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 recovery plan (Case No. U-21048) for the twelve months ending December 31, 2022.	)))))	Case No. U-21049

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 December 11, 2024.

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 January 6, 2025, or within such further period as may be authorized for filing Exceptions. If Exceptions are filed, replies thereto may be filed on or before January 21, 2025.

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

Christopher S. Saunders

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Date: 2024.12.11 15:49:29 -05'00'

December 11, 2024
Lansing, Michigan

Christopher S. Saunders
Administrative Law Judge

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 recovery plan (Case No. U-21048) for the twelve months ending December 31, 2022.	)))))	Case No. U-21049

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On March 31, 2023, Consumers Energy Company (Consumers), pursuant to 1982 PA 304, as amended, MCLA 460.6j et seq., filed an application (Application) with the Michigan Public Service Commission (Commission) requesting approval to reconcile its Power Supply Cost Recovery (PSCR) costs incurred and PSCR revenues collected for the period of January 2022 through December 2022. The application included the testimony and exhibits of 12 witnesses.

On April 10, 2023, a Notice of Hearing was issued by the Commission's Executive Secretary which set a prehearing for May 10, 2023. On March 31, 2023, Cadillac Renewable Energy, LLC; Genessee Power Station Limited Partnership; Grayling Generating Station Limited Partnership; Hillman Power Company, LLC; TES Filer City Station Limited Partnership; National Energy of Lincoln, Inc.; and National Energy of McBain, Inc. (collectively known as the biomass merchant plants or BMPs)

filed a joint Petition for Intervention. On April 19, 2023, Attorney General Dana Nessel filed a Notice of Intervention. On April 28, 2023, the Association of Businesses Advocating Tariff Equity (ABATE) filed a Petition for Intervention. On May 3, 2023, the Residential Customer Group (RCG) filed a Petition for Intervention.

On May 10, 2023, Administrative Law Judge (ALJ) Christopher S. Saunders convened a prehearing in this matter. During the prehearing the Petitions for Intervention were granted, and the parties mutually agreed upon a schedule which, among other things, set dates for cross examination of February 14 and 15, 2024. On November 27, 2023, a scheduling order was issued based on the agreement of the parties which adjourned the dates set at the prehearing and set cross examination dates of April 3 and 4, 2024. On January 12, 2024, a scheduling order was issued at the request of the parties which adjourned the dates in the matter and set cross examination for April 24 and 25, 2024. Cross examination began as scheduled on April 24, 2024 and concluded that same day.

The record in this matter consists of 471 pages of transcript and 86 exhibits admitted into the record. On May 24, 2024, Consumers, the Attorney General, the BMPs, and Staff filed briefs. On June 14, 2024, Consumers, the BMPs, and the Attorney General filed reply briefs.

II.

OVERVIEW OF THE RECORD

A. Consumers Energy

Laura M. Connolly, Director of Regulated Pricing in the Rates and Regulation Department, testified regarding the calculations for the Financial Compensation Mechanism (FCM) that will be implemented in January 2025.

Leanna E. Feazel, Senior Accounting Analyst in the Revenue and Fuel Accounting section of the General Accounting Department, provided testimony regarding the methodology and calculation of the Company's over- or under-recovery amount related to the operation of the PSCR clause during 2022.[1]

Brian D. Gallaway, Director of Fossil Fuel Supply in the Energy Supply Operations Department, adopted all of witness Steven J. Nadeau's testimony and related exhibit. The testimony pertains to Consumers' 2022 actual volumes and costs of oil and natural gas used for electric generation.[2]

Joshua W. Hahn, Principal Electrical Engineer in the Electric Supply Operations Forecasting Section of the Electric Supply Department, testified regarding Consumers' projected costs in its 2022 PSCR Plan case (U-21048). He provided testimony regarding the actual generational requirements and purchased and interchange expenses incurred by Consumers in 2022 as well as the costs and revenues associated with its participation in the Midcontinent Independent System Operator, Inc.'s (MISO) FTR and Auction Revenue Rights (ARR) markets. Further, Mr. Hahn provided testimony

[1] Direct testimony transcribed at 3 Tr 54-62. Ms. Feazel sponsored Exhibits A-4 and A-5.
[2] Direct Testimony transcribed at 3 Tr 64-71. Mr. Gallaway sponsored Exhibit A-19 revised.

purported to support the calculations of lost MWh for the Ludington Pumped Storage Plant Units.[3]

Nathan J. Hoffman, Director of Plant Operations-Campbell testified regarding the reasonableness and prudence of certain outages experienced in 2022 at the Company's fossil-fueled electric generating units and the River Hydros. Additionally, he described the outages in 2022 at Consumers' Ludington Pumped Storage Plant (Ludington) including the extended outage at Ludington Unit 3 and the associated costs, which Consumers intends to record as a regulatory asset subject to Commission approval. Mr. Hoffman also provided testimony regarding the expense associated with emission allowances for oxides of nitrogen and sulfur dioxide, and the expense associated with the consumption of urea, aqueous ammonia, lime, and activated carbon.[4]

Mr. Hoffman further provided supplemental direct testimony on behalf of Consumers. His supplemental direct testimony explains the basis for Consumers' power supply cost revisions sponsored by witnesses Joshua W. Hahn, Leanna E. Feazel, and Raymond T. Scaife. He additionally explains the basis for Consumers' financial compensation mechanism (FCM) revisions sponsored by witnesses Hannah L. Patton and Laura M. Connolly and identifies changes to Consumers' witnesses in this matter.[5]

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[3] Revised direct testimony transcribed at 3 Tr 73-81. Mr. Hahn sponsored Exhibits A-6 revised, A-7, and A-8.
[4] Direct testimony transcribed at 3 Tr 84-109. Mr. Hoffman sponsored Exhibits A-9 through A-16.
[5] Supplemental direct testimony transcribed at 3 Tr 110-113.

Kevin C. Lott, Fuels Transportation & Planning Director in the Electric Supply Department, provided direct testimony regarding Consumers' 2022 actual as-burned coal costs and tonnage at each of the Company's coal-fired generating plants.[6]

Hannah L. Patton, Accounting Manager in the Revenue and Fuel Accounting section of the General Accounting Department, testified regarding the total amount of FCM earned by Consumers in 2022. Further, she presented the total amount of FCM surcharge which was billed in 2022 and the resulting over-recovery amount of FCM including the prior year over-recovery balance from 2021.[7]

Jenny L. Rickard, former Power Purchase Agreements (PPA) Settlements Supervisor in the Contracts and Settlements section of the Electric Supply Department, provided testimony regarding settlements with the BMPs, purchases and sales with third parties in 2022, and 2022 interchange delivered by counterparties to MISO. Ms. Rickard left Consumers after submitting her direct testimony, her testimony was adopted by Consumers' witness Raymond Scaife.[8]

Angela K. Rissman, Manager of Coal Procurement in Fossil Fuel Supply, testified regarding Consumers' actual volumes and costs of coal and oil used for electric generation in 2022.[9]

Raymond T. Scaife, Manager of MISO Settlements of the Electric Grid Integration Contracts & Settlements section of the Electric Supply Department, provided direct testimony pertaining to the purchased power supply costs incurred by Consumers in 2022 and to the settlement of market transactions and transmission expenses

[6] Direct testimony transcribed at 3 Tr 155-162. Mr. Lott sponsored Exhibit A-18.
[7] Direct testimony transcribed at 3 Tr 164-170. Ms. Patton sponsored Exhibits A-20, A-21, and A-22.
[8] Direct testimony transcribed at 3 Tr 172-178. Ms. Rickard sponsored Exhibits A-23 and A-24.
[9] Direct testimony transcribed at 3 Tr 180-187. Ms. Rissman sponsored Exhibit A-25.

incurred within MISO. Additionally, Mr. Scaife adopted the direct testimony of Jenny L. Rickard.[10]

Emily M. Walainis, former Manager of Supply Contracts in the Contracts and Settlements Department, testified regarding the Independent Administrator expense associated with Consumers' annual IRP competitive solicitations; PPAs executed, terminated, 18 or otherwise modified in 2022; reverse capacity auction costs; and the FCM forecast.[11]

B. Attorney General

Sebastian Coppola, an independent energy business consultant, testified on behalf of the Attorney General. Mr. Coppola's testimony provides an independent analysis of Consumers' PSCR Reconciliation for the year 2022. He addressed five major topics consisting of recommended disallowances of replacement power costs related to three power outages at the Karn power plant, disallowance of replacement power costs related to a power outage at the Campbell power plant, adjustment of replacement power costs related to several power outages at the Ludington power plant, adjustment of Biomass Power (BMP) plant costs, and adjustments to the Company's reported PSCR cost over-recovery balance for the year 2022.[12]

C. BMPs

Douglas A. Audette, Plant Manager of Cadillac Renewable Energy, LLC, provided testimony regarding the actual fuel and variable operation and maintenance

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[10] Revised direct testimony transcribed at 3 Tr 190-200. Mr. Scaife sponsored Exhibits A-26, A-27, and A-28.
[11] Direct testimony transcribed at 3 Tr 223-233. Ms. Walainis sponsored Exhibits A-29 and A-30.
[12] Direct testimony transcribed at 3 Tr 398-443. Mr. Coppola sponsored Exhibits AG-1 through AG-11. Exhibits AG-12 through AG-20 were admitted in lieu of cross examination.

costs Cadillac Renewable Energy incurred from January 1, 2022 through December 31, 2022 and its request for recovery of costs. He additionally provided testimony pertaining to Cadillac's claim that Consumers incorrectly calculated the Hold Harmless Payment that it charged Cadillac under the Reduced Dispatch Agreement, and that Consumers owes Cadillac a refund.[13]

Thomas A. Clift, Plant Manager of the Genessee Power Station, testified regarding Genesee Power Station's actual fuel and maintenance costs from January 1, 2022 through December 31, 2022 and to the amount Genessee Power Station was paid by Consumers for those expenses during that time period. He further testified regarding Genessee Power Station's request to recover costs under Public Act 286 of 2008, and regarding the BMP's request for a consumer price index adjustment.[14]

Edward A. Going, Sr., Plant General Manager for Grayling Generating Station, provided testimony regarding Grayling Generating Station's actual fuel and maintenance costs from January 1, 2022 through December 31, 2022 and to the amount Grayling Generating Station was paid by Consumers for those expenses during that time period. He further testified regarding Grayling Generating Station's request for recovery of costs under Public Act 286 of 2008.[15]

Robert Joe Tondu, Owner and President of Tondu Corporation which is an owner and general partner of the T.E.S. Filer City Station Limited Partnership, provided testimony in this matter. He testified regarding actual fuel and maintenance costs from

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[13] Direct testimony transcribed at 3 Tr 237-260. Mr. Audette sponsored Exhibits BMP-1, BMP-17, BMP-23, BMP-24. He co-sponsored Exhibits BMP-1 and BMP-2.
[14] Direct testimony transcribed at 3 Tr 277-304. Mr. Clift sponsored Exhibits BMP-4, BMP-10, and BMP-18. He co-sponsored Exhibits BMP-1 and BMP-2.
[15] Direct testimony transcribed at 3 Tr 306-329. Mr. Going sponsored Exhibits BMP-5 and BMP-19. He co-sponsored Exhibits BMP-1 and BMP-2.

January 1, 2022 through December 31, 2022 and to the amount T.E.S. was paid by Consumers for those expenses during that time period. Additionally, he testified regarding T.E.S.'s 2022 costs to comply with the U.S. EPA's Cross State Air Pollution Rule, 40 12 CFR 97 Subparts AAAAA to FFFFF (CSAPR), and Mercury and Air Toxics Standards 13 (MATS), 40 CFR Part 63, Subpart UUUUU.[16]

Don Adams, Director for both the National Energy of McBain and Lincoln Power Stations, provided testimony regarding actual fuel and maintenance costs from January 1, 2022 through December 31, 2022 and to the amount the Lincoln and McBain Power Stations were paid by Consumers for those expenses during that time period. He further testified regarding Lincoln and McBain's requests for costs under Public Act 286 of 2008.[17]

D. Staff

Dolores A. Midkiff-Powell, Manager for Energy Cost Recovery Reconciliation Section of the Regulated Energy Division, testified regarding Staff's recommendation for Consumers' cumulative PSCR reconciliation for the 12-month period ending December 31, 2022.[18]

[16] Direct testimony transcribed at 3 Tr 331-374. Mr. Tondu sponsored Exhibits BMP-7, BMP-11, BMP-12, BMP-13, BMP-14, BMP-15, BMP-16, and BMP-22. He co-sponsored BMP-1 and BMP-2.
[17] Direct testimony transcribed at 3 Tr 376-394. Mr. Adams sponsored Exhibits BMP-8, BMP-9, and BMP-21. He co-sponsored Exhibits BMP-1 and BMP-2.
[18] Revised direct testimony transcribed at 3 Tr 446-454. Ms. Midkiff-Powell sponsored Exhibits S-1.0 and S-1.1.

Jing Shi, Public Utilities Engineer in the Energy Cost Recovery and Generation Operation Section, provided testimony regarding Staff's review and position pertaining to Consumers' PSCR Reconciliation for the 12 months ending December 31, 2022.[19]

Gretchen M. Wagner, Auditing Specialist in the Interconnection and DER Section of the Energy Operations Division, provided testimony regarding Staff's audit findings for Consumers' financial compensation mechanism (FCM) reconciliation on the Company's calculated FCM capped revenue, interest and total FCM over recovery.[20]

E. Rebuttal-Consumers

Nathan Hoffman provided rebuttal testimony in response to Sebastian Coppola's recommendation that the Commission disallow a total of $6,469,519 in replacement power costs for single outages at J. H. Campbell (Campbell) Units 2 and 3 and D.E. Karn (Karn) Unit 1, and two outages at Karn Unit 2. Further, he provided testimony pertaining to Mr. Coppola's assertions regarding the Company's prior disclosures regarding Toshiba's performance on the overhauls and upgrades of the Company's Ludington Pumped Storage (LPS or Ludington) generating units and Mr. Coppola's recommendations for the provision of Ludington data from prior Power Supply Cost Recovery (PSCR) Reconciliation cases.[21]

Kristopher L. Koster, Principal Project Manager within the Enterprise Project Management organization, provided rebuttal testimony regarding the direct testimony of Sebastian Coppola wherein he recommended the Commission disallow $2,329,167 in replacement power costs for several outages at the Ludington Plant in 2022. He further

[19] Revised direct testimony transcribed at 3 Tr 457-478. Ms. Shi sponsored Exhibits S-2.1, S-2.2, S-2.3, and S-2.4.
[20] Direct testimony transcribed at 3 Tr 480-488.
[21] Rebuttal testimony transcribed at 3 Tr 114-135. Mr. Hoffman sponsored Exhibit A-31 in rebuttal.

provided rebuttal testimony regarding Mr. Coppola's interpretation of discovery responses pertaining to outages at the Ludington Plant in this matter.[22]

Raymond Scaife provided rebuttal testimony on behalf of Consumers regarding the direct testimony of Douglas A. Audette and his recommendation that the Commission order Consumers to refund Cadillac Renewable Energy, LLC $600,416.80 under the Reduced Dispatch Agreement between Cadillac and Consumers Energy dated January 29, 2007.[23] Mr. Scaife also provided sur-surrebuttal testimony regarding the surrebuttal testimony of Mr. Audette.[24]

Beth A. Skowronski, Manager of Supply Contracts in the Contracts and Settlements Department, provided rebuttal testimony pertaining to Staff witness Gretchen M. Wagner's testimony regarding Consumers' PPA with Otsego Paper, Inc. Ms. Skowronski adopted the testimony and exhibits of witness Emily M. Walainis.[25]

F. Rebuttal-BMPs

Douglas Audette provided rebuttal testimony on behalf of Cadilac Renewable Energy, LLC to rebut the testimony of Consumer's witness Raymond T. Scaife.[26]

III.

DISCUSSION

This reconciliation is governed by the provisions of MCL 460.6j(12)-(16). Most of Consumer's application was not contested, and therefore this PFD recommends the Commission approve the portions of the application which were unopposed as

[22] Rebuttal testimony transcribed at 3 Tr 137-153.
[23] Rebuttal testimony transcribed at 3 Tr 201-208.
[24] Sur-surrebuttal testimony transcribed at 3 Tr 209-215.
[25] Rebuttal testimony transcribed at 3 Tr 217-221.
[26] Rebuttal testimony transcribed at 2 Tr 262-275. He sponsored Exhibits BMP-25 through BMP-29.

reasonable and prudent. The items that require resolution in this proceeding relate to the following cost elements: replacement power costs for outage # 59 at Karn 1; replacement power costs for outages # 23 and 24 at Karn 2; replacement power costs for outage #10 at Campbell 2; replacement power costs for outage #260 at Campbell 3; replacement power costs associated with extended outages pertaining to Toshiba-related work at Ludington; hold-harmless payments to Cadillac Renewable Energy, LLC; and the FCM associated with the Otsego Paper, LLC PPA.

The Attorney General recommends removal of replacement power costs for the outages addressed below. Staff found Consumers' total power supply costs to be reasonable and prudent. Aside from adjustments to the total PSCR under-recovery and an assertion made regarding the Financial Compensation Mechanism (FCM), discussed in Section C, Staff did not take issue with any other portion of Consumers' application.

Consumers stated that apart from Staff's position concerning the FCM, it agrees with Staff's proposed adjustments contained in its initial brief[27]. As part of its calculations, Staff increased the Purchased and Interchange Power Costs by $14,618,541 for the BMPs.[28] Additionally, Staff incorporated an adjustment recommended by witness Jing Shi. This adjustment removed $126,805 from the instant case for Ludington replacement power costs which should have been included in the deferral accounting regulatory asset established in the Commission's May 18, 2023 Order in Case No. U-21310.[29] Including the flow-through effect of interest for the adjustments, Staff arrived at a final PSCR under-recovery of $415,718,853 to be used

[27] Consumer's Brief, page 25.
[28] 3 Tr 452; Exhibit S-1.0
[29] 3 Tr 453; Exhibit S-1.0.

as Consumers' PSCR beginning balance in its 2023 PSCR reconciliation case. As stated above, Consumers agrees with the adjustments proposed by Staff.

A. Replacement Power Costs

1. Outage #59-Karn 1

On May 17, 2022, Karn Unit 1 experienced an unplanned 13-hour outage. Consumers stated that the outage resulted from a leak in a condenser door gasket with failure occurring during the start-up of the unit and therefore requiring the start-up to be aborted. The condenser was drained to allow for the old gasket to be removed and a new gasket installed.[30]

The Attorney General asserts Consumers should not recover the costs of purchasing replacement power as a result of this outage. Mr. Coppola testified that this outage resulted in Consumers being required to purchase replacement power during the outage period. In assessing the May 17, 2022 outage, Mr. Coppola examined Consumers' response to discovery request AG-CE-0064(b)(ii) and the related report attached to the response.[31] He testified that the generating unit was required to abort its start-up and required repairs which took approximately 13 hours to complete. He further stated that the root cause of the outage was an improperly installed door gasket and that the incremental power costs Consumers is seeking to recover for the outage in this matter "are the result of Company personnel or a contractor working on behalf of the Company failing to follow appropriate installation procedures."[32] Therefore, Mr. Coppola

[30] Exhibits A-9 and A-11.
[31] Exhibit AG-1.
[32] 3 Tr 407.

recommends the Commission disallow the power costs for this outage sought for recovery by Consumers.

Consumers disagrees with Mr. Coppola's conclusion regarding Outage #59. In his rebuttal testimony, Nathan J. Hoffman stated that there was no failure by Consumers' personnel to follow appropriate installation procedures. He noted that the manway doors on the condenser are original to the plant and were built in 1959. He stated that the sealing surfaces of the manway doors have become degraded over time and were not providing a clean smooth surface against which the gaskets could properly seal. He stated, "This was not an instance of a failure to follow appropriate installation procedures, rather it was a situation in which the work task was difficult to perform."[33]

Mr. Hoffman testified that the only way to ensure a properly sealed door with a new gasket installed is to perform post-maintenance testing. He stated, "In this instance, the only method of post maintenance testing prior to unit startup would be to place the condenser circulating water pumps into service, fill the condenser water box, and visibly check for leaks."[34] Mr. Hoffman testified that performance of post-maintenance testing would have delayed the intended startup by 10 hours, and "Given that the purpose of the outage was to repair condenser tube leaks, and the nature of how this post maintenance testing is performed, it was reasonable and prudent to perform the post maintenance testing as part of the startup activities."[35] Consumers therefore performed

[33] 3 Tr 119.
[34] *Id*.
[35] 3 Tr 119-120.

the post-maintenance testing as part of the startup activities and then discovered the improper seal, resulting in a delay of 13 hours.

Mr. Hoffman therefore contends the Commission should reject Mr. Coppola's recommendation for a disallowance pertaining to this outage. He stated that Consumer's actions were at no time imprudent and unreasonable and that there is no evidence the gasket was improperly installed. Mr. Hoffman further stated that should the Commission find Consumers at fault for this outage, "the most that the Company should be penalized is for a 3-hour delay."[36] Mr. Hoffman contends that Consumers made a reasonable and prudent decision regarding this outage and should not be penalized for such.

In her brief, the Attorney General argues that this outage was the result of an improperly installed door gasket, and the Commission should disallow the power costs associated with this outage. The Attorney General points to Consumers' discovery response contained in Exhibit AG-1 and asserts:

> After being asked to explain the root cause of the problem, the Company stated that during a prior forced outage, plant personnel entered the condenser to inspect and plug additional sources of condenser leaks. At the conclusion of that work, the door gasket was improperly installed.[37]

The Attorney General relies on the testimony of Mr. Coppola contending that this outage was the result of Consumers' personnel, or a contractor hired by Consumers failing to follow appropriate installation procedures.

The Attorney General claims that in rebuttal, Consumers "countered that while it determined that the door gasket was improperly installed, it was not because of a failure

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[36] 3 Tr 120.
[37] Attorney General Brief, page 8.

to follow proper installation procedures, but that the task was difficult."[38] She asserts that the age and condition of the door were known to Consumers, and that Consumers has an obligation to maintain and repair equipment to minimize the cost of power. The Attorney General does not accept Consumers' position that it only had two choices in how to proceed regarding this incident, and states that the underlying decisions and actions taken by Consumers are reviewable in a PSCR reconciliation proceeding.

Consumers argues that the Attorney General incorrectly interpreted its discovery response contained in Exhibit AG-1. Consumers relies on the testimony of Mr. Hoffman and states that the manway doors are original to the construction of the plant in 1959 and that over time, the sealing surfaces have become degraded, making it difficult to seal the doors properly. Consumers further points to Mr. Hoffman's testimony wherein he stated that Consumers had to choose between visibly checking for leaks by placing condenser circulating water pups into service and thereby delaying the unit start-up for 10 hours or starting up the unit and performing the requisite post-maintenance testing, potentially saving the ten hours.[39]

Additionally, Consumers notes that Karn Unit 1 was retired in May 2023, that Consumers was aware of the date of retirement, and that it did not make sense to undertake additional capital investments to replace the condenser thereby eliminating any problems with the condenser door seal. In response to the Attorney General's statement regarding knowledge of the age and condition of the doors, Consumers states, "The age and condition of the door are known, but that does not change the fact

[38] Attorney General Brief, page 9.
[39] Consumers Brief, pages 20-21.

that the age and condition of the door render it impossible to discern whether a successful seal will be formed without a subsequent test."[40] Consumers asserts that examination of the reasonableness of its decisions cannot be judged in hindsight, and that the decisions made must be viewed in light of the conditions present at the time. Therefore, Consumers contends the Attorney General's recommendation to disallow the power costs associated with this outage should be rejected.

This PFD is persuaded by the arguments made by Consumers. The preponderance of the evidence shows that Consumers had two options regarding the start-up of the unit that ultimately ended in an outage, both of which would have led to an outage occurring. The evidence shows that despite the age and condition of the door gasket, the functionality of such could not be determined solely by a visual inspection. Therefore, it was reasonable for Consumers to take the approach it took when performing the start-up as the approach taken could have potentially avoided an outage. This PFD further finds that it was reasonable not to replace the door gasket prior to the start-up especially in light of the pending retirement of the unit. As such, the actions taken by Consumers pertaining to this outage were reasonable and prudent, and this PFD recommends the Commission not remove the replacement power costs associated therewith.

2. Outage #s 23 & 24-Karn 2

On January 21, 2022 through January 24, 2022, Karn Unit 2 experienced two unplanned outages which lasted approximately sixty-nine hours. The Attorney General claims Consumers should not recover the power costs for these outages as requested.

[40] Consumer Reply Brief, page 4.

Mr. Coppola testified that in a supporting report provided in response to discovery, "the Company stated that the generating unit had to be shut down because the turbine rotor temperature was approaching the turbine case temperature and was creating a turbine differential expansion."[41] He further noted that excessive time was needed placing mills into service to achieve minimum loading during startup after the unit was online, as a result "turbine rotor temperatures increased at a faster rate than the turbine case temperatures causing a differential expansion and 'rotor long condition.'"[42]

After examining the root cause analysis (RCA) report provided by Consumers, Mr. Coppola determined there were several deficiencies in the procedures followed which led to the shut-down and outage. He stated that "The deficiencies span from the slurry line not being flushed and drained adequately to an incomplete flushing and shutdown procedure."[43] Mr. Coppola concluded that Consumers is responsible for causing the outage in question due to deficient procedures and a failure of employees to follow appropriate procedures. He therefore recommends the Commission disallow the power costs for this outage requested by Consumers.

Consumers disagrees with Mr. Coppola's conclusions regarding these outages. In rebuttal, Mr. Hoffman stated that, "Mr. Coppola selectively mischaracterizes the Company's actions in each of these outage events."[44] Mr. Hoffman points to his answer to the Attorney General's discovery request (Exhibit AG-2) wherein he stated:

> The Company experienced two power trips within a 2-day period because Karn Unit 2 was experiencing significant challenges with the operation of the coal pulverizer mills, primarily related to coal quality and debris from

[41] 3 Tr 408.
[42] 3 Tr 409; Exhibit AG-2.
[43] 3 Tr 410.
[44] 3 Tr 121.

> the coal pile. Karn 2 had 'ball mill' type pulverizers that are very susceptible to debris from the coal pile. Unit startups required a much larger attention to turbine heating time, synchronization online, and controlled load escalation to avoid differential expansion. The coal mills had frequent startup problems, and, on several occasions, load could not be escalated properly, and the turbine was tripped on differential expansion failures. . . . . The turbine trips are taken in order to avoid catastrophic failure of the turbine and associated equipment.[45]

Mr. Hoffman went on to state that the points of cause for the failed startups are:

> (1) Superheat Temperatures entering the turbine were approximately 200 degrees F higher than allowed, causing excessive rotor thermal expansion (limit is 1050 degrees F), (2) Superheat sprays are high pressure inlet pressure (450 psig) and load dependent (105 MW) instead of superheat temperature, and (3) starting differential expansion clearance as stated in startup procedure GOP 2.0 for re-start inadequate.[46]

Additionally, Mr. Hoffman testified that the coal pulverizers were not able to pulverize a sufficient amount of coal to send to the furnace because the operators were having difficulty opening the pulverizer discharge valves. As such, the unit experienced turbine rotor differential expansion because Consumers was not able to increase the heat input to the unit to generate more steam.[47] Mr. Hoffman disagrees with Mr. Coppola's conclusion that Consumers is responsible for the outage. He stated that the deficiencies cited by Mr. Coppola did not contribute to the coal pulverizers' ability to supply sufficient coal to the boiler, rather the boiler did not have a sufficient amount of coal due to Consumers' difficulty in opening the coal pulverizer discharge valves. Mr. Hoffman testified that Consumers tripped the unit to avoid catastrophic failure thereto, pursuant to Consumers' long-standing procedure. He recommended that the Commission reject Mr. Coppola's recommendation that the replacement power costs for

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[45] *Id*.
[46] 3 Tr 121.
[47] 3 Tr 122.

these outages be disallowed, stating “At no time were the Company’s actions either unreasonable or imprudent and there is no evidence that the Company did not follow long-standing procedure.”[48]

The Attorney General relies on the testimony of Mr. Coppola and states that the RCA report generated by Consumers identifies several deficiencies in the procedures followed by its employees which resulted in the outages in question. The Attorney General takes issue with Mr. Hoffman’s rebuttal testimony wherein he disagrees with the RCA and states that the causes listed were factors to consider in looking to make future improvements. She states, “The fact that they could inform remedial measures does not render them not causes. In fact, a section with Action Items is included near the end of the RCA describing updated procedures.”[49]

The Attorney General asserts that Mr. Coppola did not misinterpret the RCA, and that the document speaks for itself. She further argues that despite the RCA identifying excessive rotor heat combined with inadequate DE clearance as a root cause, the RSA also “identified other causes (physical, human and systematic) that implicated Company employee actions and procedural deficiencies.”[50] Further, the Attorney General disputes Consumers’ argument that the narrative text in the RCA appears to be a glitch in the electronic database and form and refutes the notion that Mr. Coppola should have realized the text was a glitch stating, “Mere repetition of text does not mean the text is wrong and Mr. Coppola had every right to believe that the Company was providing

[48] 3 Tr 124.
[49] Attorney General Brief, pages 13-14.
[50] Attorney General Reply Brief, page 5.

reliable information and relying on it."[51] Therefore, the Attorney General contends the Commission should disallow the power costs associated with these outages arguing the record supports such a recommendation.

In its initial brief, Consumers relies on the testimony of Mr. Hoffman. It points to Mr. Hoffman's testimony wherein he states that the type of coal pulveriser mills present at the plant could not pulverize a sufficient amount of coal because of the difficulty plant operators were having opening the coal pulverizer discharge valves that were seizing up due to coal debris. Consumers states, "This was an ongoing mechanical problem that prevented the Company from increasing the load on the generator in the controlled manner that is required to prevent differential expansion."[52] Consumers states it corrected the issues with the discharge valves during the outage.

Consumers argues that Mr. Coppola made his recommendations based on a narrative in the RCA form, contained in Exhibit AG-3. Consumers asserts the that narrative text does not belong in the RCA, it states:

> The Company is unsure why that narrative text is even present in the Root Cause Analysis for the January 21 and 22, 2022 Karn Unit 2 outages, but it appears to be a glitch in the electronic database and form, which apparently auto-populated data from a different analysis. It is also clear that something was amiss with the data because it repeats the same text multiple times, filling the entire text window.[53]

Consumers further argues that this narrative is clearly inapplicable to the outages at hand and that Mr. Coppola's conclusions that operator error was a root cause for these outages was erroneous.

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[51] *Id*.
[52] Consumers Brief, page 23.
[53] Consumers Brief, pages 23-24; Exhibit AG-3.

Further explaining the outages, Consumers asserts that differential expansion can result in catastrophic failure to the turbine and associated equipment. Consumers disputes Mr. Coppola's assertion that superheat spray would cool the steam admitted to the turbine and help avoid the differential expansion. Regarding superheat spray, Consumers explains:

> So, when differential expansion is already occurring, it is an available remedial measure to counteract the differential expansion and avoid the potential catastrophic failure. But, it also counteracts the turbine start-up process because, as Company witness Hoffman explained, the controlled load escalation required to avoid differential expansion during start-up requires the furnace to generate more steam, which requires increased heat input from the coal mills. 3 TR 122. The Company cannot simultaneously reduce the steam heat with SH spray and increase the steam heat needed to ramp up the turbine load.[54]

Consumers therefore contends that superheat spray can rectify differential expansion, but only in a way that counteracts start-up. Superheat spray was not utilized in this instance, and Mr. Hoffman explained that the use thereof would not have remedied the start-up failures that occurred. Consumers asserts that the outages were caused by "the inability to produce enough heat to avoid differential expansion by synchronizing the heating process for both the turbine rotor and the turbine case at the same time."[55] Consumers therefore argues the Commission should reject the Attorney General's recommendation for a disallowance of power costs associated with these outages.

This PFD is persuaded by Consumers' argument. It does appear that there was an error in the text of the RCA that Mr. Coppola referenced regarding the cause of the

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[54] Consumers Reply Brief, page 6.
[55] *Id*.

outage. Furthermore, Mr. Hoffman provided a sound explanation of the cause of the outages, which was not attributable to operator error or deficient procedures. This PFD finds that the preponderance of the evidence presented shows that Consumers' actions regarding these outages were reasonable and prudent and does not recommend the Commission remove these costs.

3. Outage #10-Campbell 2

On February 20, 2022, Campbell Unit 2 experienced an unplanned outage that lasted for 119.90 hours over a five-day period. The Attorney General contends Consumers should also not recover the costs of purchasing replacement power as a result of this outage. Mr. Coppola testified that the report contained in Exhibit A-11 and Consumers' response to discovery request AG-CE-0055 show that the root cause of the outage was an operating error and an incomplete procedure.[56] He stated the "error caused the generating unit to abort the start-up and required adjustments to pressure regulators which lasted approximately 5 days to complete"[57] and resulted in Consumers needing to purchase replacement power during this period. In reviewing the discovery response provided by Consumers, Mr. Coppola testified that the generating unit experienced an infiltration of seal oil into the generator which required the start-up to be aborted. Consumers' discovery response indicates that a valve was inadvertently opened too far during the course of the turbine and generator overhaul, and the valve being out of adjustment is what caused the infiltration of seal oil.

[56] 3 Tr 412.
[57] *Id*.

Mr. Coppola noted that Consumers stated that there is not a procedural need to adjust the valve in question during normal operations. However, he stated that "Operating procedures have been updated to verify seal oil pressures and position of valve. The Generator Hydrogen Seal Oil Bypass Valve has also been locked in place to prevent any inadvertent adjustment."[58] Mr. Coppola further testified, "The incremental power costs for this outage that the Company seeks to recover in this reconciliation case are the result of an error by Company employees and a deficient procedure."[59] As such, Mr. Coppola recommends the Commission disallow the purchased power costs for this outage from the total power costs included in this matter.

Mr. Hoffman testified that he does not agree with Mr. Coppola's conclusion that this outage was caused by an operator error or that Consumers was using an incomplete procedure. He stated that while attempting to identify the cause of the oil infiltration, Consumers discovered that a pressure sensing isolation valve had been closed, apparently by the contractor during the generator overhaul. Mr. Hoffman identified that valve as 2-11-V-202 "Generator 2 Outboard End Hydrogen Seal Oil Pressure Sensing Isolation Valve", which is normally left open.[60]

Additionally, Mr. Hoffman testified that the valve in question is not operated and therefore left open as part of normal operations. Regarding the operation of the valve he stated, "The Generator 2 Outboard End Hydrogen Seal Oil Pressure Sensing Isolation Valve is not intended to be operated or adjusted. Any adjustments to the seal oil system

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[58] 3 Tr 411.
[59] *Id*.
[60] 3 Tr 125.

are performed at the generator seal oil skid."[61] Mr. Hoffman testified that while the generator was being overhauled, the contractor preforming the overhaul closed the valve and did not reopen it. He stated that Consumers was unaware the valve had been closed by the contractor and, "As a result, when the system was restored, there was no pressure feedback to the Pressure Equalizing Valve and as a result, oil was allowed to infiltrate the generator."[62]

Rebutting Mr. Coppola's conclusion that Consumers' procedures were inadequate pertaining to this outage, Mr. Hoffman stated that the procedures were adequate, but that changes were made as the company is always looking to improve its procedures and operations. He testified that after the valve was opened and sensing capabilities restored, the valve was adjusted to the proper position and locked in place "strictly as a visual and physical reminder that the bypass should not be manipulated once adequate seal oil pressure is achieved."[63] Mr. Hoffman stated that this adjustment eliminates the potential to have oil infiltrate the generator as it did in this instance.

Mr. Hoffman stated the Commission should reject Mr. Coppola's recommendation of the disallowance of costs associated with this outage and contends Consumers' actions were reasonable and prudent. He asserts that Consumers' procedure was not inadequate and notes that it had been implemented multiple times during the life of the plant. He stated, "Generation Operations had no reason to operate the valve during normal operations. The mis-positioning of the valve occurred during a

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[61] *Id*.
[62] *Id*.
[63] 2 Tr 126.

generator overhaul, an infrequently performed maintenance activity that is performed on a frequency of 10 years or more."[64]

In her brief, the Attorney General reiterated that the cause of this outage was oil infiltrating a generator requiring the start-up to be aborted. The Attorney General's initial brief references a discovery response (contained in Exhibit AG-4) referencing a bypass valve being opened too far during the turbine and generator overhaul. She notes that the valve is not normally adjusted during regular operating procedures, but that such procedures have been updated to verify the position of the valve and to lock it in place. Mr. Coppola concluded that the cause of the outage was operating error and incomplete procedure, and no root cause report was prepared by Consumers.

The Attorney General notes that Consumers admitted that during the overhaul one of its contractors closed the valve, which is normally left open, which led to the infiltration of oil into the generator. The Attorney General therefore argues that it was the contractors hired by Consumers who closed the valve in question ultimately leading to the outage, noting that Consumers "admits that operating procedures at the time did not address the extent to which the bypass valve needed to be open."[65] Therefore, she asserts that the outage and associated costs Consumers requests to recover were caused by an error of Consumers' contractors and a deficient procedure and those costs should not be borne by customers.

Additionally, the Attorney General notes that the Commission has held that a utility can be responsible for the negligence of a contractor acting within the scope of its

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[64] *Id*.
[65] Attorney General Brief, page 16.

employment. The Attorney General further asserts that Consumers' claim of ignorance regarding the position of the valve is not an excuse, and that Consumers should have provided guidance to the contractor regarding the valve and checked the position of such before attempting start-up.[66]

Consumers argues that there is no merit to Mr. Coppola's claim that this outage was caused by employee error or deficient procedure and takes issue with Mr. Coppola's statement that the position of the valve was caused by an employee, stating that it was a contractor not an employee of Consumers. Regarding the procedure, Consumers asserts that the procedure was not deficient and states that the general overhaul that was taking place is a maintenance activity only performed every ten years or more. Consumers therefore contends there was no reason for its employees to anticipate that the valve would be closed, and further notes that employees would have no reason to operate the valve during normal operations stating that the valve "is located in a place where Company employees would not have ready access to the Isolation Valve and there was no procedural reason to check it or adjust it during normal operations."[67]

Consumers further refutes Mr. Coppola's contention that the subsequent remedial measures taken by Consumers support his claim that the procedures in place at the time were deficient. It points to MRE 407 in arguing that subsequent remedial measures cannot be used to show negligence. Commenting on the remedial action that was taken subsequent to the outage, Consumers argues, "Clearly, this action was not

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[66] Attorney General Reply Brief, pages 6-8.
[67] Consumers Brief, pages 25-26.

indicative of a problem with any existing procedure; it was simply a creative solution to protect against a similar potential issue in the future."[68]

Arguing further, Consumers points to MCL 460.6j, and states that the Commission "is charged with evaluating the reasonableness and prudence of the utility's actions that are under review – not the reasonableness and prudence of third parties' actions."[69] Consumers avers that while the Commission has held that utilities are not completely shielded from responsibility regarding the selection and management of third party contractors, "Only if a utility fails to properly select or monitor its contractors should the contractor's errors be imputed to the utility."[70] Consumers asserts that the Attorney General presented no evidence showing that its actions regarding the selection or monitoring of the contractor were unreasonable or imprudent and that it is not reasonable to expect it to oversee the work being performed on all parts of the generator.

Additionally, Consumers disputes that the contractor was erroneous in closing the isolation valve during its work. Consumers argues that because it does not have in-house personnel to conduct the work the contractor was performing and the task is performed so infrequently, its witnesses did not speculate whether the closing of the valve and the failure to reopen it was erroneous. Arguing further, Consumers asserts there was no evidence presented to show that those actions of the contractor were faulty.

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[68] Consumers Brief, page 26.
[69] Consumers Reply Brief, page 7.
[70] Consumers Reply Brief, page 8.

Consumers further disputes the Attorney General's contention that its procedures were deficient. Consumers asserts that the Attorney General "may be confused about what subsequent remedial measures the Company actually took."[71] Pointing out that three different valves were discussed in testimony, exhibits, and discovery responses pertaining to this outage, Consumers describes the roles the seal oil and different valves play in operating the generator on pages 10 and 11 of its reply brief. Consumers states that while trying to identify the root cause of the outage, its investigation initially focused on the bypass valve, and a preliminary finding was made that this valve was the cause of the seal oil infiltration. However, after adjustments to the bypass valve did not resolve the issue, the investigation continued ultimately determining that the isolation valve was the source of the problem.[72]

Arguing further, Consumers points to the testimony of Mr. Hoffman who explained that after the isolation valve issue was resolved, it was discovered that the bypass valve had been opened too far, and the operating procedures at the time did not address how far the valve was supposed to be opened. Consumers states that, "in the course of performing the troubleshooting activities and the Company's efforts to resolve the cause of the outage, the Bypass Valve, which had initially been a focus of the troubleshooting investigation, had been moved out of proper adjustment."[73] Operating procedures were adjusted thereafter to verify the position of the bypass valve and lock it into place.

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[71] Consumers Reply Brief, page 9.
[72] Consumers Reply Brief, page 11; Exhibit A-11.
[73] Consumers Reply Brief, page 12.

Consumers asserts that the Attorney General has oversimplified the process of diagnosing problems with the generator at Campbell Unit 2. It states:

> Correctly diagnosing the problem is not always as easy and straightforward as the Attorney General assumes. Sometimes the correct diagnosis requires testing numerous hypotheses that may turn out not to be the actual source of the problem. While testing those hypotheses, the Company may discover other issues that could cause new problems down the line. When it does, it prudently addresses and documents those problems to improve operations.[74]

Consumers asserts that the Attorney General's contention that deficient procedures contributed to the outage is not supported by its efforts to identify the problem or adjust operational procedures. Consumers asserts that neither the Attorney General nor Mr. Coppola have a detailed understanding of how the Campbell Unit 2 operates and states, "They have misread and misunderstood a few cursory statements written in engineering documents that are used to communicate with other internal engineers – not external lay people – about the history, source, and resolution of plant outages within the Company's generating fleet."[75]

This PFD agrees with the Attorney General that the power costs associated with this outage should be disallowed. The preponderance of the evidence shows that the ultimate cause of this outage was the isolation valve being closed by the contractor during the overhaul of the unit. The Attorney General correctly notes that the Commission has disallowed replacement powers costs which resulted from the negligence of an agent of a utility, such as the contractor in the instant matter.[76] This PFD is persuaded by the argument of the Attorney General that the power costs

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[74] Consumers Reply Brief, page 12.
[75] Consumers Reply Brief, page 13.
[76] Docket No. U-15001-R, March 2, 2010 Order, page 8.

associated with the outage should be disallowed and adopts the proposed disallowance.[77]

4. Outage #260-Campbell 3

On November 14, 2022, Campbell Unit 3 experienced an 11-day unplanned outage. The outage began on November 14, 2022 and ended on November 25, 2022. The Attorney General contends that the Commission should disallow the power costs associated with this outage requested by Consumers.

Mr. Coppola testified that, according to a report provided by Consumers, loss of instrument airflow to critical control components caused the generating unit to power trip (suddenly shutdown). Additionally, he stated, "Expanding further, the report stated that there was a failure to the actuator/valve on the inlet to the in-service instrument air dryer due to a failure of the valve to open on the inlet of the instrument air dryer."[78] Mr. Coppola further noted that the report stated that the turbine turning gear motor failed during shutdown and had to be sent offsite to be rewound. He stated that no cause was determined for the failure of the turning gear motor, and additionally noted that "the power outage was extended due to the turbine not rotating on the turning gear after shutdown, which caused a rotor bow requiring a hold time to allow temperatures to achieve equilibrium and correct the bow."[79]

In assessing this outage, Mr. Coppola examined the root cause analysis (RCA) report provided by Consumers in response to discovery. He stated, "As described in the RCA report, there were several deficiencies in the procedures followed by Company

[77] Proposed disallowance contained in Exhibit AG-7 CONF and Coppola Confidential Testimony 3 Tr 508-509.
[78] 3 Tr 413.
[79] *Id*.

employees that led to the unit to trip and cause the extended power outage."[80] Mr. Coppola's examination of the RCA report led him to determine that Consumers' employees did not follow the existing procedural standard, that the standard itself lacked clarity, that employees were not properly trained on the procedure to follow, and that Consumers did not have the required equipment in place.[81]

Mr. Coppola noted that, though responses to discovery, Consumers denied that the root cause of the outage was operator error despite the language of the RCA report. He also pointed out that the RCA report was prepared "by the Company shortly after the incident occurred is very clear as to what occurred to cause the outage and where the responsibility lies."[82] Mr. Coppola contends the RCA report must lead one to conclude Consumers is responsible for causing the power trip and the resultant outage. He therefore recommends the Commission disallow the incremental power costs for this outage sought by Consumers.[83]

In rebuttal to Mr. Coppola, Mr. Hoffman testified that the full load trip relating to this outage was not caused by operator error. He stated:

> The "full load trip" occurred because of an instantaneous loss of instrument air pressure. The loss of instrument air pressure was caused by a failure of the inlet valve actuator. As a result of the actuator failure, the inlet valve did not open which prevented air from being admitted into the instrument air dryer and an instantaneous loss of instrument air pressure occurred.[84]

Mr. Hoffman testified that the RCA referred to by Mr. Coppola did not completely present the circumstances which led to the outage. He stated that the discussion

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[80] 3 Tr 414.
[81] 3 Tr 414-415; Exhibit AG-6.
[82] 3 Tr 415
[83] *Id*.
[84] 3 Tr 127; Exhibit AG-5.

section of the RCA pertaining to operating procedure as well as commentary on degraded airflow and pressure does not articulate facts which contributed to the outage. He went on to state that the use "of the bypass valve is meant to supplement air pressure when swapping air dryers only. Operationally, the bypass valve is not relied upon to supply supplemental air pressure over long periods of time."[85] He asserts that Mr. Coppola has not presented evidence that the outage in question "resulted from anything more than an instantaneous loss of instrument air pressure which resulted from the failure of the inlet valve actuator, thereby preventing the inlet valve from opening."[86]

Mr. Hoffman further stated that it is reasonable and prudent to remove inoperative and redundant equipment from service for maintenance thereon. Regarding the outage in question, he stated that the "E" instrument dryer in the unit was removed from service on October 5, 2022 due to degradation. Prior thereto, the "D" dryer was placed into service for testing. The "D" dryer had preventative maintenance performed on it on July 25, 2022, after which post-maintenance testing was conducted. During the post-maintenance testing, "the inlet valve which ultimately failed was stroked to ensure proper operation."[87] Mr. Hoffman testified that on October 4, 2022, corrective maintenance was conducted on the "D" dryer which included replacing the control display and two pressure switches. Post-maintenance testing was again conducted on October 5, 2022, "at which time the inlet valve would have been stroked again to verify

[85] 3 Tr 128.
[86] *Id*.
[87] 3 Tr 129.

proper operation."[88] Mr. Hoffman stated that the "E" dryer was then removed from operation and the "D" dryer remained in service until November 14, 2023.[89]

Mr. Hoffman additionally testified that the "D" dryer was operating satisfactorily in the immediate hours leading up to the trip. He stated that there "were no leading indicators that an imminent loss of air event was about to occur until the failure of the inlet valve caused the instantaneous loss of air pressure."[90] Mr. Hoffman testified that the most reliable configuration of the equipment from an operational standpoint is to have both dryers available, and that information regarding adequate air volume or pressure in the event of a failure such as the one at hand does not exist. He stated that Consumers could not have done anything to avoid the valve failure and resultant loss of instrument air in this instance and noted that the outage was extended as the loss of instrument air impacted several systems ultimately resulting in the inability to place the turbine on gear.[91]

Because Consumers was unable to put the turbine on the turning gear, Mr. Hoffman testified a temporary bow formed in the rotor. He stated that, "The delay in returning the unit back to service was the result of waiting for the rotor to cool enough to eliminate the interference between the rotor and the stationary section before it could be placed on turning gear and the bow allowed to work itself out."[92] Mr. Hoffman asserts that the outage was not caused by operator error, but by an instantaneous loss of instrument air pressure which impacted various systems in the plant. He stated that

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[88] *Id.*
[89] Exhibit A-31.
[90] 3 Tr 129.
[91] 3 Tr 130.
[92] 3 Tr 131.

Consumers acted reasonably and prudently in the period preceding the outage and that the Commission should reject Mr. Coppola's recommendation.

In her brief, the Attorney General points to the RCA report Consumers prepared following this outage which is contained in Exhibit AG-6. The Attorney General contends that the RCA report identified several deficiencies in the procedures Consumers' employees undertook that led the unit to trip and the resultant extended outage. She states:

> First, there was a standard that employees did not follow. Second, the standard lacked clarity causing confusion for the unit operators. Third, employees were not adequately trained on the proper procedure to follow. Fourth, the Company did not have the required equipment in place.[93]

The Attorney General notes that Consumers denies that the root cause of the issue was operator error. She argues that the denials asserted by Consumers regarding the issues identified in the RCA contributing to the outage are vague and do not appear to be accurate. The Attorney General again points to the RCA report and states, "Presumably, the people responsible for the RCA were aware of the operations and procedures and choose to identify the issues discussed above as causes in the RCA."[94] Therefore, she argues that the costs sought for recovery by Consumers for this outage resulted from employees not following procedures, deficiencies in those procedures, and the lack of adequate equipment.

Additionally, the Attorney General notes that Consumers has a procedure for opening a bypass valve when needed to supplement air pressure, "but the Company speculates that the operator's failure to do so did not cause the loss of air pressure and

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[93] Attorney General Brief, page 19.
[94] Attorney General Brief, page 20.

would not have prevented or corrected the loss of air pressure that led to the outage."[95] The Attorney General maintains that this outage resulted from not simply a mechanical error, but that physical, human, and systematic causes that were within the control of Consumers and existed for some time contributed to the outage.

Consumers asserts that Mr. Coppola's conclusions regarding this outage are incorrect. Mr. Coppola's conclusions arose from his review of the RCA form for this outage, which states that there was a procedure that Consumers' employees failed to follow because of the lack of clarity in the procedure and the employee not being adequately trained in the procedure. But Consumers contends that "the failure to follow the procedure was neither the cause of the outage, nor would the procedure have remedied the outage if it had been correctly followed."[96] Consumers relies on the testimony of Mr. Hoffman wherein he explained that the procedure calls for an employee to crack open a bypass valve to supplement air pressure when there is a loss of system air pressure, but that in this case the loss of air pressure was too great for this procedure to work.

Further, Consumers avers that the failure of the operator to crack open the bypass valve did not cause the loss of air pressure, and "would not have prevented or corrected the loss of air pressure that led to the outage even if it had been executed according to the procedure."[97] In response to discovery, Mr. Hoffman stated that cracking the bypass valve in this situation could have caused greater damage to the system, noting that the air supplied by the bypass valve is wet and of low quality, which

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[95] Attorney General Reply Brief, page 9.
[96] Consumers Brief, page 28.
[97] Consumers Brief, page 29.

could cause freezing of the transmitter and pose a greater risk to the unit than operating with one instrument air dryer. He additionally noted that "the procedure for cracking open the bypass valve is really meant for a situation in which the Company is swapping air driers only."[98]

Responding to Mr. Coppola's assertions about inadequate equipment, Consumers disputes that the "E" instrument dryer was not redundant, but that it degraded to the point that it became unable to operate and was removed from service on October 5, 2022. Consumers further notes that maintenance had begun on the "E" dryer, but that it was still out of service at the time of the outage due to difficulty in procuring parts. Additionally, Consumers refutes Mr. Coppola's assertion that the dryers were undersized and that both were required to be in service at the same time. Consumers states, "As indicated in Exhibit AG-17, the SOP for the air dryers only requires a single dryer to be in service. The system is accompanied by an alarm set to 80 PSIG to ensure sufficient instrument air pressure to the plant."[99] Consumers argues the outage in question was the result of mechanical failure, not of inadequate procedures, employee's failure to follow procedures, or inadequate equipment.

This PFD finds that the preponderance of the evidence supports Consumers' contention that this outage was a result of a mechanical failure. Consumers presented persuasive testimony and arguments showing that the procedure the Attorney General claims was not followed would not have remedied the outage as the procedure would not have supplied enough air pressure to make up for the failed dryer. As the

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[98] *Id*.
[99] Consumers Brief, page 30.

preponderance of the evidence shows that this outage resulted from a mechanical failure, this PFD recommends the Commission deny the Attorney General's request that the power costs associated with this outage be disallowed.

5. Ludington Outages

The Attorney General also contends that the Commission should require Consumers to identify replacement power costs for Ludington Units 1, 2, and 4 through 6 for the years 2021, 2020, and "prior years pertaining to the Toshiba problem in its 2023 PSCR reconciliation case."[100] Additionally, the Attorney General asserts that in addition to identifying replacement power costs, Consumers "should be required to correct any error or omission by proposing additional adjustments to remove those replacement power costs from the 2022 or 2023 PSCR reconciliation and record those costs in the regulatory asset provided for in Case No. U-21310."[101]

The outage in question took place at the Ludington Plant Unit 3, beginning with a planned outage to overhaul and upgrade Unit 3 on May 13, 2019, and extended past its initial completion date of May 20, 2020 with the outage continuing through March 25, 2020 and the unit becoming commercially operational again on April 2, 2022. The Attorney General notes that Consumers originally reported it had to purchase replacement power in 2022 at a cost of $2,202,363, but that Mr. Hoffman's supplemental testimony, filed on November 7, 2023, "removed the $2,202,363 in replacement power expenses associated with outage periods attributable to defective work performed by Toshiba at the Ludington Pumped Storage plant from this PSCR

[100] Attorney General Brief, page 25.
[101] Attorney General Brief, pages 25-26.

case."[102] The replacement power costs were placed into a regulatory asset account, recovery of which will be addressed in another proceeding in accordance with the Commission's May 18, 2023 Order in Case No. U-21310.

In his testimony, Mr. Coppola states that in response to discovery requests Consumers increased the amount recorded to the regulatory asset account $126,805 from a total of $2,202,363 to a total of $2,329,167.[103] While Mr. Coppola asserts that the removal of these costs to the regulatory asset account appears to be in conformity with the Commission's intent in Case No. U-21310, he contends that the Attorney General recently discovered through an attachment to discovery requests "that the equipment and service quality problems with Toshiba were more widespread than the Company has previously describe with the Ludington Unit 3 extended outage."[104] He notes that the attachment shows existing problems at Ludington Unit 1, 2, 4, 5, and 6, alleging that all six of the generating units have similar problems with Toshiba equipment. Mr. Coppola additionally states that this wider problem has not been disclosed by Consumers in prior PSCR plan or reconciliation cases.

Mr. Coppola further asserts that the Attorney General, the Commission Staff, and other intervenors were only made aware that a problem with the Toshiba equipment existed at Ludington Unit 3 based on information disclosed by Consumers in 2020 and 2021 PSCR reconciliation filings. He contends that it appears now that similar or other problems existed with Toshiba equipment at the other five generating units, and that

[102] Attorney General Brief, page 22.
[103] 3 Tr 417; Exhibit AG-8.
[104] 3 Tr 418.

such problems occurred in 2022, 2021, 2020, and possibly other years. Mr. Coppola therefore recommends:

> that either in rebuttal testimony in this case or in the 2023 PSCR reconciliation the Company identify the replacement power costs for Units 1, 2, and 4 through 6 for 2021, 2020, and prior years pertaining to the Toshiba problem. In addition to identifying the amount, the Company should correct the error and omission by proposing additional adjustments to remove those replacement power costs from the 2022 or 2023 PSCR reconciliation and record those costs in the regulatory asset provided for in Case No. U-21310.[105]

He further recommends that should Consumers not voluntarily remove those costs from the instant reconciliation case, that the Commission order it to do so as part of the 2023 PSCR reconciliation.

The Attorney General contends that Consumers "should be required to identify the replacement power costs for Units 1, 2, and 4 through 6 for 2021, 2020, and prior years pertaining to the Toshiba problem in its 2023 PSCR reconciliation case."[106] She further asserts that Consumers should be required to correct any errors or omissions by "proposing additional adjustments to remove those replacement power costs from the 2022 or 2023 PSCR reconciliation and record those costs in the regulatory asset provided for in Case No. U-21310."[107] The Attorney General argues that despite prior approval, replacement power costs for 2020 and 2021 could be reexamined if there were undisclosed costs associated therewith.

Consumers disputes the Attorney General's recommendation regarding the replacement power costs for the Ludington outages. Consumers argues that the costs referenced by the Attorney General that occurred prior to 2022 are outside the scope of

[105] 3 Tr 419.
[106] Attorney General Brief, page 25.
[107] Attorney General Brief, pages 25-26.

this case, and that the Attorney General's recommendation violates the Commission's Order in Case No. U-21310.

Kristopher L. Koster provided rebuttal testimony in response to the testimony and recommendations of Mr. Coppola pertaining to the Ludington outages. Mr. Koster testified that Consumers has disclosed that the defective work performed by Toshiba extended to units other than Unit 3. He stated, "Despite Mr. Coppola's statements to the contrary, the Company has filed testimony in prior cases disclosing to the Commission, MPSC Staff ("Staff"), and intervening parties Toshiba's defective work on the other Ludington units."[108] Mr. Koster testified that Consumers has filed testimony describing Toshiba's defective work in Case No.'s U-20526, U-20803, U-21310, and the present case.[109] He asserts that Consumers has been transparent regarding the issues related to Toshiba's work at all units, not just Unit 3. He stated that these issues have been disclosed through testimony or sworn statements in prior cases and that there are no errors or omissions by Consumers as claimed by Mr. Coppola.

Additionally, Mr. Hoffman testified that Consumers has addressed the quality of Toshiba's workmanship in prior PSCR Reconciliation cases, beginning with Case No. U-20220 and continuing with Case No.'s U-20526 and U-20803. He therefore states that "it is untrue that the Company has not previously disclosed this wider problem in testimony filed in previous PSCR reconciliation cases."[110] Mr. Hoffman further states that the Commission should reject Mr. Coppola's recommendations regarding the Ludington outages as "Costs incurred in prior years have already been reconciled, and

[108] 3 Tr 141.
[109] 3 Tr 142-153.
[110] 3 Tr 133.

the Company in fact had received a previous disallowance for the Toshiba-designed flaw at Ludington Unit 2 in its 2019 PSCR Reconciliation Case."[111]

Consumers contends that the Attorney General's recommendations should be rejected arguing that costs outside of the 2022 reconciliation period are beyond the scope of this case, and arguing that adopting the recommendations would violate the Commission's May 18, 2023 Order in Case No. U-21310. In U-21310, Consumers and DTE Energy (as owners of the Ludington plant) filed an application for a regulatory asset to defer the costs of Toshiba's defective work. The application was approved in the Commission's May 18, 2023 Order. As the Order was issued after the inception of the present case, Consumers removed the 2022 replacement power costs associated with the Toshiba work and placed them into the regulatory asset, requiring Consumers to revise and supplement its testimony and exhibits in this matter. Consumers further notes that both Staff and the Attorney General identified $126,805 in replacement power costs related to a Unit 3 outage in 2022 that was inadvertently excluded from its revised testimony and exhibits. Consumers added this amount to what it is requesting be removed and placed in the regulatory asset, for a total of $2,329,167 to be removed from this case.[112]

Consumers argues that costs outside of the 2022 reconciliation period are outside the scope of this case and, in turn, irrelevant. Consumers asserts that "Replacement power costs from earlier reconciliation periods are immaterial to this case and should not be considered."[113] Arguing further, Consumers asserts that facts not

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[111] 3 Tr 134.
[112] Consumers Brief, page 33.
[113] Consumers Brief, page 34.

within the scope of this matter are inconsequential to the determination of this case and therefore irrelevant. Accordingly, Consumers avers that costs related to Toshiba incurred from 2019 through 2021 are outside the scope of this case, and evidence relating to such is irrelevant. Pointing to MCL 460.6j(12)-(15), Consumers argues the scope of this matter is generally limited to the 2022 reconciliation period. Although MCL 460.6j(12) allows costs outside of the reconciliation period to be included, it must be determined that those costs were not adequately considered in prior cases.

Consumers relies on the testimony of Mr. Hoffman wherein he explains that the costs in question which are outside of the 2022 reconciliation period have already been reconciled in previous cases. Additionally, Consumers argues that the Commission disallowed costs related to Toshiba in its 2019 and 2020 PSCR Reconciliation cases, and that it agreed to remove $1.77 million in Toshiba-related costs from its 2021 PSCR Reconciliation case. Consumers states:

> In response to discovery seeking Toshiba-related replacement power costs from 2019 to 2021 that were not already reviewed and adjudicated, the Company identified marginal costs— marginal in comparison to the costs that were adjudicated—from 2019 and 2021 that were reconciled in earlier proceedings but not identified as Toshiba-related costs.[114]

Although it stipulated to the admission of the Attorney General's exhibits, Consumers did not waive its objection to the evidence pertaining to costs outside the 2022 reconciliation period. In its brief, Consumers objects to this evidence as being outside the scope of this case and therefore irrelevant. Consumers asserts that Toshiba-related costs were adequately considered at the time of the prior reconciliation cases based on the information that was available at the time. Therefore, Consumers "urges the

[114] Consumers Brief, page 35.

Commission to reject the Attorney General's invitation to revisit costs incurred in prior reconciliation proceedings that were reconciled based on the best information known at the time."[115]

Additionally, Consumers argues that following the Attorney General's recommendation would violate the Commission's May 18, 2023 Order in Case No. U-21310. The Commission's Order authorizes Consumers and DTE Energy to place into the regulatory asset all Toshiba-related costs which have not been previously reviewed and approved for incorporation into rates.[116] Consumers asserts that in its Order, the Commission made a distinction between Toshiba-related costs occurring from 2019 through 2021, and Toshiba-related costs occurring in 2022. It argues that the costs from each time period must be treated differently, and because the 2019 through 2021 replacement power costs have already been reviewed and reconciled, the May 18, 2023 Order does not allow them to be removed to the regulatory asset.

This PFD agrees with Consumers' position on this issue. As stated in MCL 460.6j(12), reconciliation proceedings are generally limited to the year in question but may address other years if the costs in question were not adequately considered in prior cases. As Consumers points out, there have already been reconciliation proceedings regarding the years for which the Attorney General asserts costs pertaining to Toshiba's defective work should be revisited. This PFD finds that the 2019 through 2021 costs relating to Toshiba-related work are outside the scope of the instant case.

[115] Consumers Brief, page 36.
[116] Case No. U-21310, May 18, 2023 Order, page 5.

B. Hold Harmless Payment

Consumers and Cadillac Renewable Energy, LLC are parties to an amended Power Purchase Agreement (PPA) that was executed in May 1997.[117] In 2007, the parties agreed to a Reduced Dispatch Agreement (RDA) that allows Cadillac to deliver less power to Consumers when Cadillac's cost of production is greater than the PPA's dispatch price.[118] At issue here is the Hold Harmless Payment provision in Section 4 of the RDA, which requires Cadillac to reimburse Consumers for the additional costs of replacement energy. That provision reads in relevant part:

> 4. Hold Harmless Payment. The economic dispatch procedure identified in Section 2(a) of this RDA is expected to reduce electric production at the Plant from what would have occurred using the PPA Dispatch Price. The reduction in electric production at the Plant will result in replacement of energy from some combination of increased output from other generating units owned or controlled by [Consumers] and/or increased purchases of energy from third-party power suppliers and/or reduced sales to third party power purchasers. *Cadillac will reimburse [Consumers] for the additional costs of such replacement energy in an amount equal to the sum of the hourly products of the Mitigated Dispatch*[119] *and the positive difference between Displacement Cost*[120] *and the PPA Dispatch Price*. . . .[121]

In turn, PPA Dispatch Price is defined as "the variable charges that would be applicable for Dispatch in accordance with the PPA expressed in $/MWh."[122]

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[117] See Exhibit BMP-27.
[118] See Exhibit BMP-23.
[119] Mitigated Dispatch is the amount of replacement power. The term is defined under the RDA as "the difference between the Hypothetical Dispatch and the MISO Dispatch expressed in MWh." Exhibit BMP-23, p 3.
[120] Displacement Cost is the cost of replacement power. The term is defined under the RDA as "the cost (in $/MWh) of Resources (including foregone sales) that displaced the Plant in [Consumers'] system Dispatch as a result of [Consumers'] Dispatch of the Plant on the basis of COP [Cost of Production] and deemed to be equal to the day-ahead locational marginal price at the Plant CPNode as established by MISO on a daily basis." Exhibit BMP-23, p 2.
[121] Exhibit BMP-23, pp 4-5 (emphasis added).
[122] Exhibit BMP-23, p 3.

Consumers calculates the hold harmless payments and deducts that amount from its monthly payments to Cadillac.[123] Cadillac claims that Consumers incorrectly calculated the hold harmless payment and therefore owes Cadillac a refund.

Cadillac witness Audette explained that the RDA benefits Consumers' customers because it allows Consumers to purchase, when available, lower-priced market power and then split the savings between Cadillac and Consumers.[124] The RDA also benefits Cadillac by allowing Cadillac to avoid incurring costs when its cost of production is higher than the cost of market power, saving Cadillac the difference between the cost of market power and the higher cost of production.[125] Mr. Audette explained that the hold harmless payment "ensures that Consumers does not pay more for market power which it purchases to replace Cadillac's power than it would have otherwise paid Cadillac."[126] He testified that Consumers did not inform Cadillac of the hold harmless payment before that amount was deducted, nor did it provide Cadillac with its calculation of the hold harmless payment amounts before making deductions in 2022.[127]

Mr. Audette testified there are three components in the calculation of the hold harmless payment: "(i) the amount of market power purchased by Consumers Energy expressed in Megawatt Hours (MWhs), (ii) the cost of that market power and (iii) the total amount Consumers would have paid Cadillac if it had not purchased market power but had instead purchased that same power from Cadillac."[128] He testified that the

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[123] Exhibit BMP-23, p 5; 3 Tr 253.
[124] 3 Tr 251-252.
[125] 3 Tr 251-252.
[126] 3 Tr 252.
[127] 3 Tr 253.
[128] 3 Tr 253.

amounts of the first two components are known.[129] Regarding the third component, Mr. Audette testified that the cost Consumers would have paid Cadillac can be calculated.[130] According to Mr. Audette, Consumers would have first paid Cadillac the Variable Expense Payment Rate (VEPR) under the PPA.[131] Consumers would have also reimbursed Cadillac for Nitrogen Oxide (NOx) allowance costs and a portion of the additional fuel costs required to generate that energy.[132] Mr. Audette noted that "Cadillac's NOx allowance costs and the portion of its fuel costs that exceed the fuel costs embedded in Cadillac's [VEPR] are recoverable in cost recovery proceedings including this case under MCL 460.6a(9)-(11) [Act 286]," and he testified that those amounts can be calculated now that Cadillac's costs have been audited.[133]

Mr. Audette claimed that the 2022 hold harmless payment calculation is incorrect because it includes only the VEPR and does not include the NOx allowance costs or the additional fuel costs that Consumers would have paid had it purchased power from Cadillac.[134] "Both of those amounts [NOx allowance costs and additional fuel costs] are, in fact, costs that Cadillac would have incurred and recovered under MCL 460.6a(9)-(11)."[135] Mr. Audette opined that by omitting those amounts from the calculation, Consumers has understated what it would have paid Cadillac and, in turn, increased the

[129] 3 Tr 253.
[130] 3 Tr 254.
[131] 3 Tr 254.
[132] 3 Tr 254.
[133] 3 Tr 254.
[134] 3 Tr 254-255, 257.
[135] 3 Tr 255.

amount of the hold harmless payment.[136] He testified that Consumers "is being more than held harmless" and "is forcing a rate reduction upon Cadillac."[137]

To support his argument, Mr. Audette quoted the RDA's Hold Harmless Payment provision and emphasized that PPA Dispatch Price is defined as "the *variable charges* that would be applicable for Dispatch in accordance with the PPA . . . ."[138] He testified:

> The Reduced Dispatch Agreement uses the term "variable charges." It does not use the term "Variable Energy Payment."[139] The term "Variable Energy Payment" is in Cadillac's PPA, but that term is not used in the Reduced Dispatch Agreement. The relevant price differential is between Cadillac's total variable changes [sic] and the cost of the power used to replace that generation.[140]

Mr. Audette testified that Consumers charged Cadillac $4,380,171 in hold harmless payments in 2022.[141] He explained that Cadillac is not seeking recovery of any portion of the overpayment attributable to fuel costs because "the price of Biomass fuel fluctuated significantly in 2022 and it would be too difficult to accurately determine the amount of additional fuel cha[r]ges that Cadillac would have incurred in 2022."[142] Regarding the NOx allowance costs, Cadillac calculated that Consumers owes Cadillac $600,416 as a result of miscalculating the hold harmless payment.[143] Mr. Audette explained how Cadillac came to that amount:

> The U.S. EPA's NOx Ozone Season runs from May 1 through September 30 of each year. From May 1 through September 30, 2022, Consumers

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[136] 3 Tr 255.
[137] 3 Tr 255.
[138] 3 Tr 256.
[139] The PPA refers to the "Variable Expense Payment Rate." See Exhibit BMP-27, pp 9, 17. Cadillac at times instead uses the term "Variable Energy Payment."
[140] 3 Tr 256.
[141] 3 Tr 257.
[142] 3 Tr 258.
[143] 3 Tr 258. As discussed below, Mr. Audette later revised that figure downward after factoring in the RDA's Net Benefit Sharing provision.

> purchased 46,008.95 MWhs of mitigated energy from market sources instead of buying that power from Cadillac.
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> The Cadillac generating plant's NOx emission rate is 1.80 lb/MW.
>
> If Consumers had purchased the 46,008.95 MWhs of energy from Cadillac, the Cadillac plant would have generated 82,816.11 lbs, or 41.41 tons, of NOx, resulting in the need to purchase 41.41 NOx allowances.
>
> At Cadillac's Average 2022 NOx cost price of $14,500/allowance, those 41.41 allowances would have cost $600,416.80, which amount is not included in Consumers' calculation of the Hold Harmless Payment and is owed to Cadillac as an overcharge refund.[144]

Mr. Scaife testified in support of Consumers' method of calculating the hold harmless payment. He opined that Consumers "has settled the RDA monthly in accordance with the terms of the agreement and consistent with past practice."[145] He also provided "context" to Mr. Audette's description of what the hold harmless payment is meant to accomplish, explaining:

> Prior to the RDA, the PPA was dispatchable based on the lessor of (i) a dispatch quote provided by Cadillac and (ii) the PPAs Variable Expense Payment Rate ("VEP"). VEP is the price in $/MWh paid to Cadillac for the energy that is delivered from Cadillac to Consumers Energy. When Cadillac's variable cost of production ("COP") is greater than the PPA VEP, Cadillac loses money for each MWh of energy delivered.[146]

The RDA acts to "mitigate this loss associated with variable expenses and revenues" by allowing Consumers to dispatch Cadilac based on Cadilac's COP instead of the PPA VEPR.[147] This results in a reduction in delivered energy from Cadillac, reducing the amount of power that Consumers would have economically received under the PPA.[148] In turn, the hold harmless payment "ensures that this lost market revenue that would

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[144] 3 Tr 259.
[145] 3 Tr 203.
[146] 3 Tr 203.
[147] 3 Tr 203.
[148] 3 Tr 204.

have been paid by MISO to consumers is now paid by Cadillac to Consumers Energy directly."[149] Mr. Scaife further explained:

> [T]he practical effect of the Hold Harmless Payment provision at the time the RDA was written was to ensure that the Company's customers were indifferent (held harmless) regardless of whether or not the RDA was in place. It ensured that Consumers Energy's total costs under the RDA (PPA costs, MISO energy market revenues, and Hold Harmless Payment) was equivalent to the total PPA costs without the RDA (PPA costs and MISO energy market revenues).[150]

Mr. Scaife next addressed Mr. Audette's claim that Consumers would have paid Cadillac other amounts related to NOx allowance costs and additional fuel costs, testifying:

> Hypothetically, Consumers Energy would have paid for the NOx Allowance Costs as part of the uncapped Biomass Merchant Plants ("BMP") payments and the additional fuel costs as part of the capped BMP payments on the Mitigated Dispatch if both (i) the RDA did not exist and (ii) they were reasonably incurred if so determined by the Commission in this proceeding.[151]

Mr. Scaife noted that the RDA—dated January 29, 2007—predates the 2008 enactment of Act 286, which established the framework for recovering capped and uncapped BMP costs.[152] Therefore, Mr. Scaife opined that the RDA "does not include any consideration for capped or uncapped BMP costs," and "[s]ince the capped and uncapped BMP costs are not addressed under the RDA contract, they should not be included in the calculations used to settle the contract."[153]

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[149] 3 Tr 204.
[150] 3 Tr 204.
[151] 3 Tr 205.
[152] 3 Tr 205.
[153] 3 Tr 205.

Mr. Scaife also disagreed with Mr. Audette's claim that Consumers is forcing a rate reduction upon Cadillac.[154] He testified that while Act 286 impacted the cost recovery that Cadillac is able to receive from Consumers, "the RDA is not in violation of the statute and therefore is enforceable under the terms of the contract which are very clear."[155] He also referenced the RDA's Termination provision, noting that neither party is forced to continue the RDA if they determine it is not in their best interests to do so.[156]

Next, Mr. Scaife rebutted Mr. Audette's claim that the term "variable charges" in the RDA's definition of PPA Dispatch Price should include Cadillac's total variable charges.[157] He testified: "The variable charges referenced in the RDA's PPA Dispatch Price definition are those '. . . applicable for Dispatch **in accordance with the PPA** . . .' Therefore one must look to the PPA for guidance in interpreting the meaning of the definition of PPA Dispatch Price."[158] Mr. Scaife then quoted Subsection 3.1 of Amendment No. 5 to the PPA, which states:

> Consumers shall schedule energy delivered from Seller's Plant based on a dispatching cost quoted by Seller. Seller will quote to Consumers the Plant's dispatching cost for both On-Peak and Off-Peak Hours, expressed in cents per kilowatt-hour, by the fifteenth day of each month. Such dispatching cost will be used to dispatch Seller's Plant in the month following its submittal. Seller may not quote a dispatching cost which is higher than the corresponding monthly Variable Expense Payment Rate, as determined in accordance with Exhibit A, Energy Charge Determination.[159]

He therefore reasoned that the PPA dispatch cost is the lesser of a dispatch quote provided by Cadillac and the VEPR, and "[s]ince Cadillac's COP is greater than VEP[R],

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[154] 3 Tr 206.
[155] 3 Tr 206.
[156] 3 Tr 206, citing Section 3 of the RDA at Exhibit BMP-23, p 4.
[157] 3 Tr 207.
[158] 3 Tr 208.
[159] 3 Tr 208. The PPA is included in Exhibit BMP-27.

the VEP[R] is the appropriate determination" of the variable charges referenced in the RDA's definition of PPA Dispatch Price.[160]

Mr. Audette responded that Mr. Scaife erroneously relied on Subsection 3.1 of the amended PPA because the RDA was executed after the amended PPA and thus "changed the pricing mechanism used to dispatch Cadillac."[161] He explained his analysis:

> Subsection 3.1 of Amendment No. 5 states that "Seller [Cadillac] may not quote a dispatching cost which is higher than the corresponding monthly Variable Expense Payment Rate, as determined in accordance with Exhibit A, Energy Charge Determination." Ten years later, the RDA changed that to specifically authorize Cadillac to quote a Cost of Production that is higher than its Variable Expense Payment Rate and thereby avoid being dispatched at its Variable Expense Payment Rate.
>
> If Cadillac quotes a Cost of Production that is greater than its Variable Expense Payment Rate and Consumers purchases replacement power, the RDA requires Cadillac to pay Consumers a Hold Harmless Payment. That Hold Harmless Payment is based on "the variable charges that would be applicable for Dispatch in accordance with the PPA expressed in $/MWh." The RDA does not provide for the Hold Harmless Payment to be calculated based on the Variable Expense Payment Rate in Amendment No. 5.[162]

Mr. Audette also disagreed with Mr. Scaife's conclusion that the RDA does not include consideration of capped or uncapped BMP costs.[163] He testified that the RDA "explicitly incorporates 'variable charges' in the calculation of the Hold Harmless payment," which encompasses Cadillac's NOx allowance costs.[164]

Mr. Audette then parsed the language of the Hold Harmless Payment provision and the definition of PPA Dispatch Price—noting that neither mention the VEPR—

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[160] 3 Tr 208.
[161] 3 Tr 264.
[162] 3 Tr 264-265.
[163] 3 Tr 265.
[164] 3 Tr 265.

before concluding that the term "variable charges" includes Cadillac's total variable charges.[165] He again testified that Consumers would have reimbursed Cadillac for NOx allowance costs, citing Act 286, and he claimed that Mr. Scaife acknowledged the same in his testimony.[166]

In reiterating that Cadillac was not seeking recovery of any portion of the excessive hold harmless payments attributable to fuel costs, Mr. Audette noted that recovery of fuel costs under Act 286 is capped and shared by all six BMPs.[167] Therefore, "any additional fuel costs would only change the allocation of the capped expenses among the Biomass Plants" and "likely would not significantly impact the calculation of the Hold Harmless Payment."[168] In contrast, "Cadillac can recover its NOx allowance costs as uncapped O&M expenses" because Act 286 does not cap recovery of those costs.[169] Mr. Audette then testified:

> Excluding the NOx allowance costs from the calculation of the Hold Harmless Payment increases Cadillac's Hold Harmless Payment and results in a payment that is more than what is needed to ensure that Consumers' net costs for replacement power are the same as the total costs it would have paid Cadillac. Excluding the NOx allowance costs from the calculation of the Hold Harmless Payment results in Consumers paying less for replacement power than it would have paid Cadillac for that same power. That is plainly inconsistent with the RDA and the nature of a Hold Harmless Payment. A Hold Harmless Payment is not a "subsidy payment" or a "financial benefit payment."[170]

Mr. Audette next addressed the Net Benefits Sharing provision in Section 5 of the RDA, explaining that it benefits Consumers and its customers by allocating 20% of the

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[165] 3 Tr 266-267.
[166] 3 Tr 267.
[167] 3 Tr 268.
[168] 3 Tr 268.
[169] 3 Tr 268-269.
[170] 3 Tr 269.

net benefits to Consumers.[171] "That positive financial benefit is different from the Hold Harmless Payment which only ensures that Consumers Energy is neutral or indifferent to replacement power purchases."[172] He quoted the definition of Net Benefits, which states that the amount of cost savings is calculated as "the product of (i) Mitigated Dispatch and (ii) the difference between COP and Displacement Cost."[173] In turn, COP is defined as "the sum of: (1) the market price of fuel for the Plant ('Fuel Cost'), expressed in $/MWh, and (2) the non-fuel, variable operation and maintenance costs for the Plant, expressed in $/MWh ('Variable O&M Costs')."[174] Mr. Audette analyzed this language:

> The RDA calculates the Net Benefits based upon Cadillac's "non-fuel variable operation and maintenance costs for the Plant, expressed in $/MWh ('Variable O&M Costs')." That definition parallels and is consistent with the "Dispatch Price" used to calculate the Hold Harmless Payment and is defined as "the variable charges that would be applicable for Dispatch in accordance with the PPA expressed in $/MWh."
>
> One of Cadillac's "non-fuel variable operation and maintenance costs" is, in fact, its NOx allowance costs.
>
> Neither the Hold Harmless Payment or [sic] the Net Benefit payment is limited to the PPA's Variable Expense Payment Rate.[175]

He concluded that Consumers incorrectly calculated both the hold harmless payment and the net benefits payment because Consumers used only the VEPR from the PPA and "excludes the other variable costs that Cadillac would incur to generate power, including the NOx allowances at issue."[176] He further testified that Consumers failed to

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[171] 3 Tr 270.
[172] 3 Tr 270.
[173] 3 Tr 270.
[174] 3 Tr 270.
[175] 3 Tr 270-271.
[176] 3 Tr 271, citing Exhibits BMP-25 and BMP-29.

follow Section 9 of the RDA, which requires Consumers' billing statement to separately identify the hold harmless payment and the net benefits payment.[177]

Mr. Audette explained that when the Net Benefits Payment provision is factor in, Consumers owes Cadillac $480,333 instead of $600,416:

> My direct testimony states that Consumers' calculation of the 2022 Hold Harmless Payments over charged Cadillac $600,416.80 and requests that amount be repaid to Cadillac. See also, Exhibit BMP-3. Because the $600,416.80 of NOx allowance costs should have been included in the calculations of both the Hold Harmless Payment and the Net Benefits Payment, but was not included, Consumers is entitled to 20% of that amount as its share of the Net Benefits. Consumers has confirmed to Cadillac's counsel that its calculation of Net Benefits Payment did not include the NOx allowance costs at issue. 20% of $600,416.80 is $120,083.36. Crediting Consumers for that $120,083.36 amount reduces the amount owed to Cadillac to $480,333.44.[178]

Mr. Audette also testified about the financial impact on Cadillac due to Consumers' incorrect calculation:

> As shown on Exhibit BMP-2, Cadillac suffered a shortfall of $6,825,718 between its fuel and variable O&M costs and what it was paid for those items under its Power Purchase Agreement. Cadillac will only recover $2,941,959 of that shortfall in this proceeding under MCL 460.6a(9)-(11). That means that Cadillac will have suffered a permanent unrecovered loss of $3,883,759. By incorrectly calculating the RDA Hold Harmless payment and Net Benefits payment, Consumers is increasing Cadillac's loss by a net of $480,333.44, to a total unrecovered loss of $4,364,092.44.[179]

He cited Exhibit BMP-28 in testifying that the 2022 hold harmless payments were "significantly higher" than in previous years due to increases in replacement power

[177] 3 Tr 272-273, citing Exhibit BMP-26.
[178] 3 Tr 273-274.
[179] 3 Tr 274.

costs and Cadillac's fuel costs.[180] "That fact means it is very important to Cadillac that the Hold Harmless Payments be properly calculated."[181]

Finally, Mr. Audette testified that he agreed with Mr. Scaife that the RDA does not violate Act 286.[182]

Mr. Scaife disagreed with Mr. Audette's analysis and again testified that the hold harmless payments were calculated in accordance with the RDA.[183] He provided further support for his argument that those payments are properly calculated based on the PPA's VEPR:

> [T]he RDA specifically **requires** that the lesser of Cadillac's Cost of Production ("COP") and the VEPR must be used. Because (1) Amendment No. 5 to the Power Purchase Agreement ("PPA") was executed prior to the RDA, and (2) the RDA specifically refers to Amendment No. 5 to determine the appropriate PPA Dispatch Price to be used in the RDA settlement, it is clear that the VEPR is the prescribed value. For clarity, the PPA Dispatch Price is the price that Cadillac would have been offered into the MISO energy market absent the RDA. However, because of the existence of the RDA, Cadillac is offered at its COP.[184]

At 3 Tr 212-213, Mr. Scaife provided a hypothetical scenario to illustrate how the RDA works to benefit both parties through the hold harmless and net benefits payments. He also explained Consumers' billing practices:

> Exhibit BMP-26 is a copy of the billing statement for Cadillac Renewable Energy for the Month of May 2022. In that bill is a section that shows total Mitigated Energy MWh, and the combined amount of the Hold Harmless payment and Consumers Energy's entitlement to 20% of the Net Benefits. Consumers Energy recognizes the entire Hold Harmless payment and its 20% share of the Net Benefits in the form of a reduction to the Grand Total paid to Cadillac in the monthly billing as a result of the RDA. In this case,

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[180] 3 Tr 274-275.
[181] 3 Tr 274.
[182] 3 Tr 275.
[183] 3 Tr 215.
[184] 3 Tr 211-212.

> the total monthly settlement resulting from the RDA is $637,505.25 as shown on BMP-26. It should be noted that Cadillac experiences the other 80% of the Net Benefits as a benefit of the RDA in avoided variable costs.[185]

Mr. Scaife concluded his testimony by explaining that the significant increase in hold harmless payments in 2022 was rational given increases in replacement power costs and Cadillac's fuel costs.[186]

In its initial brief, Cadillac reiterates Mr. Audette's various arguments in support of Cadillac's position that Consumers improperly excluded NOx allowance costs when calculating both the hold harmless payments and the net benefits payments. Cadillac also asserts that the RDA's language should be construed according to its plain and ordinary meaning, and the term "variable charges" within the definition of PPA Dispatch Price is unambiguous and should include Cadillac's other variable costs beyond the PPA's VEPR—including those costs that Cadillac recovers under Act 286.[187] Cadillac argues this interpretation is consistent with other language in the Hold Harmless Payment provision, "which makes clear that Cadillac is only obligated to hold Consumers harmless for the 'additional costs of such replacement power.'"[188] Cadillac again explains that although additional fuel costs qualify as "variable charges," it is only requesting that the 2022 hold harmless payments be recalculated to include NOx allowance costs.[189]

Cadillac argues Consumers does not dispute the fact that excluding NOx allowance costs when calculating the hold harmless payments "results in a payment

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[185] 3 Tr 213-214.
[186] 3 Tr 215.
[187] Cadillac brief, 19-20.
[188] Cadillac brief, 20, quoting Section 4 of the RDA, Exhibit BMP-23, p 5.
[189] Cadillac brief, 21.

that is more than what is necessary to ensure that Consumers' cost for replacement market power is the same as what it would have paid Cadillac for that power."[190] Similarly, when factoring in the net benefits payments, Cadillac asserts:

> By excluding the $600,416.80 of NOx allowance costs from its calculation of the Hold Harmless Payment and the Net Benefits payment results, Consumers is receiving 100% of the Net Benefits of $600,416.80 NOx allowance costs, not 20%. In fact, it results in Cadillac both paying Consumers that $600,416.80 and Consumers also receiving the indirect benefit of not paying those NOx allowance costs. That is a "double dip," which is plainly inconsistent with the RDA. Consumers is only entitled to a Net Benefit of 20% of the NOx allowance costs, i.e., $120,083.36.[191]

Cadillac takes issue with Mr. Scaife's assertion that the PPA Dispatch price is the price that Cadillac's energy would have been offered into the MISO market absent the RDA.[192] It argues that Mr. Scaife failed to acknowledge that "Cadillac sells its power to Consumers and that Consumers is the MISO Market Participant which bids that power into the MISO market, not Cadillac. Consumers controls the price at which the power it purchases from Cadillac is bid into the MISO market, not Cadillac."[193] And, not only does Consumers control the bid price, but it is also aware of the cost of NOx allowances, that NOx allowance costs are recoverable under Act 286, and that the Commission has approved recovery of NOx allowances in all prior PSCR proceedings since 2015.[194]

Consumers' initial brief generally tracks Mr. Scaife's testimony to support its claim that the hold harmless payments are properly calculated. Consumers reiterates that the "variable charges" mentioned in the definition of PPA Dispatch Price "cannot be

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[190] Cadillac brief, 22.
[191] Cadillac brief, 24.
[192] Cadillac brief, 25.
[193] Cadillac brief, 25.
[194] Cadillac brief, 25.

understood without reference to the PPA" and that, according to Subsection 3.1 of the PPA, the VEPR is the appropriate measure of variable charges under the definition of PPA Dispatch Price.[195] In addition, "The variable energy payment rate is specifically determined in accordance with the calculation in Exhibit A to the PPA, and it does not capture NOx allowance costs."[196]

In reply briefing, Cadillac argues that Consumers "ignores the purpose of [the hold harmless payment] which is solely to ensure that Consumers pays no more for replacement power than it would have paid Cadillac."[197] It notes that Consumers admits that Consumers would have "hypothetically" paid Cadillac for NOx allowance costs were it not for the RDA.[198] And it again argues that, just like the VEPR, Cadillac's NOx allowance costs are "variable costs": "Those costs vary according to the amount of power that Cadillac generates, the amount of NOx emissions it generates in producing that power and its corresponding obligation to purchase and hold NOx allowances."[199] According to Cadillac, "Consumers is forcing Cadillac to pay it $600,416.80 of NOx allowance costs when Consumers did not incur those costs because it did not purchase power from Cadillac" and when Consumers was only entitled to 20% of that amount as a net benefits payment.[200]

Consumers replies that Section 4 of the RDA uses replacement power costs as the measure of the hold harmless payment, and, therefore, PPA Dispatch Price is defined "in this context" and "does not promise Cadillac a credit for all its extraneous

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[195] Consumers brief, 40-41.
[196] Consumers brief, 41.
[197] Cadillac reply, 2.
[198] Cadillac reply, 2.
[199] Cadillac reply, 2-3.
[200] Cadillac reply, 3.

costs" like NOx allowance costs.[201] Consumer accuses Cadillac of "downplay[ing]" and "oversimplif[ying]" the definition of PPA Dispatch Price.[202] Consumers expounds on its argument:

> Cadillac's oversimplification of the hold harmless payment and net benefit calculation has led Cadillac to believe that it is entitled to recover all costs it would have incurred but for the reduced dispatch agreement. The reduced dispatch agreement never promised this; it merely promised compensation for replacement power. The agreement's drafters recognized that it will reduce production from the Cadillac Plant and will "result in ***replacement of energy"***—that is, it will lead Consumers Energy to replace the lost production in one of several ways. 3 TR 204; Exhibit BMP-23, page 5, ¶ 4 (emphasis added). The agreement provided a prescriptive formula by which "Cadillac will reimburse [Consumers] for the additional ***costs of such replacement energy."*** Exhibit BMP-23, page 5, ¶ 4 (emphasis added). For the hold harmless payment, this formula is "the sum of the hourly products of the Mitigated Dispatch and the positive difference between Displacement Cost and the PPA Dispatch Price." *Id.* The focus is on the cost of the replacement power. The hold harmless payment does not build in a credit for all Cadillac's extraneous costs.[203]

Consumers further argues that Cadillac's interpretation of "variable charges" within the definition of PPA Dispatch Price is contrary to the canons of contract interpretation because it disregards qualifying language and would "render the words 'in accordance with the PPA expressed in $/MWh' nugatory."[204] Consumers also asserts that "[o]n its face, the reduced dispatch agreement incorporates the PPA's approach to applying variable charges to dispatch," which means the VEPR is the appropriate determination of "variable charges that would be applicable for dispatch in accordance with the PPA."[205]

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[201] Consumers reply, 18-20.
[202] Consumers reply, 19-20.
[203] Consumers reply, 20.
[204] Consumers reply, 21-22.
[205] Consumers reply, 22.

Consumers then distinguishes the calculation used to determine the net benefits payment from that used to determine the hold harmless payment: "Although some of the inputs are the same, the calculation [for net benefits] is different and intended to measure cost savings instead of the cost of replacement power."[206] In other words, the hold harmless payment and net benefit payment operate in different ways to ensure that customers are held harmless or benefit from the RDA.[207] According to Consumers, neither calculation accounts for NOx allowance costs.[208] However, Consumers notes the repercussions if Cadillac were wrong about the hold harmless payment but right about the net benefits payment: "[I]f the net benefit calculation did capture NOx allowance costs, despite the hold harmless payment not capturing them, this would mean that Cadillac owes Consumers Energy more and not less."[209]

This PFD agrees with Consumers that under the plain language of the RDA, the VEPR referenced in Subsection 3.1 of the PPA is the appropriate determination of the variable charges at the center of the parties' dispute. A contract must be interpreted to "give effect to every word, phrase, and clause," while an interpretation that would "render any part of the contract surplusage or nugatory" should be avoided. *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003). Here, PPA Dispatch Price is defined as "the variable charges that would be applicable for Dispatch in accordance with the PPA . . . ."[210] The definition incorporates the PPA for purposes of determining the variable charges. In turn, Subsection 3.1 of the PPA addresses the

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[206] Consumers reply, 23.
[207] Consumers reply, 24.
[208] Consumers reply, 23.
[209] Consumers reply, 23.
[210] Exhibit BMP-23, p 3.

variable charges that are applicable for dispatch and makes clear that the VEPR applies when Cadillac's COP is greater than the VEPR, which would include instances when the RDA is triggered due to Cadillac's relatively high COP.

This interpretation gives effect to every word within the definition of PPA Dispatch Price. It is also consistent with Section 2 of the RDA, which states in part, "Absent this RDA, [Consumers] would dispatch Cadillac's Contract Capacity in accordance with the PPA Dispatch Price."[211] This sentence confirms that—as the term PPA Dispatch Price suggests—the PPA is the correct reference point for assessing the variable charges at issue here.

Cadillac argues that according to its plain and ordinary meaning "variable charges" is synonymous with total variable charges and should include all of Cadillac's costs to produce energy—regardless of whether they are referenced in the PPA—including NOx allowance costs. But in doing so, Cadillac disregards the fact that the term "variable charges" is specifically defined, or limited, by the language that follows the term. That definition is controlling. See *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 447; 886 NW2d 445 (2015) ("terms used in a contract are to be given their commonly used meanings unless defined in the contract"). Cadillac's interpretation must be rejected because it would render meaningless the qualifying phrase "that would be applicable for Dispatch in accordance with the PPA." See *Klapp*, 468 Mich at 468. In other words, to adopt Cadillac's proposed interpretation would effectively amend the contract, contrary to the objective of contract interpretation. See

[211] Exhibit BMP-23, p 3.

Kyocera Corp, 313 Mich App at 446 (when a contract is clear and unambiguous "courts do not have the ability to write a different contract for the parties").

Cadillac further argues that the definition of variable charges cannot depend on Subsection 3.1 of the PPA because the RDA changed the dispatch procedure contained within that subsection.[212] This logic is faulty. The RDA indeed changed the dispatch procedure established in the PPA, but that does not in any way conflict with the fact that the RDA incorporates the PPA for purposes of calculating the hold harmless payment.

Cadillac fails to establish that Consumers incorrectly calculated the hold harmless payment. While Cadillac claims this result is inequitable and inconsistent with the purpose of the RDA, it is nevertheless the correct result given the language of the contract to which both parties agreed.

C. Otsego PPA FCM

In its brief, Staff asserts that the Commission may want to consider a disallowance for Consumers' energy only PPA with Otsego Paper, Inc. from the Financial Compensation Mechanism (FCM). Staff notes that it did not recommend a disallowance for the PPA in its direct testimony, but that witness Gretchen M. Wagner stated, "the Commission may want to consider a disallowance since this is the first contract involving a non-renewable generation source that the Company had proposed including in its FCM calculation."[213] Ms. Wagner stated that Staff's understanding of the FCM was that it would apply to "new renewable energy PPAs, excluding PPAs executed under the Company's Renewable Energy Plan."[214] Additionally, Staff stated that should

[212] See 3 Tr 264-265.
[213] 3 Tr 487.
[214] *Id*.

the Commission approve the FCM for the Otsego PPA, Staff recommends the Commission approve a cumulative over-recovery for the FCM, inclusive of interest, in the amount of $1,968,924.[215]

Consumers disagrees with the suggestion that the Commission consider disallowing costs related to the FCM for the Otsego Paper PPA. Consumers contends that Staff's understanding of the FCM as articulated by Ms. Wagner is not consistent with the language of the settlement agreements in Case Nos. U-20165 and U-21090. Consumers points to the testimony of its witness Beth A. Skowronski wherein she stated that the Otsego Paper PPA is eligible for the FCM because, "(i) it was executed on July 1, 2019, (ii) it is with a PURPA Qualifying Facility, (iii) it was entered into in accordance with the Company's Commission-approved Rate Book for Electric Service, and (iv) its costs were approved by the Commission in the Company's 2022 PSCR Plan case."[216]

This PFD agrees with the position of Consumers regarding this issue. There was no testimony provided stating that Staff was recommending a disallowance of the Otsego PPA for the FCM. Staff's position regarding this matter is not entirely clear, and it appears Staff is only recommending the Commission consider a disallowance. This PFD finds that the preponderance of the evidence does not support a disallowance of the Otsego PPA from the FCM and therefore recommends the Commission approve a cumulative over-recovery of $1,968,924 as recommended by Staff.

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[215] Staff Brief, page 7.
[216] 3 Tr 220-221.

IV.

CONCLUSION

Based on the above findings of fact and conclusions of law, this PFD recommends that the Commission:

1. Approve the portions of the Application that are unopposed.
2. Adopt the adjustments recommended by Staff and accepted by Consumers as noted in the discussion section above.
3. Disallow the amount recommended by the Attorney General contained in Exhibit AG-7 CONF and Coppola Confidential Testimony 3 Tr 508-509 for the Campbell Unit 2 outage of February 20, 2022 (Outage Event #10).
4. Find that Consumers did not overbill Cadillac Renewable Energy, LLC for hold harmless payments.
5. Find that the replacement power costs associated with the Ludington outages raised by the Attorney General are outside the scope of the instant matter.
6. Find that the costs associated with the Otsego Paper PPA are appropriate for the FCM and approve a cumulative over-recovery of $1,968,924 for such as recommended by Staff.

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

Christopher S. Saunders

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Christopher S. Saunders
Administrative Law Judge

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