$9.0 million in liquidated damages, which the company intends to use to reduce the overall cost of the Ludington upgrade. While the company's plan is not unreasonable, Consumers does not address why the company cannot reduce PSCR costs by allocating some of the liquidated damages to PSCR expense.

Quoting from the contract with TAES, Mr. Koster testified that the agreement does not permit an action for consequential damages, including PSCR costs:

No Liability For Consequential Damages. Other than with respect to the Contractor's obligations to pay liquidated damages to the Owner, in no event shall either Owner or Contractor be liable to the other, whether arising under in breach of contract, tort (including negligence), strict liability, or otherwise, for loss of anticipated profits, loss by reason of plant shutdown, non-operation or increased expense of operation, service interruption, cost of purchased or replacement power, claims of customers, cost of money, loss of capital or revenue, or for any special, incidental, exemplary or other consequential loss or damage.

And, according to a discovery response from Consumers contained in Exhibit AG-8, p.

3:

It is expressly acknowledged and agreed that said Unit Late Interim Acceptance Liquidated Damages represents a reasonable estimate of the Owner's actual damages for late Unit Interim Completion (the precise computation of which damages would be impracticable or extremely difficult) and are not a penalty.

Thus, although the contract does not provide an independent action for replacement power costs, nothing in the liquidated damages clause prevents the

company from using a portion of the liquidated damages to cover the cost of replacement power. Accordingly, this PFD recommends that the Commission disallow the replacement power costs of \$1.36 million, with the understanding that Consumers may retain this amount from its share of the liquidated damages. This is similar to the remedy that was approved in Case No. U-15001-R, where a contractor's failure to secure a crane at a jobsite led to the crane collapsing under high winds and an extended outage due to damage to the plant. Subsequently, there was an insurance settlement that covered a portion of the costs. In that case, the Commission held:

The Commission has consistently found that replacement power costs incurred as a result of the negligence of the utility or the employee or agent of the utility acting within the scope of its employment or agency are not recoverable. Consumers' own witness testified that "the cause of the crane collapse was that the main boom was not secured by APComPower and not left in a safe position following the evening shift." 2 Tr 81. The Commission agrees with the ALJ that proper securing of the crane at all times is the duty of the contractor, who is supervised by the utility. The Commission adopts the recommendation of the ALJ and finds that the replacement power costs associated with the extension of the Campbell 3 outage should be disallowed. The company is entitled to retain the insurance proceeds.¹¹³

Finally, this PFD agrees with Staff and the Attorney General that revenue from the sale of ZBD credits and ZRCs should not be considered an offset to the additional cost of replacement power for the extended outage at Ludington (or any other outage(s)). First, as Staff points out, the PSCR construct requires that market revenues and costs pass through the PSCR as costs or credits to customers, whereas outages that extend over 90 days are evaluated based on reasonableness and prudence. Second, the PFD agrees with Staff and the Attorney General that the run-up in the

¹¹³ March 2, 2010 order in Case No. U-15001-R, p. 8.
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MISO PRA in 2019 cannot be solely attributed to the outage at Ludington as ABATE contends. In addition to the testimony from Mr. Bodiford and Mr. Coppola on the multiple factors that contribute to the clearing price in the MISO PRA, the Attorney General also provides additional evidence that ABATE's claim was erroneous:

If the Ludington 3 extended outage had been the cause of the auction price run-up to \$257.53 in Zone 7 in the 2020/2021 PRA, it should also have caused a similar high price in the 2021/2022 PRA. However, despite the fact the Ludington 3 generating capacity was not included in the 2021/2022 PRA, the auction price dropped to \$5.00 from \$257.53 in the prior year which is another indication that the \$257.53 auction price in the 2020/2021 PRA and the related ZDB credits cannot be attributed to the Ludington 3 extended outage contrary to Mr. Dauphinais' conclusion. The MISO auction process involves several generating resources in the Michigan Lower Peninsula and other factors, such as [capacity import limit] CIL and export limits, which can have a profound effect on the outcome of the auction price.¹¹⁴

VI.

CONCLUSION

Consistent with the foregoing discussion, this PFD recommends that the Commission approve the PSCR reconciliation as filed by the company, revised to update the 2021 PSCR beginning balance consistent with the final orders in this case and in Case No. U-20220. In addition, the Commission should disallow replacement power supply costs associated with Outage Event Nos. 59 and 26 at Campbell 1 and Outage Event No. 2 at Ludington 3, allowing the company to retain liquidated damages in an amount equal to the cost of replacement power at Ludington. Lastly, the Commission should approve Staff's recommended amounts for capped and uncapped

¹¹⁴ Attorney General brief, p. 22, citing 2 Tr 421.

costs associated with power supplied by the BMPs, and Staff's change to the method of reporting SOx and NOx expense as discussed in Ms. Midkiff-Powell's testimony.

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

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Sally L. Wallace
Administrative Law Judge