

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions,)
determinations, and/or approvals necessary for) Case No. U-15805
CONSUMERS ENERGY COMPANY to fully comply)
with Public Acts 286 and 295 of 2008.)
_____)

In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions,)
determinations, and/or approvals necessary for) Case No. U-15889
CONSUMERS ENERGY COMPANY to fully comply)
with Public Acts 286 and 295 of 2008.)
_____)

At the May 26, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

OPINION AND ORDER

Procedural History

On February 17, 2009, Consumers Energy Company (Consumers) filed a combined application in Case Nos. U-15805 and U-15889, with supporting testimony and exhibits, requesting approval of its renewable energy plan (REP) for its electric division and energy optimization plans (EOP) for its electric and gas divisions.¹ Approval of these plans is required,

¹Case No. U-15805 was opened on October 21, 2008 for filings concerning Consumers' REP and EOP for its electric division. Case No. U-15889 was opened the same date for filings concerning Consumers' EOP for its gas division.

after a contested case, under 2008 PA 295, MCL 460.1001 *et seq.* (Act 295).² Administrative Law Judge Sharon L. Feldman (ALJ) held a prehearing conference on February 27, 2009, at which she consolidated the two cases and granted petitions to intervene filed by Attorney General Michael A. Cox (Attorney General), Hemlock Semiconductor Corporation (Hemlock), Midland Cogeneration Limited Partnership, Energy Michigan, Constellation NewEnergy, Michigan Sustainable Energy Coalition (MSEC), RES North America, Association of Businesses Advocating Tariff Equity (ABATE), LS Power Associates, LaFarge Midwest, Inc. (LaFarge), Michigan Wholesale Power Association (MWPA), New Covert Generating Company, Michigan Cable Telecommunications Association, Michigan Community Action Agency Association, Michigan Environmental Council (MEC), Natural Resources Defense Council (NRDC), Environmental Law and Policy Center (ELPC), and Ecology Center of Ann Arbor (Ecology Center).³ The Commission Staff (Staff) also participated in the proceedings.

On March 9, 2009, Hemlock filed a motion to strike portions of Consumers' testimony and exhibits and a motion in limine to exclude Consumers' evidence on electric revenue decoupling. Alternatively, Hemlock moved for partial summary disposition on the decoupling issue. Hemlock argued that decoupling, for both gas and electric, was outside the scope of these cases and that the inclusion of extraneous or irrelevant issues was of particular concern given the compressed timetable for the proceedings. On the same date, ABATE filed a motion to dismiss certain portions of Consumers' application. ABATE likewise argued that revenue decoupling was not relevant to the REP or EOP cases and that Consumers' requests for approval of revenue

²This order is issued within 90 days after Consumers completed its application by submitting its work papers to all intervenors on February 26, 2009.

³The NRDC, MEC, ELPC and the Ecology Center are collectively referred to as the Environmental Coalition in instances where a joint filing was made.

decoupling mechanisms for both gas and electric divisions were provided for in other cases.

ABATE also argued that Consumers' proposal to add 900 megawatts (MW) of renewable energy capacity was excessive and violated the Act 295 requirement that the company add 500 MW of renewable capacity by 2015. The Attorney General filed a response in which he concurred with ABATE on its motion.

In response to ABATE's motion, MEC, ELPC, NRDC, and the Ecology Center argued that Consumers' proposed REP was reasonable in light of the fact that Act 295 only set a floor on capacity, requiring Consumers to have "not less than" 500 MW of renewable capacity by 2015.

In response to Hemlock's motions regarding the inclusion of decoupling in the proceedings, MEC and NRDC argued that the motions should be denied on grounds that they were premature. MEC and NRDC asserted that decoupling is essential to Consumers' EOP because decoupling will enable Consumers to increase promotion of its EO programs. MEC and NRDC argued that the Commission should deny the motions filed by Hemlock and ABATE because the Commission need not decide the merits of any specific decoupling proposal at this point, it only need find that revenue decoupling, like other financial incentives, is relevant to the company's EO plan. The Staff agreed that the motions should be denied at this time.

In a ruling issued at a hearing on March 16, 2009, the ALJ granted in part the motions filed by Hemlock and ABATE. The ALJ ruled that the issue regarding the amount of renewable capacity that Consumers was proposing to add was germane to the proceeding and denied ABATE's motion on that basis. The ALJ also determined that it was the intent of the Commission to consider decoupling in a general rate case and not as part of the REP and EOP proceedings. The ALJ pointed to the filing requirements contained in the Commission's December 4, 2008 temporary order and to several other orders in which the Commission directed Consumers to file a

decoupling proposal in its next general rate case. ABATE and Consumers did not appeal the ALJ's ruling.

Evidentiary hearings were held on April 13-16, 2009. Consumers, the Staff, LaFarge, MSEC, ABATE, MWPA, the Attorney General, and the Environmental Coalition filed initial briefs on April 28, 2009. On May 5, 2009, the same parties filed reply briefs. The record in this case consists of 1,051 pages of transcript and 81 exhibits admitted into evidence.

RENEWABLE ENERGY PLAN

Positions of the Parties

Consumers submitted an REP that included proposals to increase its renewable energy capacity by 200 MW by December 31, 2013 with an additional 300 MW of renewable capacity incorporated by December 31, 2015. By 2017, Consumers expects to have over 900 MW of renewable capacity, the majority from wind generation resources. Consumers proposes that half of the new renewable capacity will be purchased under long term power purchase agreements (PPAs) with third parties, with the remaining capacity to be supplied by facilities built and owned by the company. Consumers asserts that its plan will assure that by 2015 not less than 10% of its retail sales would be met through generation or purchase of renewable energy.

According to Consumers, the total revenue requirement associated with these capital investments and PPAs is estimated to be approximately \$5.3 billion, of which \$3.5 billion will be offset by avoided capacity and energy costs. The estimated \$3.5 billion in avoided costs have been translated into a transfer price and is proposed for recovery through the power supply cost recovery (PSCR) process. The remaining \$1.8 billion for the incremental cost of compliance will be recovered through a levelized surcharge applied to customer bills over the 20 year period of the REP. Consumers proposes surcharges for various customer classes that are at or below the caps

contained in Act 295. *See*, Exhibit A-7. Consumers contends that the REP contains sufficient information to demonstrate that the life-cycle costs associated with the REP, when offset by the life-cycle savings associated with Consumers' electric EOP, is less than the life-cycle cost of a new conventional coal fired generating facility.

Consumers REP anticipates that approximately 3.6 million renewable energy credits (RECs) will be needed by 2015 to comply with the Act 295 renewable portfolio standard (RPS) for the company's jurisdictional customers. According to Consumers, it needs to secure additional renewable resources between now and 2015 and beyond to increase the number of RECs the company holds from approximately 1.6 million per year to 3.6 million per year. As noted, Consumers proposes to acquire the majority of its RECs through PPAs with third party generators and by building and owning its own renewable generation systems.

Consumers also proposes to acquire RECs through a pilot program, the Experimental Advanced Renewable Program. The Experimental Advanced Renewable Program will provide a firm price offer to retail customers who choose to own and operate certain small-scale qualified renewable energy systems interconnected with the Consumers' electric distribution system. Consumers proposes to: 1) limit the amount of renewable energy purchased through the program to 2 MW; 2) limit the size of each customer's system to no less than 1 kilowatt (kW) for residential customers, no less than 20 kW for commercial and industrial customers and no more than 150 kW from any customer; 3) limit the technology to be used to generate renewable energy to solar photovoltaic (PV) technology; 4) limit the duration of these purchases to 12 years; and 5) require that energy deliveries under this program begin by December 31, 2010.

The Attorney General and the Environmental Coalition urge the Commission to reject Consumers' proposed REP on grounds that Consumers proposes to collect the majority of its

incremental costs of compliance from residential customers, despite the fact that residential customers only consume one third of jurisdictional load. According to the Attorney General, “It is neither reasonable nor prudent to design surcharges in a fashion that allocates 2/3rds of the charges to customers who will receive only 37% of the proportional benefits of the REP.” Attorney General’s initial brief, p. 11.

The Attorney General and ABATE also contend that the many uncertainties in Consumers’ REP may result in costs that exceed the rate caps established in MCL 460.1045 and that the life-cycle tests presented in Exhibits A-16 and A-17 of the REP overestimate the capacity and energy from renewable generation and underestimate the capacity and energy from conventional coal generation. ABATE argues that Consumers has not yet completed its study of on-site wind data to determine a long term average capacity factor for wind generation and has not yet begun to design the wind farm(s) proposed to be constructed by 2013. ABATE points to uncertainty about future costs of wind turbine equipment, especially if a national renewable energy standard is enacted.

The Attorney General contends that Consumers’ proposal to lock in the transfer price for renewable energy costs is unreasonable because ratepayers would bear the burden of a price increase but not the benefit of a price decrease.

ABATE notes that Consumers’ proposed surcharge will result in substantial overcollections during the initial years of the REP, and that these overcollections will earn at the company’s average short-term borrowing rate. ABATE contends that Consumers will effectively borrow over \$350 million from ratepayers over 5 years for which the company proposes to pay a very low interest rate.

The Environmental Coalition also argues that the projected costs of the REP are unreasonably high because Consumers used inappropriate assumptions in estimating the cost of wind power.

The Environmental Coalition observes that Consumers estimates the cost of wind power paid under a PPA at \$174.00 per megawatt hour (MWh), and \$172 per MWh for its self-build projects, despite the fact that utilities in other states have paid substantially less for wind power and The Detroit Edison Company (Detroit Edison) recently submitted an application for approval of a wind energy PPA priced at \$115 per MWh. The Environmental Coalition asserts that a more reasonable assumption for the cost of wind power is in the range of \$115-\$125 per MWh. The Environmental Coalition claims that by using such high estimates for renewable energy, these estimates become benchmarks and the likelihood of building or purchasing renewable power for less is remote. As a result, ratepayers could pay as much as \$2.4 billion more than they should for wind energy.

The Environmental Coalition asserts that Consumers' inflated estimate is a result of using a capacity factor and capacity credit that are far too low. The Environmental Coalition claims that Consumers failed to recognize the additional capacity value to wind facilities from using wind energy to operate the Ludington pumped storage facility. The Environmental Coalition further argues that Consumers costs are inflated by incorrect depreciation rates and an erroneous weighted average cost of capital. The Environmental Coalition argues that the result of these assumptions regarding the capacity factor and credit is that Consumers unreasonably lowers the amount recovered through the PSCR thus increasing the amount recovered through the surcharge. The Environmental Coalition also contends that Consumers' proposed fixed charge rate of 14.51% is inflated and is a result of the series of incorrect assumptions discussed above. According to the Environmental Coalition, correcting these errors now will significantly reduce the overall cost of the REP.

Regarding capacity, energy, and RECs to be obtained from third parties, the MWPA and the Environmental Coalition argue that Consumers' REP is unreasonable and imprudent because the

request for proposals (RFP) and competitive bidding process the company proposes to use for the acquisition of renewable energy and RECs is flawed. According to MWPA, Consumers continues to rely on the same RFP process that the company used in 2005 and early 2009. The MWPA argues that this process is inappropriate for meeting the renewable energy requirements of Act 295. Specifically, the MWPA argues that the RFP is unfriendly to suppliers (especially large wind developers), and potential financiers and will likely result in higher, rather than lower, bids. The MWPA and the Environmental Coalition point out the Consumers' RFP requests that bidders submit confidential or proprietary information that does little to inform the bid evaluation process, and Consumers fails to provide a description of how confidential information will be handled. These parties also claim that Consumers' proposal provides the company with complete discretion in evaluating bids that further reduces confidence in the process. The Environmental Coalition recommends that Consumers use an independent third party to evaluate bids.

The MWPA argues that Consumers should convene a collaborative including renewables developers and lenders before issuing its RFP so that obstacles and errors can be addressed and bidders will feel more confident about participating. The MWPA maintains that an open and transparent process, while increasing time at the beginning, can substantially lessen delays in the latter part of the process.

The MWPA recommends that the Commission condition its approval of Consumers REP on:

- 1) a requirement that Consumers engage in a collaborative process with all stakeholders, including independent renewable energy developers, lending institutions, and the Staff to improve RFP design and bid evaluation criteria, with the Commission to resolve any challenges that may be encountered in such collaborative process;
- 2) a requirement that Consumers provide a description of measures to be employed to assure fairness in the bidding process; and
- 3) a requirement that

Consumers issue RFPs that allow bidders to submit proposals on both a bundled and unbundled basis.

LaFarge argues that Consumers' proposal to only purchase bundled capacity, energy, and RECs is imprudent and unreasonable because purchasing unbundled RECs or advanced cleaner energy credits (ACECs) may be significantly less costly than the bundled purchases that Consumers' proposes. LaFarge notes that it has a large cement factory that produces energy, which is used on-site, along with ACECs that could be purchased and used to substitute for RECs as provided in Act 295.

The MSEC and the Environmental Coalition likewise argue that Consumers' proposal to purchase only bundled renewable energy is not reasonable and that the proposal violates Section 33(1)(b) of Act 295, which explicitly mandates the purchase of unbundled RECs. The MSEC adds that by refusing to consider the purchase of unbundled RECs, Consumers, as one of the larger potential purchasers of RECs, could distort the REC market. The MSEC observes that there are a number of generators with energy contracts under the Public Utility Regulatory Policy Act (PURPA) that have RECs available to sell, but there may not be a sufficiently competitive REC market if Consumers does not participate. The MSEC also contends that Consumers' plan to build its own wind farms and purchase bundled RECs from independent developers will significantly increase the incremental cost of compliance with Act 295. The MSEC adds that Consumers has seriously underestimated its baseline REC balance, making it more important that the company consider the purchase of additional unbundled RECs.

The Staff contends that, although the intervenors have raised meaningful issues that need to be addressed at some point, the Commission should nevertheless approve Consumers' proposed REP at this time. The Staff emphasizes that:

“[T]he Commission is only being asked to approve a conceptual plan, based upon estimates of the plan’s costs and performance. Although the Commission may approve the plan now, all parties should be put on notice that the Company’s recovery of the underlying estimated costs is not being determined now. All actual costs will be approved only after they have been examined and deemed reasonable and prudent. Those processes will include both Commission review of contracts used to meet the Company’s requirements under the Act, and the reconciliation proceedings for the Company’s RE plan.”

Staff’s initial brief, p. 14.

The Staff recommends that the Commission approve Consumers’ initial proposed surcharge for each customer class and subclass. The Staff asserts that the purposes of Act 295 are best served by collecting maximum revenues at the onset of the program and adds that the REP surcharge revenue is fully reconciled.

The Staff recommends that the Commission revisit appropriate cost rates and depreciation rates and schedules through the rulemaking required under MCL 460.1191. The Staff also recommends that the Commission establish a depreciation case to specifically address service life and other depreciation issues for renewable generation. The Staff also recommends that the Commission open a future docket for the purposes of better estimating the costs of wind generation for all utilities subject to the requirements of Act 295.

The Staff notes that concerns raised about Consumers’ proposed RFP and bid process for renewable energy procurement are warranted. The Staff agrees that Consumers’ RFP design and its statement of estimated costs are problematic and are likely to lead to higher rather than lower bids. The Staff also agrees that Consumers’ insistence on the need for bidders to submit proprietary information and proposed variable energy payments based on the use of the locational marginal price (LMP) may discourage bidders and drive up PPA costs. The Staff further notes that Consumers should modify its REP to consider the purchase of potentially lower-cost unbundled RECs, ACECs, or energy optimization credits (EOCs). The Staff does not recommend

that the Commission modify Consumers' RFP process as part of this proceeding, but does suggest that the Commission consider incorporating these recommendations for improving the RFP process into final rules implementing Act 295.

The Staff generally supports Consumers' proposed Experimental Advanced Renewable Program, but recommends that the program be expanded to include all renewable generation resources, rather than limiting the program to solar PV technology. The Staff also recommends that interconnection procedures should be addressed by the Commission's interconnection and net metering standards. The Staff recommends that Consumers consider alternatives to the proposed \$25 monthly participation fee and that the company should consider designing the program so that rates will adjust in accordance with any state or federal financial incentives.

In summary, the Staff observes that while the Commission's authority over a utility's contractual procurement process is limited, the Commission does have several options including: 1) directing the utilities to convene a collaborative including the Staff and interested stakeholders for designing a fair and transparent RFP and bid process; 2) providing the Staff with direction on what it means to "consult with" utilities on renewable energy RFPs as discussed in the temporary order issued in Case No. U-15800; and 3) working with the state to develop its own RFP and renewable energy procurement process and use the results as an indication of reasonableness and prudence of utility procedures.

Findings of Fact and Conclusions of Law

Subpart A of Part 2 of Act 295, MCL 460.1021 through MCL 460.1053, requires that all electric providers in Michigan file proposed REPs with the Commission for review and approval. Act 295 requires that an REP: 1) explain how the electric provider intends to meet the renewable capacity and renewable energy targets specified in Act 295; 2) estimate the costs associated with

meeting those targets; and 3) propose cost recovery mechanisms, including a transfer price mechanism, to recover a portion of the total costs through the PSCR process, and a 20-year levelized surcharge to recover the incremental cost of compliance from customers.

The Legislature has prescribed the standard by which the Commission shall approve or reject an REP under MCL 460.1021(6):

The commission shall not approve an electric provider's plan unless the commission determines both of the following:

- (a) That the plan is reasonable and prudent. In making this determination, the commission shall take into consideration projected costs and whether or not projected costs included in prior plans were exceeded.
- (b) That the life-cycle cost of renewable energy acquired or generated under the plan less the projected life-cycle net savings associated with the provider's energy optimization plan does not exceed the expected life-cycle cost of electricity generated by a new conventional coal-fired facility. In determining the expected life-cycle cost of electricity generated by a new conventional coal-fired facility, the commission shall consider data from this state and the states of Ohio, Indiana, Illinois, Wisconsin, and Minnesota, including, if applicable, the life-cycle costs of the renewable energy system and new conventional coal-fired facilities. When determining the life-cycle costs of the renewable energy system and new conventional coal-fired facilities, the commission shall use a methodology that includes, but is not limited to, consideration of the value of energy, capacity, and ancillary services. The commission shall also consider other costs such as transmission, economic benefits, and environmental costs, including, but not limited to, greenhouse gas constraints or taxes. In performing its assessment, the commission may utilize other available data, including national or regional reports and data published by federal or state governmental agencies, industry associations, and consumer groups.

The Commission agrees with the Staff that although Consumers' REP is flawed, the problems in the proposed plan do not rise to the level where the overall framework of the plan should be found unreasonable or imprudent.

To summarize, Consumers' REP proposes 900 MW of new wind energy system capacity, 50% of which Consumers proposes to build and 50% of which will be acquired through PPAs with third party developers. Consumers estimates the net present value revenue requirement for meeting this renewable capacity at \$5.3 billion. Consumers projects a 20-year levelized cost of \$172 per MWh

for wind energy from generating facilities it will build, and approximately \$174 per MWh for wind energy it will purchase through PPAs.

Most parties in the case contend that Consumers' cost projections are significantly inflated, pointing to Detroit Edison's projected cost of \$108 per MWh submitted in that company's REP in Case No. U-15806 and noting that providers in other states have paid less than \$100 per MWh for wind energy. The Environmental Coalition asserts that these high costs result from Consumers' estimated capacity factor of 28% and capacity credit of 12.5%, which it contends are far too low.

The Commission agrees that Consumers' estimate for the cost of wind power may be too high, but notes that the components Consumers used to calculate the cost—such as the wind capacity factor—are derived from reasonable sources.⁴ The Commission observes that Detroit Edison used a different method for establishing its cost estimate and made different assumptions in its plan. For example, Detroit Edison made the reasonable assumption that the federal production tax credit (PTC) will be renewed thus lowering the estimated cost of renewable energy by \$30-\$40 per MWh from Consumers' estimate. Conversely, Consumers made the also reasonable assumption that the PTC will not continue beyond 2012, thus deriving a higher estimated cost for renewable energy. Detroit Edison used a higher capacity factor than Consumers in its calculations, reducing its estimated costs an additional \$15-\$20 per MWh below Consumers' estimate. But as Consumers points out, as more data, particularly site-specific data, on wind capacity is acquired the company will be required to adjust the estimates in its EOP. Likewise, if the PTC is renewed in 2012, Consumers' REP will be adjusted to reflect this incentive.

The Environmental Coalition also argues that Consumers' proposed depreciation rate for wind power generating facilities is insufficiently supported by the evidence and is unreasonably high.

⁴Consumers used a 28% wind capacity factor from the January 21, 2007 21st Century Energy Plan of former Commission Chairman J. Peter Lark.

The Commission agrees that depreciation for wind generation must be treated in the same manner that depreciation issues are treated for other utility plant, with periodic review and updating of depreciation schedules for different plant components and corresponding adjustments to depreciation rates. The Commission therefore will open a depreciation case to specifically address depreciation of renewable energy facilities to be completed before Consumers submits its next REP. Consumers will then be able to adjust its depreciation estimates to conform to the results of the depreciation case.

The MWPA contends that Consumers' RFP contains terms requiring disclosure of proprietary and competitive information, grants Consumers unqualified discretion in evaluating bids, contains no provision for independent oversight, and places excessive risk on the PPA developer. As a result wind power providers, especially large wind developers, will decline to bid thereby decreasing competition and increasing the cost of wind energy acquired through PPAs. Similarly, the Environmental Coalition argues that Consumers' proposal to develop 50% of the wind energy required under the RPS itself is imprudent in part because Consumers has no experience as a wind power developer, and has not demonstrated that it can develop resources as effectively or efficiently as experienced wind power providers. The Environmental Coalition also asserts that because Consumers proposes to apply its fixed charge rate to the self-built wind energy regardless of cost or performance, Consumers would have a strong financial incentive to build and operate these facilities at the highest possible cost. Finally, LaFarge, MSEC, and others contend that Consumers' proposed REP process excludes lower cost sources of RECs such as ACECs and EOCs.

The Commission agrees that many of these concerns are compelling and that it would be prudent for Consumers to take the concerns of, and recommendations by, the intervenors into

consideration in designing its RFP and bidding process. The Commission reiterates that in approving this plan, it is not approving any actual costs. All actual costs incurred for PPAs or self-build renewable generation are subject to Commission review for reasonableness and prudence. Moreover, the Commission will have the advantage of knowing not only what Consumers proposes to spend, but also what other Michigan utilities are proposing to pay for renewable generation equipment and PPAs. Detroit Edison's recently approved contract is a case in point. Detroit Edison received Commission approval to pay \$115 per MWh for 20 years for wind energy, capacity, and RECs.⁵ A PPA that proposes a substantially higher price may not be approved by the Commission on grounds that it is unreasonable. Likewise, cost recovery for self-build renewable generation will be carefully reviewed in a contested case before Commission approval.

The Commission agrees with the Staff's recommendation that a future docket should be opened to track costs of various renewable energy systems and components, to provide information for determining reasonable and prudent expenditures. The Commission also directs the Staff to provide oversight and consultation during the RFP development and design process, including proposal evaluation, to ensure that the RFP process is competitive and fair and that the process generates optimal results.

In this initial plan, Consumers does not contemplate the purchase of unbundled RECs, ACECs or EOCs to substitute for RECs. Consumers asserts that it is purchasing bundled renewable energy in order to meet its capacity requirements in 2013 as provided in MCL 460.1027. The Commission agrees that Consumers' proposal is reasonable at this time, but presumes that Consumers might alter its plan at some point to take advantage of purchasing unbundled RECs, ACECs, or EOCs if prices are favorable. Further, the Commission notes that the purchase of RECs from

⁵See, April 30, 2009 order in Case No. U-15806.

distributed generation resources, especially small generators, would support the development of distributed generation in Michigan. Distributed generation could both improve electric system reliability and could meet a reasonable portion of future electricity demand in Michigan. In addition, the net metering program under Act 295 will create the opportunity for the creation of new distributed generation customers on Consumers' system who will generate RECs that are available for purchase. The Commission therefore directs Consumers to work with the Staff to assure that RECs produced by small distributed generators be effectively tracked, certified, and used to meet the overall renewable goals of the company's REP.

The Commission notes that the MSEC raised for the first time in its reply brief the issue that Consumers has substantially overestimated its baseline RECs. Because there is insufficient evidence in this record to demonstrate that Consumers' estimate is incorrect, the Commission declines to address the issue in this order. In Consumers' REP filing in two years, the Commission expects that Consumers' estimate of baseline RECs will be more precisely determined and validated.

The Environmental Coalition argues that Consumers' proposed Experimental Advanced Renewable Program is too small. The Staff observes that the proposed program could be improved by allowing participation by any type of renewable generator, by using the proposed interconnection standards to govern interconnection procedures, and by limiting the cost of customer participation. The Commission disagrees that the proposed Experimental Advanced Renewable Program is too small at this time. The Commission views this as a pilot program which, if successful, will likely be expanded in the future. However, the Commission agrees that the flat monthly fee of \$25 for all size generators, as proposed by Consumers, is likely to deter participation by smaller generators, especially residential customers. The Commission agrees with

the Staff's recommendation that the fee should be proportional to the size of the generating system and further finds that it should be limited to a maximum charge of \$50 per month for the largest generators. The Commission therefore approves Consumers proposed Experimental Advanced Renewable Program, provided that the company agrees to set the administration fee equal to the current system access charge for each customer class, up to a maximum of \$50, as outlined in the Staff's testimony. *See*, 5 Tr 704. The Commission adds that it expects the other details of the program to conform to all laws and regulations governing interconnection and distributed generation.

Finally, the Attorney General and the Environmental Coalition argue that Consumers' proposed surcharge design requires residential ratepayers to pay 65% of the surcharge amount even though residential customers only account for 35% of overall energy usage. Thus, the proposed surcharge design disproportionately burdens the residential class. ABATE also points out that the surcharge will generate a sizable surplus before Consumers begins to pay for renewable energy.

The Commission observes that the Attorney General and the Environmental Coalition assume that all commercial and industrial class customers are *de facto* large energy users. They are not. As Consumers noted, in designing the surcharge the company balanced its revenue requirement with the limits mandated in Act 295 and with the rate impacts for each customer class and subclass. While it is true that residential customers will be paying the majority of the total cost of the program, the rate impact is relatively modest for these customers. Some of the smaller commercial and industrial users will be paying less than the cap contained in MCL 460.1045(2), but will nevertheless see a more significant rate increase, on a percentage basis, than will residential customers.

Section 45(1) of Act 295 provides: “For an electric provider whose rates are regulated by the commission, the commission shall determine the appropriate charges for the electric provider’s tariffs that permit recovery of the incremental cost of compliance[.]” In light of the increases proposed in Consumers’ current rate case, the mandatory realignment of rates, the difficult economic circumstances residents of this state are currently facing, and considering the probable overestimate of renewables costs contained in Consumers REP, the Commission finds that Consumers’ REP should be modified to limit the surcharge on residential customers to \$2.50 per month. This reduction is further justified by the concerns raised by the intervenors about the size of the reserve fund that Consumers proposes to establish to meet the RPS. At \$3.00 per meter per month, Consumers’ reserve fund peaks at \$353 million in 2014. With this reduction, the fund peaks at approximately \$341 million in the same year, a difference of only \$12 million. The Commission adds that Consumers will be submitting another REP case in 2011, which will contain updated cost estimates. If necessary, the surcharge amounts can be adjusted at that time.

ENERGY OPTIMIZATION PLANS

Positions of the Parties

Consumers’ application stated that the company worked with Summit Blue Consulting and Wisconsin Energy Conservation Corporation to develop a portfolio of energy optimization programs designed to deliver electric and natural gas savings in a manner that meets the energy optimization requirements in Act 295. According to Consumers, a process that involved a review of the most successful energy efficiency programs from across the country, with a focus on successful programs in the Midwest, was used to develop the portfolio. The programs target all sectors and customer classes, including low-income and small business customers. Once the EOP

is approved, Consumers plans to phase in its energy optimization programs beginning in July 2009.

Consumers described five major programs that it proposed to offer for residential customers including: 1) the Residential Comprehensive Homes Program that includes direct installation components for low-income and multi-family customers; 2) the Efficient Products Program, which features rebates for Energy Star® products such as compact fluorescent light bulbs (CFL), furnaces, central air conditioners, room air conditioners, water heaters, clothes washers, and dehumidifiers; 3) an appliance recycling program that collects and disposes of used refrigerators, freezers, room air conditioners, and dehumidifiers in an environmentally safe manner; 4) an energy education program for 4th-6th grade students and their families, which includes low cost energy efficiency measures; and 5) several residential pilot programs.

Consumers' proposed low-income program includes recommendations, financial assistance, and education to low-income customers to assist them in reducing energy use and managing their energy costs. In addition, Consumers states that it will coordinate low-income services with local weatherization providers to provide assistance at a lower administrative cost. According to the EOP, Consumers will provide and install, at no charge, a standard list of eligible building shell and equipment measures as well as specific energy savings measures that are not currently funded through the federal Low Income Home Energy Assistance Program. These measures may include CFL, furnaces, insulation, water heaters, refrigerators, programmable thermostats, duct sealing, and window replacement. Services will also be offered to owners of multi-family rental properties with low-income residents.

Consumers' EOP contains four programs for business customers including: 1) the Comprehensive Business Solutions Program that will provide incentives for the purchase of over 170

energy efficiency measures; 2) the Custom Business Solutions Program, targeted at large commercial and industrial customers, which provides for specialized energy savings applications; 3) the Small Business Direct Install Program that provides direct installation of efficient lighting technologies and other low cost measures; and 4) The Business Pilots Program, which will offer local government, universities, schools, and hospitals an opportunity to participate in a Michigan Saves type program.⁶

Consumers estimates that its EOP will cost approximately \$508 million from 2009 through 2014 to achieve the energy saving targets specified in Act 295. Consumers proposes to expense all costs incurred in designing and implementing its EOP and requests approval of surcharges that are designed to recover the costs of the plan on a levelized basis over that six year period. *See*, Exhibit A-28. Consumers proposes that for EOP cost underrecoveries existing at the end of any accounting month, monthly interest will be accrued at one twelfth of the company's authorized pre-tax overall rate of return. For EOP overrecoveries existing at the end of any accounting month, monthly interest will be accrued at one twelfth of Consumers' average short-term borrowing rate.

Consumers notes that its proposed EOP expenditure is less than the maximum amount permitted under Act 295. Consumers asserts that while it may be possible to achieve energy savings in addition to the minimum amounts required by Act 295, at a cost within the expenditure limits, the company believes that the current energy efficiency targets are relatively aggressive and some experience and evaluation is required before increasing spending and exceeding the goals of

⁶Michigan Saves is an energy efficiency program that provides up-front financing for the installation of energy efficiency measures. Michigan Saves will pay the cost of installing energy efficiency measures or equipment and the property owner will make monthly payments on his utility bill until the loan is paid off. The required payment amount on the loan will be less than the energy savings that result from installation of the energy efficiency measure.

Act 295. Consumers further contends that under current ratemaking practices there is a disincentive for pursuing greater energy savings because any reduction in sales below the levels used to establish current rates results in a shortfall in revenues to cover utility fixed costs, potentially leading to lower earnings. Consumers therefore requested that the Commission overrule the ALJ and approve a revenue decoupling mechanism as part of this proceeding.

The expected benefit cost test results are detailed for each program and shown in Exhibit A-3. Exhibit A-3 shows that the programs collectively, including the low-income program, attain a Utility System Resource Cost Test ratio of 3.5, which exceeds the minimum requirements of Act 295. Consumers proposes a process for evaluation of actual energy optimization programs to verify the incremental energy savings, using bill analysis, surveys, and on-site verification of samples of participating customers from each program to determine if net energy savings are actually equal to the gross savings values.

Consumers notes that some industrial customers may choose to run self-directed EOPs. For these customers, Consumers proposes to use the energy savings value provided by the customers in their self-direct applications, as provided in Act 295. For pilot programs, general education, and customer awareness programs Consumers states that it will assume that the energy savings achieved by the program are proportionate to the amount of the total EOP budget spent on the program.

Consumers indicates that it plans to file annual reconciliation reports detailing how much it spent on each program, and how much energy was saved by each program by customer class, within 120 days after the end of each plan year.

Finally, Consumers proposed a mechanism to award the company a financial incentive for exceeding the energy optimization performances standard. Consumers proposed that it earn an

incentive payment based on the net cost reductions experienced by its customers as a result of the implementation of its EOP. Under Consumers' proposal, for every 1% energy savings achieved above the statutory target, the company will earn an incentive equal to 0.50% of the total net cost reduction experience by its customers. The incentive payment will be calculated separately for each year's electric and natural gas plan performance.

The Attorney General argues that the Commission should not adopt an electric revenue decoupling mechanism at this time. The Attorney General notes that Act 295 only authorizes decoupling for gas and that gas rates should not be decoupled until the company has spent the minimum qualifying amount of 0.5% of total natural gas retail sales revenues and presents evidence that it has an underrecovery of revenues resulting from implementation of its EOP.

The Attorney General, LaFarge, and ABATE assert that the Commission should not approve Consumers' financial incentive proposals before the company actually exceeds the energy optimization performance standards and because the incentive as proposed by the company is not commensurate with performance.

ABATE argues that Consumers seeks to collect an energy optimization surcharge on gas transportation-only customers as well as from full service customers. According to ABATE, transportation-only customers should be excluded from the EOP surcharge because they do not purchase gas from Consumers. ABATE notes that it appealed the Commission's February 3, 2009 order in Case No. U-15800, which determined that gas transportation-only customers should pay an EOP surcharge.⁷

The Environmental Coalition asserts that the Commission should reject Consumers' EOP, on grounds that the plan is not reasonable and prudent, unless the company agrees to certain revisions

⁷See, *ABATE v Public Service Comm*, Court of Appeals Docket No. 290640.

to its plan. The Environmental Coalition points out that energy optimization is the most cost effective way to reduce energy use, delay the need for expensive new generation, and save customers money. Yet Consumers proposes to spend \$63 million less on energy optimization than is permitted in Act 295. The Environmental Coalition notes that Consumers' evidence shows aggregate savings of \$3.50 for every \$1.00 spent for energy optimization. It adds that several of the programs have estimated benefit cost ratios that are significantly higher than 3.5. The Environmental Coalition recommends that in addition to adding more funding to the programs with the highest benefit cost estimates, Consumers should also expand certain proposed programs that show significant promise for long-term energy savings. The Environmental Coalition maintains that in light of the substantial savings to be gained from energy optimization, it is neither reasonable nor prudent for Consumers to spend less than the "floor" set by Act 295.

The Environmental Coalition argues that Consumers failed to propose a reasonable and prudent method for evaluation and verification of EOP savings. According to the Environmental Coalition, Consumers' plan to estimate savings using the Michigan Energy Measures Database (MEMD) is unacceptable because the assumptions in the database have not been reviewed and verified. The Environmental Coalition posits that if Consumers' estimates regarding savings from CFL are incorrect, the company runs the risk of not meeting its electric savings targets under Act 295. The Environmental Coalition recommends that the Commission require Consumers to validate as soon as possible the assumptions underlying the MEMD by comparing the values in the MEMD with values in similar databases maintained in other states. The Environmental Coalition asserts that this validation must occur in a manner that allows stakeholders to review the savings assumptions in an informal collaborative or in a formal proceeding before the Commission. The Environmental Coalition notes that because Consumers' EOP for electric is so dependent on

savings from CFL, the company should be directed to carry out a market saturation study to specifically validate EOP assumptions concerning CFL savings.

The Environmental Coalition argues that Consumers should not be permitted to include energy optimization savings from self-directed plans in its EOP until the energy optimization measures are implemented and energy savings are verified. The Environmental Coalition claims that Consumers' proposal to add these savings to its plan, without verification, violates Section 93(6) of Act 295. The Environmental Coalition recommends that the Commission require Consumers to take a series of steps to assure that savings from self-directed plans are properly measured and verified.

Finally, the Environmental Coalition contends that Consumers should establish a collaborative process to “develop any needed re-design and improvements to its energy efficiency programs during the six year plan’ and to determine ‘whether energy efficiency investment in addition to the EO Plan would be cost-effective and beneficial to its customers.’” Environmental Coalition’s brief, p. 66. The Environmental Coalition asserts that Consumers expressed willingness to engage in such a process and that the Commission should formalize a collaborative to perform an ongoing review of the EOP in this order.

In summary, the Environmental Coalition recommends that the Commission reject Consumers’ EOP unless the plan is amended to include: 1) the investment of the maximum amount permitted under Act 295; 2) verification that energy savings from customers’ self-directed energy efficiency improvements are achieved before claiming the associated savings; 3) validation of CFL energy savings assumptions through a market saturation study; 4) verification of underlying assumptions in the MEMD; 5) commencement of evaluation work as soon as possible; and 6) updating the MEMD with Michigan-based experience.

The Staff asserts that the concerns raised by the Environmental Coalition have merit and should be addressed by the Commission at some point. Nevertheless, the Staff recommends that the Commission approve Consumers' initial EOP. The Staff points out that Consumers has only requested approval of a conceptual plan based upon estimates of EOP costs and performance; Consumers' actual recovery of costs will not be approved until the company's investments in energy optimization have been reviewed and found to be reasonable and prudent and energy savings have been verified.

The Staff recommends that the Commission defer consideration of Consumers' proposed revenue decoupling mechanism until the Commission addresses the design of a decoupling mechanism in the company's current rate case, Case No. U-15645.

The Staff concurs with the Attorney General and ABATE that Consumers' proposed financial incentive mechanism should not be approved. The Staff argues that the standards for accepting or rejecting the EOP do not apply to the financial incentive mechanism because Act 295 does not include a financial incentive mechanism as a required element of an EOP. If the Commission approves a financial incentive at this time, the Staff recommends that the Commission approve the Staff's alternative mechanism. The Staff asserts that Consumers' proposed mechanism produces substantial incentive payments for small incremental consumption reductions beyond the legislative target. According to the Staff, Consumers' mechanism is designed for a performance objective limited to achieving, or slightly exceeding, the statutory minimum targets. The mechanism is therefore unlikely to give the utility an incentive to pursue economic energy efficiency resources that are associated with more aggressive performance. The Staff asserts that its proposed incentive mechanism, shown in Exhibit S-1, is a commensurate incentive for exceeding energy optimization targets.

The Staff recommends that Consumers file its first reconciliation case on March 31, 2010—90 days after the end of the plan year rather than the 120 days proposed by Consumers—to cover the period commencing with the implementation of the EO program through December 31, 2009. The Staff adds that a 120 day period might give the Commission flexibility in staggering reconciliation cases.

The Staff states that it encouraged the development of the MEMD for the purposes of consistency in data assumptions for all initial provider plans. The database was intended to be “a starting point for identifying potential energy savings for all providers.” Staff’s initial brief, p. 48. The Staff further notes that Consumers’ EOP will be subject a cost-reconciliation process involving a contested-case hearing covering all program costs, actual energy savings, and method used to determine both. The Staff therefore recommends that the Commission find that energy optimization savings estimates used by Consumers for its EOP are reasonable and prudent at this time. The Staff also recommends that the Commission direct Consumers to provide annual updates of the MEMD based on the company’s actual experiences as determined in its EOP reconciliation proceeding. The Staff further recommends that the Commission create a workgroup to verify data and to make revisions to the MEMD on the basis of information provided by all utilities and other stakeholders.

The Staff recommends that the Commission reject Consumers’ proposal to record interest on underrecoveries of energy optimization costs at the company’s approved pre-tax rate of return and, for overrecoveries, to record interest at the average short-term borrowing rate. The Staff notes that Act 295 is silent on the treatment of EOP costs and recommends recording interest on under-recovered EOP expenditures at Consumers’ average short-term borrowing rate.

The Staff contends that ABATE's claim, that gas transportation-only customers should not be assessed an EOP surcharge, should be deferred until the Court of Appeals decides the matter. Finally, the Staff contends that the Commission should address the process of verification of energy savings by self-directed EOPs in the context of rulemaking required by Act 295. The Staff also points out that there are various interpretations of "electric retail sales" used in the different REP and EOP cases. The Staff recommends that the definition of "electric retail sales" should be clarified by rule.

Findings of Fact and Conclusions of Law

Subpart B of Part 2 of Act 295, MCL 460.1071 through MCL 460.1113, requires each electric provider and all rate-regulated natural gas distribution utilities to file proposed EOPs with the Commission for review and approval. Act 295 provides that, "The overall goal of an EOP is to reduce the future costs of providing electric and natural gas service to customers. In particular, an EO plan shall be designed to delay the need for constructing new electric generating facilities and thereby protect consumers from incurring the costs of such construction."

The EOP must: 1) propose a set of programs that will meet energy savings targets established by Act 295; 2) include offerings for each customer class, including low income residential; 3) specify necessary funding levels; 4) propose cost recovery mechanisms that will allow recovery of EOP costs; 5) demonstrate that the energy optimization programs, excluding program offerings to low income residential customers, will be cost effective; and 6) provide for the practical and effective administration of the proposed programs. Act 295 further provides that the Commission may authorize a financial incentive for exceeding the energy optimization performance standard.

Section 73(2) of Act 295 provides:

The commission shall not approve a proposed energy optimization plan unless the commission determines that the EO plan meets the utility system resource cost test and is reasonable and prudent. In determining whether the EO plan is reasonable and prudent, the commission shall review each element and consider whether it would reduce the future cost of service for the provider's customers. In addition, the commission shall consider at least all of the following:

- (a) The specific changes in customers' consumption patterns that the proposed EO plan is attempting to influence.
- (b) The cost and benefit analysis and other justification for specific programs and measures included in a proposed EO plan.
- (c) Whether the proposed EO plan is consistent with any long-range resource plan filed by the provider with the commission.
- (d) Whether the proposed EO plan will result in any unreasonable prejudice or disadvantage to any class of customers.
- (e) The extent to which the EO plan provides programs that are available, affordable, and useful to all customers.

The Commission agrees with the Staff's position that Consumers' EOP meets the requirements for approval under Section 73 and that, although there are problems with Consumers' proposed EOP, these problems do not rise to the level where the plan should be found unreasonable. Further, the Commission agrees that many, if not all, of the issues raised by the Staff and intervenors regarding Consumers' EOP can be addressed outside of this case.

The Environmental Coalition raised the following concerns regarding Consumers' EOP:

- In light of the fact that Consumers' evidence shows that the energy optimization programs have a high benefit cost ratio, it is unreasonable for Consumers to decline to increase its spending on energy optimization programs.
- Consumers fails to propose a reasonable method for evaluation and verification of EOP savings by failing to propose a process for refining and updating the MEMD.
- Consumers' EOP does not ensure that there will be verification of the installation of energy optimization measures by customers undertaking self-directed programs and provides no means for validation of the energy savings resulting from the self-directed programs.
- Consumers should propose a collaborative process to refine and improve its EOP.

These concerns are addressed *seriatim*.

Section 77 of Act 295 sets out the energy savings targets and timelines for gas and electric utilities. According to Consumers, its EOP will meet these targets within the necessary timeframes. Section 89(7) of Act 295 provides:

A natural gas provider or an electric provider shall not spend more than the following percentage of total utility retail sales revenues, including electricity or natural gas commodity costs, in any year to comply with the energy optimization performance standard without specific approval from the commission:

- (a) In 2009, 0.75% of total retail sales revenues for 2007.
- (b) In 2010, 1.0% of total retail sales revenues for 2008.
- (c) In 2011, 1.5% of total retail sales revenues for 2009.

In other words, a gas or electric provider is required to meet the energy optimization performance standards at some cost, and only if the statutory spending targets are exceeded is the provider required to have Commission approval. In this case, Consumers plans to meet or exceed the energy savings objectives at a lower cost than that provided for in Section 89(7). The fact that the company's evidence shows that Consumers could attain additional cost-effective energy savings through a more aggressive program does not make the EOP as proposed unreasonable or imprudent for the purposes of this case. The argument by the Environmental Coalition, that Consumers' EOP should be disapproved on the basis that its plan is not as expansive as it could be, is therefore rejected.

The Commission agrees with the Environmental Coalition that accurate information about implementation of energy efficiency measures and energy savings is essential to successful implementation and verification of the EOP for Consumers and the other electric and gas providers. The Commission also agrees with the Staff's recommendation that a collaborative should be established to provide program evaluation support. The energy optimization evaluation collaborative should update and refine the MEMD on the basis of actual experience and consider the possibilities for conducting joint studies (such as the CFL market saturation study

recommended by the Environmental Coalition), the results of which can be used by all providers. On the basis of information gained from the revisions to the MEMD and the results of any additional studies, the collaborative should also make recommendations for improving EOPs for all providers. The collaborative should include all electric and gas providers subject to the Commission's jurisdiction under Act 295. In addition, energy efficiency experts, equipment installers, and other interested stakeholders should be encouraged to participate in the collaborative.

In response to concerns regarding the verification of self-directed energy optimization plans, the Commission points to Section 93(8) of Act 295:

A customer implementing a self-directed energy optimization plan under this section shall submit to the customer's electric provider every 2 years a brief report documenting the energy efficiency measures taken under the self-directed plan during that 2-year period, and the corresponding energy savings that will result. The report shall provide sufficient information for the provider and the commission to monitor progress toward the goals in the self-directed plan and to develop reliable estimates of the energy savings that are being achieved from self-directed plans. . . . A report under this subsection shall be accompanied by an affidavit from a knowledgeable official of the customer that the information in the report is true and correct to the best of the official's knowledge and belief. If the customer has retained an independent energy optimization service company, the requirements of this subsection shall be met by the energy optimization service company.

Section 93(9) of Act 295 adds:

An electric provider shall provide an annual report to the commission that identifies customers implementing self-directed energy optimization plans and summarizes the results achieved cumulatively under those self-directed plans. The commission may request additional information from the electric provider. If the commission has sufficient reason to believe the information is inaccurate or incomplete, it may request additional information from the customer to ensure accuracy of the report.

In addition, Section 93(10) provides for a hearing and the imposition of penalties on self-directed companies that fail to comply with the requirements under Section 93.

The Commission agrees with the Staff that concerns regarding independent verification of self-directed plans should be addressed outside the EOP cases. The Commission therefore directs the Staff to address these concerns under the rulemaking required under Act 295.

The Commission further observes that Section 87 of Act 295 provides that the Commission “shall establish an energy optimization credit certification and tracking program. The certification and tracking program may be contracted to and performed by a third party through a system of competitive bidding.” The Staff is also directed to assure that the third party contractor for the energy optimization credit program verifies the implementation and energy savings of self-directed projects before issuing energy optimization credits for these projects.

The Commission agrees with the Staff and others that Consumers’ renewed request for approval of a revenue decoupling mechanism is beyond the scope of this proceeding. As the ALJ correctly pointed out, the Commission has found that the proper forum for addressing decoupling is in a general rate case proceeding. Nevertheless, the Commission recognizes the importance of decoupling as the primary means to remove the utility disincentive to promoting energy optimization and recognizes the urgency in implementing decoupling to support Consumers’ EOPs. Therefore, the Commission will address decoupling for both gas and electric service in the company’s respective general rate cases.⁸

The Commission also finds that approval of a financial incentive is at the Commission’s discretion, and the incentive must be commensurate with the degree to which the provider’s program exceeds the energy optimization targets. The Commission agrees that Consumers’ proposed financial incentive mechanism is not proportionate with additional energy savings above the statutory targets. As the Staff points out, Consumers’ proposed incentive mechanism provides

⁸See, Docket Nos. U-15645 (electric) and U-15986 (gas).

substantial rewards for achieving, or slightly exceeding, the minimum statutory targets for energy savings. Consumers therefore has little incentive to pursue cost effective energy efficiency programs that significantly exceed the statutory minimum. However, the Commission believes that the Staff's incentive mechanism would be more effective if it enhanced the incentive to invest more in cost-effective energy optimization programs. Therefore, the Commission directs that within 30 days, the parties to this case may file new proposed financial incentive mechanisms. The parties may propose something new or may use the mechanisms proposed by either Consumers or the Staff, with modifications to achieve the aforementioned objectives.

Finally, the Commission agrees that Consumers should record interest on both over and underrecovered EOP expenditures at the company's short-term borrowing rate.

THEREFORE, IT IS ORDERED that:

A. The renewable energy plan proposed by Consumers Energy Company is approved subject to the company's agreement to implement changes set forth in this order. Consumers Energy Company has 21 days following the issuance of this order to submit a letter from its Chief Executive Officer confirming the utility's agreement to implement the changes specified in this order and verifying that officer's authority to make such representations on behalf of the company.

B. The Commission Staff shall provide oversight and consultation during the request for proposal development and design process, including proposal evaluation, to ensure that the process is competitive and fair and that the process generates optimal results.

C. Consumers Energy Company shall file its first reconciliation case on or before March 31, 2010.

D. The energy optimization plan for its gas and electric utilities that was proposed by Consumers Energy Company is approved.

E. The Director of the Commission's Electric Reliability Division shall establish an energy optimization evaluation collaborative to accomplish the tasks outlined in this order.

F. The Director of the Commission's Regulatory Affairs Division shall include proposed rules for ensuring verification of implementation and energy savings for self-directed customers.

G. The Commission Staff shall assure that the third-party contractor for the energy optimization credit program verifies the implementation and energy savings of self-directed projects before issuing energy optimization credits for these projects.

H. Consumers Energy Company should record interest on both over and underrecovered energy optimization plan expenditures at the company's short-term borrowing rate.

I. Within 30 days, interested parties shall file new proposals for a financial incentive mechanism. The parties may propose a new mechanism or may use one of the mechanisms proposed by either Consumers Energy Company or the Commission Staff, with modifications to achieve the objectives set forth in the order.

J. Consumers Energy Company shall file with the Commission, within 30 days, tariff sheets that reflect the approvals set forth in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of May 26, 2009.

Mary Jo Kunkle, Executive Secretary

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-15805

County of Ingham)

Mignon Middlebrook being duly sworn, deposes and says that on May 26, 2009 A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

Mignon Middlebrook

Subscribed and sworn to before me
this 26th day of May 2009

Sharron A. Allen
Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

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