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Katherine E. Talbot
Administrative Law Judge

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

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In the Matter of the Application of)	
CONSUMERS ENERGY COMPANY)	
for approval to implement a power supply)	Case No. U-21423
cost recovery plan for the 12 months)	
ending December 31, 2024.)	
_____)	

PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On September 29, 2023, Consumers Energy Company (Consumers or the Company) filed an application with the Michigan Public Service Commission (MPSC or Commission) pursuant to 1982 PA 304 (Act 304), MCL 460.6j, requesting approval for its Power Supply Cost Recovery (PSCR) Plan and monthly PSCR Factors for the 12-month period ending December 31, 2024. The Company also submitted a 5-year forecast of projected power supply requirements, along with the sources and costs of supply to meet the same. A revised application was filed October 9, 2023.

A prehearing conference was presided over by Administrative Law Judge Lesley Fairrow on November 16, 2023.¹ The ALJ acknowledged intervention by the Michigan

¹ The case was subsequently transferred to ALJ Katherine E. Talbot, via a July 9, 2024, Scheduling Memo.

Attorney General and granted Petitions to Intervene filed by the Michigan Power Limited Partnership, Ada Cogeneration Limited Partnership, Energy Michigan; and the Association of Businesses Advocating Tariff Equity (ABATE). The parties stipulated to a schedule and to the issuance of a Protective Order. On December 6, 2023, the Sierra Club filed a Petition for late intervention alleging good cause. No objection was entered, and the Petition was granted on December 7, 2023.

Consistent with the established schedule, Staff and ABATE filed direct testimony and supporting exhibits on May 10, 2024. The Commission and ABATE filed rebuttal testimony and supporting exhibits on May 30, 2024.

An evidentiary hearing was held before ALJ Katherine Talbot on July 25, 2024, at which time three witnesses appeared for cross-examination. The parties stipulated to bind in the testimony of the remaining witnesses and to admission of the proposed exhibits, without the need for witnesses to appear.

On August 30, 2024, Consumers, Staff, and ABATE filed initial briefs. These parties also filed reply briefs on September 27, 2024.

II.

OVERVIEW OF THE RECORD

The evidentiary record in this proceeding is contained in two public transcript volumes totaling 287 pages and 33 exhibits admitted into evidence. This matter includes testimony from a total of 11 witnesses. The arguments of the parties and related portions of the record are discussed in more detail in the discussion sections that follow.

A. CONSUMERS ENERGY

Consumers presented the testimony of a total of nine witnesses and Exhibits A-1 through A-30.

Daniel S. Alfred is a Strategy Manager in the Electric Supply Regulatory Strategies group.² He presented testimony identifying the transmission and energy market expenses for 2024 for which the Company is seeking recovery, and he described efforts to manage transmission-related costs.

Eugène M.J.A. Breuring is a Principal Sales Forecasting Analyst in the Financial Planning & Analysis Department.³ He presented the Company's electric deliveries, generation requirements, and peak demand forecasts for 2024 to 2028.

Joshua W. Hahn is a Principle Engineer in the Electric Supply Operations and Power Supply Cost Recovery Section of the Electric Grid Integration Department,⁴ self-identifying as the production cost modeler in the Consumers' forecasting group. He presented forecasted costs of fuel, as well as purchased and net interchange power to fulfill system requirements for 2024 through 2028.

Nathan J. Hoffman is Director Plant Operations at the JH Campbell generation facility.⁵ He explained the major fossil and Ludington Pumped Storage Plant (Ludington) planned outages; presented the periodic outage plans and Random Outage Rate (ROR)

² Mr. Alfred's direct testimony is transcribed at 2 Tr 116-127. His qualifications are found at 2 Tr 117-119. He sponsored Exhibit A-1.

³ Mr. Breuring's direct testimony is transcribed at 2 Tr 129-141. His qualifications are found at 2 Tr 130-132. He sponsored Exhibits A-2 through A-6.

⁴ Mr. Hahn's direct testimony is transcribed at 2 Tr 218-234. His qualifications are found at 2 Tr 223-225. He sponsored Exhibits A-7 through A-9 and A-30.

⁵ Mr. Hoffman's direct testimony is transcribed at 2 Tr 143-160. His qualifications are found at 2 Tr 144. He sponsored Exhibits A-10 through A-15.

projections for the 2024 PSCR Plan year; compared the projected ROR for fossil, hydro, Ludington, and peaker units with actual ROR for the five year historical period 2018 through 2022; and presented forecasted urea, aqueous ammonia, lime, and activated carbon expenses for the 2024 PSCR Plan year, and the forecast period 2025 through 2028.

Kevin C. Lott is the Fuels Transportation & Planning Director in the Electric Supply Department.⁶ He presented the Company's projected as-burned costs and volumes of coal, oil, and natural gas used for electric generation.

Elissa C. Mueller is a senior engineer in the Electric Supply Operations Forecasting section of the Electric Supply department.⁷ She forecasted the available resources to be used to meet demand and capacity requirements.

Angela K. Rissman is the Fuel Procurement Manager in the Fossil Fuel Supply Section of the Electric Supply Department.⁸ She presented Consumers' coal, natural gas, and oil purchases and procurement strategy for electric generation for the 2024-2028 period. She also testified that Consumers is proposing a PSCR contingency mechanism which would allow for upward adjustments in the PSCR factor based upon increases in the 12-month forward New York Mercantile Exchange (NYMEX) average natural gas prices.⁹

⁶ Mr. Lott's direct testimony is transcribed at 2 Tr 162-169. His qualifications are found at 2 Tr 163-164. He sponsored Exhibits A-16 through A-19.

⁷ Ms. Mueller's revised direct testimony is transcribed at 2 Tr 171-183. Her qualifications are found at 2 Tr 172-173. She sponsored Exhibits A-20 through A-23.

⁸ Ms. Rissman's direct testimony is transcribed at 2 Tr 185-202. Her qualifications are found at 2 Tr 186-187. She sponsored Exhibits A-24 and A-25.

⁹ 2 Tr 201.

Emily M. Walainis is the Manager of Supply Contracts in the Contracts and Settlements Section of the Electric Supply Operations Department.¹⁰ She addressed power purchase agreement (PPA) resources, both those previously approved and those approved but changed; the Company's Blackstart Resource Agreement; PSCR treatment of MISO revenue and expenses; the portion of expenses for Consumers' Renewable Resource Program (RRP) and Renewable Energy (RE) Plan included in the PSCR Plan; and the proposed treatment of future production tax credits (PTCs) for company-owned solar energy assets.

Andrew G. Volansky is a rate analyst in the Revenue Requirement Section of the Rates and Regulation Department.¹¹ He presented the calculation of the 2024 PSCR Factor and the proposed contingency factors for the 2024 plan years. He explained the PSCR Factor Ceiling Price Adjustment Mechanism (contingency mechanism) and how adjustments to the PSCR Factor will be implemented.¹²

B. STAFF

Staff presented the testimony of one witness and Exhibit S-1.

Raushawn D. Bodiford is a Public Utilities Engineer in the Energy Cost Recovery & Generation Operations (ECR&GO) section of the Energy Operations Division of the Michigan Public Service Commission (MPSC or Commission).¹³ He presented Staff's

¹⁰ Ms. Walainis' direct testimony is transcribed at 2 Tr 204-217. Her qualifications are found at 2 Tr 205-207. She sponsored Exhibit A-29.

¹¹ Mr. Volansky's direct testimony is transcribed at 2 Tr 252-263. His qualifications are found at 2 Tr 257-258. He sponsored Exhibits A-26 through A-28.

¹² 2 Tr 261.

¹³ Mr. Bodiford's direct testimony is transcribed at 2 Tr 45-64. His qualifications are found at 2 Tr 49-51. He sponsored Exhibit S-1.

review and position on the PSCR plan, the requested PSCR Factor for 2024, and the proposed contingency mechanism.

C. ABATE

ABATE presented the testimony of one witness and Exhibits AB-1 through AB-2.

Jessica York is a Principal with the firm of Brubaker & Associates, Inc.¹⁴ She recommended that the Commission reject Consumers' proposed PSCR contingency mechanism.

D. Rebuttal

On behalf of Consumers, Mr. Hahn¹⁵ and Mr. Volansky¹⁶ provided rebuttal testimony in support of the PSCR contingency mechanism, in response to ABATE's witness Jessica York.

On behalf of ABATE, Ms. York¹⁷ provided rebuttal testimony in response to Staff witness Mr. Bodiford's testimony supporting the contingency mechanism.

E. Cross-Examination

After binding in the prefiled testimony and admission of proposed exhibits, ABATE conducted cross-examination of three witnesses: Mr. Bodiford,¹⁸ Mr. Hahn,¹⁹ and Mr. Volansky.²⁰ Consumers also questioned the witnesses on re-direct examination.

¹⁴ Ms. York's direct testimony is transcribed at 2 Tr 24-34. Her qualifications are found at 2 Tr 32-34. She sponsored Exhibits AB-1 to AB-2.

¹⁵ Mr. Hahn's rebuttal testimony is transcribed at 2 Tr 235-240.

¹⁶ Mr. Volansky's rebuttal testimony is transcribed at 2 Tr 264-267.

¹⁷ Ms. York's rebuttal testimony is transcribed at 2 Tr 35-44.

¹⁸ Mr. Bodiford's cross-examination and re-direct testimony is transcribed at 2 Tr 65-115.

¹⁹ Mr. Hahn's cross-examination and re-direct testimony is transcribed at 2 Tr 241-255.

²⁰ Mr. Volansky's cross-examination testimony is transcribed at 2 Tr 268-273.

III.

LEGAL FRAMEWORK

MCL 460.6j, governs annual PSCR plan cases, and reconciliation cases for electrical utilities, along with other aspects of the PSCR process. MCL 460.6j(1)(b) provides the definition of a PSCR recovery clause as “a clause in the electric rates or rate schedule of an electric utility that permits the monthly adjustment of rates for power supply to allow the utility to recover the booked costs, including transportation costs, reclamation costs, and disposal and reprocessing costs, of fuel burned by the utility for electric generation and the booked costs of purchased and net interchanged power transactions by the utility incurred under reasonable and prudent policies.” Similarly, MCL 460.6j(1)(c) defines a PSCR Factor as “that element of the rates to be charged for electric service to reflect power supply costs incurred by an electric utility and made pursuant to a power supply cost recovery clause incorporated in the rates or rate schedule of an electric utility.”

MCL 460.6j(2) permits the Commission to incorporate the PSCR clause in electric rates or rate schedule of an electric utility pursuant to a contested hearing process. In order to implement the PSCR clause, an electric utility must file a PSCR plan under MCL 460.6j(3) describing the expected sources of electric power supply and changes in the cost of power supply anticipated over a future 12-month period; “requesting for each of those 12 months a specific power supply cost recovery factor;” the major contracts and power supply arrangements for that period; long-term firm gas fuel supply firm transportation; and the utility’s evaluation of the reasonableness and prudence of the power supply described in the PSCR plan. The electric utility must also file a 5-year forecast of the power supply requirements of its customers; anticipated sources of supply;

projected power supply costs; relevant major contracts and power supply arrangements; “and any other information the commission may require.” MCL 460.6j(4).

Under MCL 460.6j(5), the Commission shall conduct a power supply cost review as a contested case under MCL 24.271 to 24.287, and it shall evaluate the 5-year forecast. As part of the review of the forecast, the Commission may also indicate any cost items in the 5-year forecast that it is unlikely the utility will be permitted to recover from customers in rates, rate schedules, or PSCR Factors going forward, commonly known as a “Section 7 warning.” MCL 460.6j(7).

The parties argued the propriety of the proposed contingency mechanism under MCL 460.6j(6) which provides:

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

And MCL 460.6j(10) provides that an electric utility may file a revised PSCR plan “[n]ot later than 3 months before the beginning of the third quarter of the 12-month period” covered by the PSCR plan.

IV.

DISCUSSION

A. The Plan and Forecast

The 2024 PSCR plan and 5-year forecast are largely undisputed. Intervening parties did not dispute the PSCR Factor, or the inputs and methodology used to calculate it. The only dispute involves the PSCR Factor Ceiling Price Adjustment Mechanism (contingency mechanism) proposed by Consumers.²¹ (addressed below)

The undisputed components of the plan include the electric deliveries, generation requirements, and peak forecasts for 2024 through 2028,²² and the electric generation resources, sources of supply, and power purchase agreements for the same period.²³ The components also include major plant outages for 2024;²⁴ miscellaneous outages for 2024;²⁵ the 2024 through 2028 procurement strategy;²⁶ the five year estimate of power supply costs;²⁷ energy transmission and market costs;²⁸ the net system power supply costs;²⁹ 2024 total transmission and energy market administration expenses, including charges imposed on Consumers under the Midcontinent Independent System Operator, Inc. (MISO) Federal Energy Regulatory Commission (FERC)-approved Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff);³⁰ and environmental costs, including projected urea, aqueous ammonia, lime, and activated

²¹ See 2 Tr 201.

²² 2 Tr 132-139. See Exhibits A-2 & A-3.

²³ 2 Tr 225-234. 2 Tr 208-212. See Exhibits A-7 through A-9, & Exhibit A-29.

²⁴ 2 Tr 146-149. See Exhibit A-10.

²⁵ 2 Tr 149.

²⁶ 2 Tr 188-201. See Exhibits A-24 & A-25.

²⁷ 2 Tr 225-232. See Exhibits A-7 & A-8.

²⁸ 2 Tr 119-127. See 2 Tr 151-159. Exhibits A-1 & A-12 through A-15.

²⁹ 2 Tr 228-229. 2 Tr 169. See Exhibits A-7, A-8, A-9, A-16, A-18, & A-26.

³⁰ 2 Tr 119-127. See Exhibits A-1, A-7, & A-8.

carbon expenses.³¹ The components further include total system requirements,³² and seasonal capacity planning, including the calculation of 2024 seasonal capacity reserve margins, and the purchase of additional capacity in 2024, based in part on MISO's seasonal capacity construct.³³ Consumers argues it provided appropriate record evidence to support these components of the PSCR plan and 5-year forecast.

Staff conducted a detailed review of the Consumers' proposed plan, including total power supply costs and the requested PSCR Factor of \$0.00877 per kWh, and concluded they are reasonable and prudent.³⁴ Mr. Bodiford compared the projected variable costs for 2024 to those from the 2023 plan case.³⁵ He specifically addressed Generation costs, Peaker costs, Purchase Variable costs, Transmission and Energy Market Administration costs, Chemical costs, Long-Term Industrial Load Retention Rate credits, Total System Requirements, and Major Plant Outages.³⁶ Based on Mr. Bodiford's testimony, Staff argue the projected costs were developed consistent with past methodology and are supported by the Company's evidence in the record.³⁷ Noting that no party took issue with Consumers' projected Total Power Supply cost of \$1.959 million or the requested PSCR Factor of \$0.00877 per kWh, Staff recommend the Commission find them to be reasonable and prudent.³⁸

³¹ 2 Tr 153-159. See Exhibits A-12 through A-15.

³² 2 Tr 132-141. 2 Tr 259. See Exhibits A-2, A-4, A-5, A-6 & A-26.

³³ 2 Tr 174-182. See Exhibits A-20 through A-23.

³⁴ Staff brief, 8-9.

³⁵ 2 Tr 53. See Figure 1.

³⁶ Staff brief, 8-16.

³⁷ Staff brief, 3. 2 Tr 57-58.

³⁸ Staff brief, 8-9. See 2 Tr 52-62.

ABATE did not object to the Company's PSCR Factor, or its calculation. Rather ABATE argues that the proposed Contingency Mechanism is not reasonable and prudent and should be rejected by the Commission.

1. Inclusion of Prior Underrecovery Amount

In addition to the forecasted 2024 PSCR costs, the Company included a portion of the underrecovery from the 2023 PSCR plan case, Case No. U-21257, as approved by the Commission.³⁹ In that case the Company experienced a significant underrecovery of approximately \$450 million; primarily due to a large increase in natural gas costs.⁴⁰ The Commission approved a settlement agreement that authorized Consumers to recover the costs in the 2023, 2024, and 2025 plan cases.⁴¹ The settlement agreement provided:

The parties agree that, with respect to the \$299,384,219 excluded from the 2023 PSCR Plan, the Company shall include that amount, subject to any adjustments ordered by the Commission in the Company's 2022 PSCR reconciliation case, for recovery in equal portions in the 2024 and 2025 PSCR Plan years, including any statutory interest that is owed to the Company. Any adjustments to the \$299,384,219 amount excluded from the 2023 PSCR Plan will be incorporated as a decrease or increase to the power supply costs charged to customer, as soon as practicable and as directed by the Commission's February 23 Order.⁴²

Using Exhibit A-26, Mr. Volansky testified the PSCR Factor calculation includes \$149,692,109 (approximately half of the remaining \$299,384,219) of the underrecovery from 2022.⁴³

³⁹ February 23, 2023, order in Case No. U-21257, p 4. See 2 Tr 260.

⁴⁰ Consumers brief, 13.

⁴¹ August 30, 2023, order in Case No. U-21257, p 4. (Order approving settlement agreement).

⁴² August 30, 2023, order in Case No. U-21257, p 4. (Order approving settlement agreement).

⁴³ 2 Tr 259-260. See Exhibit A-26. Mr. Volansky testified the actual amount of the 2022 underrecovery is approximate because the reconciliation case for the 2022 plan year (Case No. U-21049) has not been finalized. 2 Tr 260.

Staff assert that the Company's inclusion of a portion of the 2022 underrecovery in this plan case complies with the Commission's order permitting allocation over a three-year period.⁴⁴ ABATE did not object to inclusion of the underrecovery amount of \$149,692,109. This PFD recommends the Commission approve the inclusion of the 2022 underrecovery in this matter.

While intervening parties objected to the contingency mechanism proposed by Consumers in the 2024 PSCR plan, there was no objection to Consumers' five-year forecast, the projected PSCR plan expenses, inclusion of a portion of the 2022 underrecovery, or the calculation of the PSCR Factor for the plan year, January 1, 2024 and December 31, 2024. Accordingly, this PFD recommends the Commission approve Consumers' proposed 2024 PSCR plan and approve a base PSCR Factor of \$0.00877 per kWh.

B. The Contingency Mechanism

1. The Proposed Contingency Mechanism.

In addition to the fixed PSCR Factor, Consumers is proposing a PSCR Factor Ceiling Price Adjustment Mechanism (contingency mechanism), that would allow for upward adjustments in the PSCR Factor based upon increases in the 12-month forward New York Mercantile Exchange (NYMEX) average natural gas price.⁴⁵ The maximum adjusted PSCR Factor under the contingency mechanism would be \$0.01925 per kWh.⁴⁶ During periods of natural gas price volatility, there can be significant differences between

⁴⁴ Staff brief, 16. See August 30, 2023, order in Case No. U-21257, p 4.

⁴⁵ 2 Tr 201.

⁴⁶ Exhibit A-28, page 2.

actual costs and forecasted PSCR Plan costs.⁴⁷ As noted previously, primarily due to substantial increases in the price of natural gas, Consumers Energy incurred a \$450 million underrecovery in PSCR plan year 2022 which is now being collected in increments in PSCR plan years 2023, 2024, and 2025.⁴⁸ Consumers' stated intent is to avoid such large underrecoveries and to send accurate and timely price signals to customers.

Consumers witness Rissman asserted the Company intends for the contingency mechanism to address this volatility, and to allow Consumers to timely recover PSCR costs from customers at the time that those customers are actually using the higher-cost energy. The Company is proposing the PSCR contingency mechanism to allow for increases in the PSCR Factor when NYMEX natural gas prices increase by increments of \$0.25 per million British thermal units (MMBtu) as compared to the PSCR plan forecast, up to a maximum of \$4.00/MMBtu in NYMEX increases.⁴⁹ When asked why NYMEX was chosen as the index on which to base the PSCR contingency mechanism, Ms. Rissman indicated that there is a direct relationship between natural gas costs and Locational Marginal Prices (LMP), and the resulting PSCR costs.⁵⁰ In relation to Oil and Natural Gas Projections, Ms. Rissman testified that the NYMEX Henry Hub is used as the pricing point for natural gas futures contracts traded on NYMEX because similar projected pricing points do not exist for citygates.⁵¹

⁴⁷ 2 Tr 201.

⁴⁸ 2 Tr 259-261, citing to February 23, 2023, order in Case No. U-21257, p 4. (Order approving settlement agreement).

⁴⁹ 2 Tr 201-202.

⁵⁰ 2 Tr 201.

⁵¹ 2 Tr 192.

Consumers witness Mr. Volansky testified in greater detail in favor of the contingency factor, using the revised tariff sheets in Exhibits A-27 and A-28.⁵² He testified that the \$0.25/MMBtu increments “are recognized” for the simplicity of the tariff sheets.⁵³ He explained that the amount of the contingent PSCR ceiling factor actually billed would be determined by monthly comparison of the updated 12-month average NYMEX price forecast described on tariff sheet D-6.10, Exhibit A-28, and the new forecasted total power supply costs, less long term industrial load retention rate payments (LTILRR), that would be incurred under the updated 12-month NYMEX price forecast.⁵⁴ The “actual PSCR Factor is determined each month based on the Company’s latest forecast of sales and PSCR costs, along with available actual sales and PSCR cost information.”⁵⁵

Mr. Volansky clarified that the PSCR Factor ceiling would never fall below the maximum, non-contingent, PSCR Factor of \$0.00877/kWh.⁵⁶ However, while the PSCR Factor is the maximum factor that can be charged, the actual PSCR Factor charged can be at or below this amount, with Consumers attempting each month to have zero under- and over-recovery.⁵⁷ Mr. Volansky noted that any over-collection of the PSCR costs would be subject to refund with Consumers paying interest at the Company’s authorized return on equity rate.⁵⁸

⁵² 2 Tr 259-263.

⁵³ 2 Tr 262.

⁵⁴ 2 Tr 262.

⁵⁵ 2 Tr 262.

⁵⁶ 2 Tr 261.

⁵⁷ 2 Tr 262.

⁵⁸ 2 Tr 263.

Mr. Bodiford testified on behalf of Staff in favor of the contingency mechanism.⁵⁹ Staff found that the contingency mechanism was designed to help match costs incurred with the cost actually charged to customers during the PSCR period, in order to “help send more accurate price signals to customers, and help reduce future under-recoveries.”⁶⁰ And on cross-examination, Mr. Bodiford clarified that, it is important to send proper pricing signals to ratepayers and avoid or mitigate large underrecoveries.⁶¹ When prices go up, customers should see that prices went up so that they can make adjustments.⁶²

Mr. Bodiford clarified that the contingency mechanism itself would not increase costs, rather it is a method of collecting actual generating costs to mitigate large increases in bills due to large underrecovery amounts.⁶³ He noted that all power supply costs are fundamentally recoverable.⁶⁴ He testified, that shielding ratepayers from “price discomfort” is an important consideration, but, because the costs are recoverable, it is secondary to accuracy.”⁶⁵

Staff recommended that the contingency mechanism be approved in this case and argue it will mitigate large underrecoveries and sharp price increases in future months if volatile market conditions occur.⁶⁶ Staff found the contingency mechanism to be “well-reasoned” and that it would “serve as a benefit to Michigan’s ratepayers if implemented

⁵⁹ 2 Tr 52-53 & 62-64.

⁶⁰ 2 Tr 62.

⁶¹ 2 Tr 75.

⁶² 2 Tr 75.

⁶³ 2 Tr 98-100.

⁶⁴ 2 Tr 76-77.

⁶⁵ 2 Tr 76-77.

⁶⁶ 2 Tr 61-63.

and properly evaluated through the reconciliation process.”⁶⁷ And based on Mr. Bodiford’s testimony, Staff assert the contingency mechanism in this matter is similar in concept to, and consistent with, the adjustment mechanism that the Commission had approved in the settlement of the Upper Michigan Energy Resources Corporation (UMERC) 2023 PSCR case.⁶⁸ Mr. Bodiford also noted that contingency mechanisms are common in GCR cases and the contingency mechanism proposed in this case is very similar.⁶⁹

2. Disputes with the Proposed Contingency Mechanism

ABATE opposes the proposed contingency mechanism and recommends that the Commission reject Consumers’ request to include it in the 2024 PSCR plan. In her direct testimony, Ms. York opined that the mechanism is unnecessary, because Consumers can institute a new contested proceeding to revise the PSCR plan under MCL 460.6j(10) to seek a higher PSCR Factor if gas prices increase to a point that substantial underrecovery would occur.⁷⁰ The NYMEX natural gas prices used in calculating the recovery mechanism, per Ms. York, are not necessarily indicative of the spot market pricing Consumers uses for most of its gas purchases, and the mechanism based on NYMEX futures would be divorced from fixed market priced purchases.⁷¹ And Ms. York noted that NYMEX prices have declined since the 2024 PSCR plan was developed, as much as 71%, from the formulation of the Company’s requested non-contingent maximum PSCR

⁶⁷ 2 Tr 63-64.

⁶⁸ 2 Tr 62, 91-92. See July 26, 2023, order in Case No. U-21265.

⁶⁹ 2 Tr 68, 72-74.

⁷⁰ 2 Tr 25, 28.

⁷¹ 2 Tr 28-29.

Factor of \$0.00877/kWh.⁷² To Ms. York, this underscored that the contingency mechanism is unnecessary.⁷³

Ms. York outlined a variety of other issues with the contingency mechanism. She expressed concern that Consumers did not include detailed calculations of its projected contingency factors with its application, and what was provided through discovery lacked supporting detail and calculation formulas.⁷⁴ She alleged that Consumers had not demonstrated that the contingency mechanism would have consistently minimized under- or over-collection amounts had it been in place previously.⁷⁵ Furthermore, per Ms. York, the contingency mechanism would impair ABATE members' ability to forecast their own budgets accurately because the maximum PSCR Factor to use in their calculations would, essentially, be unknown.⁷⁶ And Ms. York expressed concern that there was no plan in place to replace NYMEX in the unlikely event that this was no longer available as a measuring index.⁷⁷ For these reasons, Ms. York recommended that the Commission reject the contingency mechanism.

In rebuttal, Mr. Hahn testified that the Company does not currently have any fixed-price contracts for natural gas purchases for its gas-fired generation facilities, and that Consumers relies solely on spot market purchases.⁷⁸ Mr. Hahn agreed with Ms. York that NYMEX is not necessarily indicative of what Consumers will actually pay for natural gas, which is why the contingency mechanism would only be implemented during periods

⁷² 2 Tr 28-29.

⁷³ 2 Tr 28-29.

⁷⁴ 2 Tr 30.

⁷⁵ 2 Tr 30.

⁷⁶ 2 Tr 31.

⁷⁷ 2 Tr 30.

⁷⁸ 2 Tr 237.

of rising natural gas prices.⁷⁹ However, he added that there is a correlation between rising natural gas price, LMP, and PSCR costs, particularly because Consumers is a net purchaser in the MISO market.⁸⁰ He sponsored Exhibit A-30, illustrating actual monthly natural gas prices and actual MISO LMPs for 2019 through 2023, which demonstrated the correlation between LMPs and natural gas prices, “primarily due to the fact that generation units fueled by natural gas generally represent the marginal unit dispatched.”⁸¹

Mr. Hahn’s rebuttal testimony addressed most of Ms. York’s remaining arguments. He characterized Ms. York’s hypothetical situation, where NYMEX no longer exists, as being so unlikely it did not require an alternative to be specified in the current case. He added that, if NYMEX were to stop existing, Consumers would include a new annual update mechanism in its next PSCR Plan.⁸² He responded to Ms. York’s assertion that Consumers did not include detailed calculations of its projected contingency factors, with a simple spreadsheet based on \$0.25/MMBtu increment changes in NYMEX, and testified only a single variable was changed for the model runs, the forward natural gas price. He testified there were no detailed calculations to provide.⁸³ And he indicated that the market for natural gas is national and international in its scope, and natural gas is the primary fuel for electric generation throughout the U.S., so that any increases in the price of natural gas would impact ABATE’s industrial competitors, as well as ABATE’s members.⁸⁴

⁷⁹ 2 Tr 237-238.

⁸⁰ 2 Tr 237-238.

⁸¹ 2 Tr 238.

⁸² 2 Tr 239-240.

⁸³ 2 Tr 240.

⁸⁴ 2 Tr 240.

Mr. Volansky's rebuttal explained that the contingency mechanism was intended to match costs with usage when gas prices are unexpectedly high without warning, sending proper price signals to inform customers' decisions.⁸⁵ Without the contingency mechanism, the high price increases create "improper price signals for customers and cause[] misalignment between the customers who use the energy and the customers who eventually pay for the energy."⁸⁶ Consumers maintains, in addition to addressing this issue, the contingency mechanism would allow it to recover PSCR costs in a timely manner from the customers actually using the electricity, avoiding large underrecovery balances and interest thereon that would later be charged to customers in PSCR reconciliation.⁸⁷

Mr. Volansky asserted that the contingency mechanism would not introduce greater uncertainty into customers' annual energy costs than a revised plan, as both options would collect the same costs.⁸⁸ He argued that MCL 460.6j(10) was not well-suited to addressing gas price spikes because that was not a contemplated use for a revised case, particularly where the original case is still open, and because filing a revised plan causes delays with providing appropriate price signals and shortens the amount of time available in the plan year to recover the higher costs. Plus, the price spikes might occur outside of the time available for filing a revised plan.⁸⁹ In sum, Mr. Volansky testified in rebuttal that the "contingency mechanism better allows the costs to be matched with usage compared to the existing process which could disproportionately shift under-

⁸⁵ 2 Tr 265-266.

⁸⁶ 2 Tr 266.

⁸⁷ 2 Tr 266.

⁸⁸ 2 Tr 266-267.

⁸⁹ 2 Tr 266-267.

recovered cost onto customers who use a greater percentage of overall customer sales in the second half of the year, or worse, onto customers in future periods.”⁹⁰

Ms. York noted Mr. Bodiford’s contention that the contingency mechanism would effectively address underrecoveries on a month-to-month basis, but responded that it would rob customers of the opportunity to discuss ratepayer impact mitigation measures like the opportunity available in annual reconciliation proceedings.⁹¹ Had the contingency mechanism been in place in 2022, Consumers would not have requested an extended period of time over which the massive underrecovery could be repaid.⁹² Per Ms. York, the unpredictability of having something other than a single maximum allowable PSCR for customer planning purposes harms customers, both due to planning uncertainty and actual spikes in electricity billing; she provided some illustrative examples of potential increases.⁹³

Ms. York maintained that, in comparison to the contingency mechanism, it would be more appropriate option for Consumers to file another contested PSCR case to increase its maximum PSCR Factor if market conditions change significantly, and any underrecovery could be spread over multiple years to mitigate customer impacts, as was done for the 2022 underrecovery.⁹⁴ She again noted that significant underrecoveries are unusual.⁹⁵ And Ms. York again recommended that the Commission reject the contingency mechanism, contending that the Company will not be harmed without

⁹⁰ 2 Tr 267.

⁹¹ 2 Tr 38.

⁹² 2 Tr 38-39.

⁹³ 2 Tr 39-42.

⁹⁴ 2 Tr 42-43.

⁹⁵ 2 Tr 43.

implementation of the contingency mechanism, because Consumers will recover all of its PSCR costs with or without it.⁹⁶ Ms. York concluded her rebuttal by providing an alternative recommendation: limiting Consumers' ability to implement its contingency factors without another contested case being filed, suggesting a lower cap, \$1.00/MMBtu instead of \$4.00/MMBtu, to create a narrower range of PSCR Factors that could apply to customer bills.⁹⁷

In its brief, the Company argues that MCL 460.6j(6) expressly permits the requested contingency mechanism to protect against future price spikes and sizable underrecoveries such as the nearly \$450 million that occurred in plan year 2022.⁹⁸ Noting the testimony of Ms. Rissman and Mr. Volansky, the Company's brief sets forth how the contingency mechanism will be implemented – the Company will make monthly comparisons between the updated 12-month average NYMEX Price forecast, consisting of the actual monthly NYMEX Hub prices published by S&P Global Platts for months in which they have become available and the then-current NYMEX Price for the remaining months in the PSCR period, with the 12-month average NYMEX Price Forecast used in developing the PSCR Ceiling factor.⁹⁹ For each \$0.25/MMBtu increase in the NYMEX price forecast over the Plan forecast, up to a \$4.00/MMBtu ceiling, Consumers would apply the “specific new PSCR ceiling factor” that the mechanism establishes for that month.¹⁰⁰

⁹⁶ 2 Tr 43-44.

⁹⁷ 2 Tr 44.

⁹⁸ Consumers brief, 13.

⁹⁹ Consumers brief, 13.

¹⁰⁰ Consumers brief, 13-14.

Consumers argues that the contingency mechanism will help avoid large underrecoveries and customer interest payments on those underrecoveries.¹⁰¹ The contingency mechanism will provide accurate price signals to customers, allowing customers to make informed choices, and will help to ensure that customers who use the energy are the customers who will pay for the energy. And Consumers asserts that the Commission has identified these as important goals, and then lists several cases where this was articulated.¹⁰²

Consumers states that the contingency mechanism in this PSCR case is modeled on its GCR contingency mechanism, which the Commission has previously approved, and that has worked well for “many decades.”¹⁰³ Additionally, Consumers notes, Staff supports the contingency mechanism.¹⁰⁴

Consumers’ brief also echoes Mr. Volansky’s testimony regarding why 460.6j(10) is not an effective mechanism for addressing mid-year gas price spikes, adding that, in an unpublished opinion, the Michigan Court of Appeals came to the same conclusion in relation to the identical language in the GCR statute, MCL 460.6h(10).¹⁰⁵ Consumers’ brief then relies on Mr. Hahn’s and Mr. Volansky’s testimony to counter Ms. York’s contentions that the contingency mechanism is unnecessary.¹⁰⁶ And the brief similarly relies on Mr. Hahn’s rebuttal testimony to counter Ms. York’s assertions that the

¹⁰¹ Consumers brief, 14.

¹⁰² Consumers brief, 14.

¹⁰³ Consumers brief, 14.

¹⁰⁴ Consumers brief, 14-15.

¹⁰⁵ Consumers brief, 15-17. See *Michigan Community Action Agency Ass’n v Michigan Public Service Comm’n*, unpublished per curiam opinion of the Court of Appeals, rel’d June 19, 2007 (Docket No. 263262). See also *In re Consumers Energy Co*, 278 Mich App 547, 564-565 (2008).

¹⁰⁶ Consumers brief, 17-19.

contingency mechanism suffers from technical deficiencies, including that the link between natural gas prices and LMP is, at best, tenuous.¹⁰⁷

Finally, Consumers addresses ABATE's contention that the contingency mechanism introduces uncertainty into PSCR costs for customers, hampering energy-intensive customers' ability to set budgets and compete with other businesses.¹⁰⁸ Noting Mr. Hahn's testimony that natural gas prices are national, and international, scope, resulting in universal impacts across all businesses, the Company argues price increases will occur for all customers, including ABATE's competitors, the Company maintains that, while certainty in business planning is important, the Commission has found contingency mechanisms appropriate to mitigate large underrecoveries in GCR cases, irrespective of business concerns regarding price predictability.¹⁰⁹ Consumers insists that Ms. York provides no valid reason to reject the proposed PSCR contingency mechanism when those reasons are compared with the benefit of mitigating substantial underrecoveries and providing appropriate price signals.¹¹⁰

Staff, in its brief, also recommend approval of the contingency mechanism, noting that such mechanisms have been found to be lawful by both the Commission and the Michigan Court of Appeals in GCR cases pursuant to MCL 460.6h(6), which has language substantially similar to that found in MCL 460.6j(6).¹¹¹ Staff concedes that contingency mechanisms are relatively new to PSCR cases, citing Case No. U-21265 as the sole

¹⁰⁷ Consumers brief, 19-21.

¹⁰⁸ Consumers brief, 21.

¹⁰⁹ Consumers brief, 21-22.

¹¹⁰ Consumers brief, 22-23.

¹¹¹ Staff brief, 4-5. See May 2, 2014, order in Case No. U-17334, pp 11-12. See also June 3, 2004, order in Case No. U-13902, p 6.

example where one was previously approved, but Staff points out that contingency mechanisms are “not unusual in GCR cases.”¹¹² The Commission’s articulated goals of matching prices to GCR Factors to foster accurate price signals and to avoid large shifts in costs to future periods are valid and applicable in the PSCR context. Staff argues that the proposed contingency mechanism, presented in Exhibit A-28, should accomplish the goals of sending accurate price signals and avoiding large underrecoveries in the future.¹¹³

Based on Mr. Bodiford’s testimony, Staff assert that the avoidance of large underrecoveries through use of the contingency mechanism is in the best interests of ratepayers because it avoids spikes in bills that would otherwise occur when the amounts are later recovered through reconciliation.¹¹⁴ Refuting ABATE’s assertions that this fails to “consider the full picture,” Staff contends that matching market prices to the PSCR Factors during the PSCR Plan period *is* the fuller picture, because it provides for more precise billing in relation to recoverable costs.¹¹⁵ Because the PSCR costs are recoverable, it is a question of when, rather than if, the underrecovery will be included in rates, and matching incurred and charged costs to contemporaneous billing allows customers to receive accurate price signals while avoiding interest on large future underrecoveries if they are repaid over time.¹¹⁶

¹¹² Staff brief, 5.

¹¹³ Staff brief, 6.

¹¹⁴ Staff brief, 6-7.

¹¹⁵ Staff brief, 6-7.

¹¹⁶ Staff brief, 7-8.

ABATE's brief relies upon Ms. York's testimony,¹¹⁷ but raises the additional arguments that the contingency mechanism is outside the Commission's authority to approve, violates the statute, and cannot be properly audited. ABATE also alleges inconsistencies in the application, tariff sheets, discovery responses, and testimony. ABATE asserts that confusing inconsistencies, show that the mechanism is not reasonable and prudent, and it cannot be approved.¹¹⁸

In relation to its argument that the contingency mechanism is outside the Commission's authority to approve, ABATE's brief concedes that the Commission may approve a PSCR Factor based on specific amounts contingent on future events under MCL 460.6j(6), but contends that MCL 460.6j(3) requires that only one PSCR Factor be imposed per month, and that the contingency mechanism "would establish 17 different PSCR Factors for each month of the PSCR Plan period" – the proposed PSCR Factor, plus all potential amounts that might be triggered if the NYMEX increases by all of the increments, up to \$4.00/MMBtu.¹¹⁹ ABATE next argues that, because the NYMEX index includes historical price data, and because it includes contracts "that have already been executed in the market," that increases in NYMEX prices are not future events contemplated by the statute to allow increases under MCL 460.6j(6).¹²⁰

ABATE argues that Consumers has not demonstrated a direct relationship between its recoverable power supply costs and NYMEX forecast increases, both generally, and for the specific \$0.25/MMBtu increments and \$4.00/MMBtu maximum

¹¹⁷ ABATE brief, 11-21.

¹¹⁸ ABATE brief, 3-6.

¹¹⁹ ABATE brief, 6-9.

¹²⁰ ABATE brief, 9-11.

threshold amounts.¹²¹ ABATE argues that Consumers has not demonstrated that NYMEX increases clearly correspond to total power supply costs, as the first \$0.25/MMBtu increase would raise total power supply costs by 1.38%, but the increases up to the \$4.00/MMBtu ceiling would raise the total power supply costs by 16.38%.¹²² ABATE argues the Company did not explain its use of \$0.25/MMBtu incremental increases. And ABATE contends, because multiple factors contribute to total power supply costs, there is no clear association between increased costs and the NYMEX forecast.¹²³

ABATE argues that the contingency mechanism is not reasonable or prudent because it lacks transparent and verifiable formulas and data, and therefore it cannot be properly audited.¹²⁴ This is due, in part, to what ABATE characterizes as the contingency mechanism's reliance on in-house forecasts from information not readily available to the public.¹²⁵ Finally, ABATE repeats Ms. York's arguments that the contingency mechanism is unnecessary, that the Company will not be harmed without the contingency mechanism, that there is no showing that the contingency mechanism will send accurate price signals to customers, and that MCL 460.6j(10) already adequately addresses the substantial underrecovery possibility.¹²⁶

Consumers' reply brief first addresses ABATE's statutory construction arguments, characterizing them as based on "a tortured reading of the PSCR statute," and contending

¹²¹ ABATE brief, 11-12.

¹²² ABATE brief, 12-13.

¹²³ ABATE brief, 12-14.

¹²⁴ ABATE brief, 17-18.

¹²⁵ ABATE brief, 17-18.

¹²⁶ ABATE brief, 18-21.

that ABATE's interpretation violates the rules of statutory construction.¹²⁷ Instead, Consumers argues that MCL 460.6j(6) clearly permits the contingency mechanism based on future events, and that changes in the NYMEX forecast are a future event.¹²⁸ Providing citations in support, Consumers notes that the rules of statutory construction dictate that laws are to be interpreted so as to give effect to the entirety of a statute, avoiding an interpretation rendering any part surplusage or nugatory. From this, Consumers posits that the plain language of MCL 460.6j expressly permits setting PSCR Factors based on future events.¹²⁹

Additionally, Consumers argues in reply that there is nothing in the statute that supports ABATE's interpretation that "only one" possible PSCR Factor for any given month may be approved in the PSCR plan. Furthermore, if the contingency mechanism is approved and applied, only one ceiling factor under the mechanism's terms would be approved and applied in any given month.¹³⁰ The Company argues that ABATE's assertion, that NYMEX uses historical data, therefore it cannot be used as a part of a future event triggering a contingency mechanism, has been expressly rejected by both the Commission and the Michigan Court of Appeals in relation to GCR contingency mechanisms.¹³¹ The Company avers that the PSCR statute, MCL 460.6j(6), contains nearly identical language to the GCR statute.¹³² Consumers contends that a "future

¹²⁷ Consumers reply brief, 2-3.

¹²⁸ Consumers reply brief, 2-3.

¹²⁹ Consumers reply brief, 3.

¹³⁰ Consumers reply brief, 3-4.

¹³¹ Consumers reply brief, 3-6. See *Michigan Community Action Agency Ass'n v Michigan Public Service Comm'n*, unpublished per curiam opinion of the Court of Appeals, June 19, 2007 (Docket No. 263262). See also *In re Consumers Energy Co*, 278 Mich App 547 (2008).

¹³² Consumers reply brief. 4-5.

event” for purposes of MCL 460.6j(6) is one that occurs after the PSCR Plan was developed and filed with the Commission, which can be a change to NYMEX, irrespective of the historical price data on which it is based.¹³³

Consumers also addresses ABATE’s statutory construction arguments, pointing out that MCL 460.6j(6) does not require, as a matter of law, a direct correlation between gas prices and costs incurred. The Company argues that Mr. Hahn’s rebuttal testimony and exhibits showed a clear, and sufficient, relationship between gas prices and electricity costs.¹³⁴ Consumers takes the position that, using the \$0.25/MMBtu increments is reasonable and asserts that ABATE can easily calculate the new PSCR costs.¹³⁵ Consumers also argues that the relatively high increments mean that the maximum PSCR Factor will not be impacted by typical price fluctuations, providing a degree of price stability.¹³⁶

Consumers maintains that it was too late to minimize the nearly \$450 million underrecovery from 2022 by the time of the 2022 PSCR reconciliation filing, where the massive underrecovery already existed. Therefore, extending repayment of the underrecovery was the only reasonable option to address it because it had already been incurred.¹³⁷ Consumers contends this is not a result that should be “emulated” due to its price impacts.¹³⁸ Instead, Consumers argues, the mechanism is needed to address unexpected natural gas price increases occur in the future. Consumers argues the

¹³³ Consumers reply brief, 5-7, citing *Michigan Community Action Agency Ass’n v Michigan Public Service Comm’n*, unpublished per curiam opinion of the Court of Appeals, June 19, 2007 (Docket No. 263262).

¹³⁴ Consumers reply brief, 8-11.

¹³⁵ Consumers reply brief, 9-11.

¹³⁶ Consumers reply brief, 13.

¹³⁷ Consumers reply brief, 12-13.

¹³⁸ Consumers reply brief, 12-13.

Commission has held that is in the best interests of customers to send accurate price signals and maintains the mechanism reasonably addresses existing and unavoidable price volatility, and provides real-time energy pricing.¹³⁹ This permits all customers, especially residential customers to minimize their electricity usage to moderate costs.¹⁴⁰ Additionally, the change in the PSCR Factor under the contingency mechanism can be mathematically calculated from the publicly published NYMEX index, and any amounts charged in relation to the contingency mechanism will be subject to the reconciliation process, with over-collection refundable with interest to customers under MCL 460.6j(16).¹⁴¹

Staff's reply brief echoes many of Consumers' arguments, noting that, while there has only been one approved PSCR contingency mechanism, contingency mechanisms have been used frequently in the GCR context, and again noted that MCL 460.6j(6) and MCL 460.6h(6) are nearly identical.¹⁴² Staff notes that, in the GCR context, the Michigan Court of Appeals has held that NYMEX price increases are a future event, contrary to ABATE's arguments.¹⁴³ Staff assert that "the disputed mechanism is contingent on comparisons to prices that do not yet exist," and with future events triggering the contingency mechanism.¹⁴⁴ Staff also notes that MCL 460.6j(6) contemplates "factors" and "amounts" in the plural, contrary to ABATE's argument that only one PSCR Factor may be set based on its reading of MCL 460.6j(3), which would also render nugatory the

¹³⁹ Consumers reply brief, 11-14. See *In re Consumers Energy Co*, 278 Mich App 547, 567 (2008).

¹⁴⁰ Consumers reply brief, 12-14.

¹⁴¹ Consumers reply brief, 14-16.

¹⁴² Staff reply brief, 3 & 8.

¹⁴³ Staff reply brief, 3-4, citing *In re Consumers Energy Co*, 278 Mich App 547, 564-565 (2008), citing *Attorney Gen v Michigan Pub Serv Comm'n*, 235 Mich App 308; 597 NW2d 265 (1999).

¹⁴⁴ Staff reply brief, 5-7.

“specific amounts contingent on future events” portion of MCL 460.6j(6).¹⁴⁵ Staff continues to recommend approval of the proposed contingency mechanism asserting it is in the best interests of customers by sending more accurate price signals and avoiding large future underrecoveries.¹⁴⁶

ABATE’s reply brief characterizes the proposed contingency mechanism as “entirely novel,” and a dereliction of Consumers’ duty as a regulated utility to provide rate stability, with the passing of costs to customers being unreasonable and imprudent.¹⁴⁷ In its reply brief, ABATE continues to argue that the contingency mechanism conflicts with the statute, is unnecessary, is overly complicated, and is “likely to cause significant financial burden and rate instability.”¹⁴⁸ In addition to repeating the arguments it has already raised, regarding the PSCR factors that could occur under the contingency mechanism, ABATE adds the argument that Consumers must provide the same evidence for each of the possible contingent PSCR Factors that were required for the PSCR Factor of \$0.0877/kWh.¹⁴⁹

Based on the totality of the evidence in the record this PFD finds the arguments made by Consumers and Staff related to the statutory authority and need for a contingency mechanism to be more persuasive and consistent with prior legal precedent than the arguments made by ABATE.

This PFD recommends the Commission reject ABATE’s argument that the statute does not authorize the contingency mechanism. Pointing to the fact that MCL 460.6j(3)

¹⁴⁵ Staff reply brief, 7-10.

¹⁴⁶ Staff reply brief, 2 & 11.

¹⁴⁷ ABATE reply brief, 1-2.

¹⁴⁸ ABATE reply brief, 2.

¹⁴⁹ ABATE reply brief, 3-11.

and 460.6j(6) use the singular form of the term “PSCR Factor,” ABATE argues the statute only allows the Commission to approve one PSCR Factor and therefore the proposed contingency mechanism is not authorized by and is incompatible with the MCL 460.6j. ABATE contends that approval of the contingency mechanism in this case results in approval of 17 different PSCR Factors for each month. This interpretation is erroneous. The mere fact that the statute uses the singular of the word “factor,” does not reasonably lead to the interpretation that the Commission is limited in its authority to approve more than one factor per month.

However, this PFD does not find that the contingency mechanism proposed in this case actually authorizes more than one factor in any given month. The contingency mechanism simply provides for an alternative PSCR Factor if and when the cost of natural gas rises unexpectedly. When the contingency mechanism is triggered a new maximum PSCR Factor is calculated and implemented as shown in the attached Tariffs. Only one factor is implemented and charged. The Company also properly notes that the statute itself does not expressly limit the Commission to approval of a single PSCR Factor, pointing out that MCL 460.6j(6) provides for the monthly factors and “amounts contingent on future events”¹⁵⁰ – leading to the reasonable interpretation that at least two factors are authorized. And as Staff point out the language of MCL 460.(6)j has been interpreted to specifically authorize a contingency mechanism in GCR cases. This PFD finds that ABATE’s assertions violate rules of statutory construction and misconstrue the application of the contingency mechanism.

¹⁵⁰ MCL 460.6j(6).
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Pointing to the fact that the contingency mechanism ties contingent PSCR factors to historical actual monthly NYMEX prices to determine when an adjustment is warranted, ABATE argues the operation is not based exclusively on a future event.¹⁵¹ However, both Consumers and Staff demonstrated that this interpretation is contradicted by the Commission and the courts. While PSCR contingency mechanisms are relatively novel, these mechanisms have been approved in GCR cases for years and should be considered precedential. To compare, the PSCR statute, MCL 460.6j(6) provides: “The factors ordered shall be described in fixed dollar amounts per unit of electricity, but may include specific amounts contingent on future events.” And, the GCR statute, MCL 460.6h(6) provides: “The factors ordered shall be described in fixed dollar amounts per unit of gas, but may include specific amounts contingent on future events, including proceedings of the federal energy regulatory commission or its successor agency.” The statutory language concerning “amounts contingent on future events” for both PSCR and GCR plans is nearly identical, and the Commission should not ignore interpretations of the GCR provisions.

ABATE’s assertion that the contingency mechanism is not based on future events is also contradicted by precedent interpreting the GCR statute, MCL 460.6h(6). This PDF find that ABATE confuses the frame of reference for what constitutes a future event. The term “future” relates to events occurring after the PSCR plan was filed.¹⁵² The Michigan Court of Appeals held:

It seems apparent that the NYMEX index cost of gas is a future event on which the price of gas may be contingent. A base GCR factor is a “fixed

¹⁵¹ ABATE brief, p 9.

¹⁵² Consumers reply, 6

dollar” amount. The NYMEX price index itself is not a future event; however, a rise in that index is a future event. The PSC has approved contingent mechanisms based on changes in the NYMEX index cost of gas. We defer to the PSC's longstanding interpretation of statutory language.¹⁵³

That court cited, with approval, an early unpublished per curiam opinion of the Court of Appeals, *Michigan Community Action Agency Ass'n*, which also found the “unpredictable rise in the price of gas, as reflected by the NYMEX index is a future event [which] triggers a specific GCR factor increase.”¹⁵⁴ The arguments made in this case related to “future events” were very similar to those made by ABATE in this matter.

ABATE did not attempt to refute precedent related to interpretation of the GCR statute. Instead, ABATE argued that GCR cases are not comparable to PSCR cases, asserting that the “two types of utilities operate under distinct market dynamics, regulatory frameworks, and operational constraints.”¹⁵⁵ This argument is not persuasive. The Commission should find guidance in prior decisions and interpretations of statutory language when addressing a relatively new issue. “[T]he provisions of a statute should be read reasonably and in context’ ... ‘When the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted’ ... However, ‘a court should not abandon the canons of common sense’ ... [but] should avoid any construction that would render any part of a statute surplusage or nugatory,’ ... ‘to prevent absurd results.’”¹⁵⁶ And as the Michigan Court of Appeals found, “[t]he PSC is not bound

¹⁵³ *In Re Consumers Energy Co*, 278 Mich App 547,565; 753 NW2d 287 (2008), citing *Michigan Community Action Agency Ass'n*, unpublished opinion *per curiam* of the Court of Appeal, issued June 19, 2007. (Docket No. 263262), pp 10-11.

¹⁵⁴ *Michigan Community Action Agency Ass'n*, unpublished opinion *per curiam* of the Court of Appeal, issued June 19, 2007. (Docket No. 263262), pp 10-11.

¹⁵⁵ ABATE reply brief, p 15.

¹⁵⁶ *SP v BEK*, 339 Mich App 171, 177-178; 981 NW2d 500, 505-506 (2021).

by any particular ratemaking method and can make pragmatic adjustments in order to respond to the particular circumstances of any given case.”¹⁵⁷ Accordingly, this PFD finds that ABATE’s interpretation of what constitutes a future event is erroneous and should not be adopted by the Commission, and recommends the Commission reject ABATE’s argument that the contingency mechanism is not authorized by statute.

ABATE argues that the contingency mechanism is not reasonable and prudent and can’t be approved by the Commission.¹⁵⁸ First, ABATE claims that Consumers has not demonstrated the NYMEX price increase correlates to recoverable PSCR costs and did not provide detailed calculations for the contingent mechanism factors.¹⁵⁹ However, Consumers correctly states that the statute does not contain such a requirement.¹⁶⁰ And this PFD finds, based on the testimony of Mr. Hahn, Consumers has established a direct link between natural gas prices and its recoverable costs.¹⁶¹ The fact that Consumers makes all of its gas purchase in the spot market, with prices linked to LMPs, clearly shows a correlation. And the Company persuasively explained that detailed calculations were not supplied because there are no such calculations to share. Consumers established that the only variable changed in model runs to calculate the PSCR Factor amounts in the contingency mechanism was the price of natural gas.¹⁶²

ABATE also contends that the contingency mechanism is unreasonable because it can't be properly audited because the Company’s forecast uses information that is not

¹⁵⁷ *In re Consumers Energy Co*, 278 Mich App 547,558-564; 753 NW2d 287 (2008).

¹⁵⁸ ABATE brief 11.

¹⁵⁹ ABATE brief 12-13.

¹⁶⁰ Consumers reply brief, 8.

¹⁶¹ Consumers reply brief, 19-20

¹⁶² Consumers reply brief, 21. 2 Tr 240.

readily available to the public. However, this PFD finds Consumers persuasively refuted this argument. The NYMEX price forecast data is public information. The PFD finds the Company has established that the method used in calculations for the contingency mechanism are based on public information, available to ABATE and its members, and are reasonable and prudent. And this PFD does not find it necessary for the Company to propose an alternative to NYMEX in the extraordinarily unlikely event it was to disappear.

ABATE argues the contingency mechanism is not in the best interests of ratepayers because it introduces uncertainty and can cause unpredictable and substantial rate increases without notice, hindering the ability of its members to compete.¹⁶³ The fact that the natural gas market is international in scope and significant price increases will have similar impacts for all businesses undermines ABATE's alleged competitive disadvantage because the impacts will be felt by all customers. More importantly, however, the Commission and courts have made it clear that large underrecoveries indicate that the amount being charged is not sending accurate price signals to customers. In balancing the competing priorities of price predictability with other important priorities such as providing meaningful and accurate price signals, avoiding unnecessary interest, and ensuring the customers who use the energy pay for it, the Commission has repeatedly held that contingency mechanisms like the one at issue in this case are reasonable and in the best interests of customers.¹⁶⁴ And ABATE acknowledged Commission has long held that customers should receive accurate price signals to ensure

¹⁶³ ABATE brief, 14.

¹⁶⁴ See May 17, 2005, order in Case No. U-13990, pp 16-17. See also *In re Consumers Energy Co.*, 278 Mich App 547, 567.

that customers who use the energy are the ones who pay for it rather than shifting costs to future customers; large over- and underrecoveries should be avoided. Clearly, the contingency mechanism will facilitate these price signals. For example, the Commission held:

The Commission is persuaded that it is in the public interest to match market prices to the GCR factor as closely as possible during a GCR plan period such that market fluctuations are generally reflected in the gas price charged to GCR customers. Approval of the temporary factor now will lessen the potential underrecovery and the associated interest that will fall on ratepayers, will better match recovery of those costs with the customers who used the gas, will improve price signals¹⁶⁵

ABATE's argument that the Commission should also consider the affordability of the impacts produced by implementation of the mechanism is not without merit. But given the Commission's long-standing preference to match increasing costs with the customers who use the electricity, this PFD recommends the Commission approve the contingency mechanism as proposed.

Finally, ABATE argues that the contingency mechanism is unnecessary. Pointing to MCL 460.6j(10), ABATE contends that the statute already provides a procedure to address potential under recoveries and argues use of this statutory provision is preferable as it gives the Commission the option to spread an under recovery over a period of time as was done in Case No. U-21257.¹⁶⁶ However, as Consumers points out it was too late to use that statutory section in U-21257 when prices started rising precipitously and the Commission was forced to address the large underrecovery. If a contingency mechanism had been in place the underrecovery would have been mitigated. Again, because prior

¹⁶⁵ May 2, 2014, order in Case No. U-17334, pp 11-12.

¹⁶⁶ February 23, 2023, order in Case No. U-21257, p 4.

the Commission decisions prioritize accurate price signals, this PFD recommends the Commission approve the contingency mechanism.

While this PFD recommends inclusion of contingency mechanisms in PSCR plans, there is some merit in ABATE's argument that the mechanism as proposed may limit the Commission's ability to address large underrecoveries, such as occurred in 2022. The \$4.00/MMBtu threshold in the proposed contingency mechanism will allow the utility to significantly increase rates, matching usage with costs. However, as noted previously, the large 2022 underrecovery was spread over three years to mitigate the effects of the unexpected price spike. The Commission may not want to forgo this option in the future. If natural gas prices become more volatile, the Commission could lessen the financial shock to ratepayers by spreading an underrecovery over a few years. Lowering the threshold, would allow prices to increase to a point leaving the Commission the option to mitigate some of the increased costs to customers while maintaining the correlation between usage and payment, sending appropriate signals to ratepayers. This would strike a balance between sudden increases in energy bills and incurring massive underrecoveries. And because a contingency mechanism can be proposed in annual PSCR plan cases, the increments and threshold can be modified annually.

In fact, in her testimony, Ms. York recommended limiting the threshold, "effectively creating a narrower range of potential PSCR Factors that could be applied to customer bills in a given year."¹⁶⁷ However, ABATE did not make this argument in briefs.

Accordingly, this PFD recommends that the Commission approve the 2024 PSCR plan as filed, however, in the alternative, the Commission could modify the maximum threshold amount in the proposed contingency mechanism to \$2.00/MMBtu. Increases above the threshold would be addressed in another contested case.

V.

CONCLUSION

Based on the foregoing discussion, this PFD recommends that the Commission adopt Consumers' 2024 PSCR plan as filed consistent with the findings, conclusions, and recommendations set forth above.

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

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