

S T A T E O F M I C H I G A N
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for a financing order approving the securitization) Case No. U-18250
of qualified costs and related approvals.)

)

At the September 22, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On February 10, 2017, Consumers Energy Company (Consumers) filed an application, with supporting testimony and exhibits, seeking a financing order authorizing the issuance of securitization bonds covering approximately \$184.6 million in qualified costs. The application was filed pursuant to 2000 PA 142 (Act 142), which amended 1939 PA 3, MCL 460.1 *et seq.*, and allows certain utilities¹ the option of reducing their costs through the issuance of securitization

¹ Consumers meets the requirements to seek a financing order. *See*, MCL 460.10h(c); MCL 460.562(e).

bonds.² The application explained that Consumers intends to buy out, effective May 31, 2018, the remaining term of the Power Purchase Agreement between Entergy Nuclear Palisades, LLC (as subsequently assigned by Entergy Nuclear Palisades, LLC, to Entergy Nuclear Power Marketing, LLC) and Consumers, dated July 11, 2006 (Palisades PPA). In its application, Consumers requested that the Commission dispense with the Proposal for Decision (PFD) and read the record in this proceeding. The application further requested authority to: (1) create a special purpose entity (SPE) to which Consumers would transfer securitized property for the purpose of minimizing bankruptcy risks and maximizing the ratings on its securitization bonds; (2) implement securitization charges, and related tax charges, to be collected from its customers,³ as well as a mechanism for undertaking periodic true-ups of those charges; (3) proceed, at its sole discretion, with the sale of the securitization bonds authorized in this case; and (4) employ appropriate methodologies to account for these transactions and to eventually refund or retire any or all of its securitization bonds.⁴

Pursuant to due notice, a prehearing conference was held on March 9, 2017, before Administrative Law Judge Sharon L. Feldman (ALJ). In the course of the prehearing conference,

² Securitization is the process by which a utility, following the issuance of a financing order by the Commission, replaces relatively high-cost debt and equity with lower-cost debt in the form of securitization bonds. MCL 460.10h-460.10o.

³ As used throughout this financing order, unless a different subset of Consumers' customers is expressly specified, the term "customers" refers to all existing and future retail electric distribution customers of Consumers or its successors, with the exception of current choice customers (who remain so), customers using self-service power as defined in MCL 460.10a(4), and customers engaged in affiliate wheeling as defined in MCL 460.10a(10).

⁴ The Commission had been made aware of Consumers' intent to terminate the Palisades PPA, and to seek a financing order addressing the buyout payment. In the December 20, 2016 and January 20, 2017 orders in Case No. U-18218, the Commission alerted Consumers regarding basic information that the Commission would require in order to make a reasoned determination on this application.

the ALJ granted intervenor status to the Michigan Department of the Attorney General (Attorney General), the Association of Businesses Advocating Tariff Equity (ABATE), Michigan Environmental Council (MEC), Entergy Nuclear Palisades, LLC, and Entergy Nuclear Power Marketing, LLC (together, Entergy), and the Residential Customer Group (RCG). The Commission Staff (Staff) also participated in the proceedings. In the January 20, 2017 order in Case No. U-18218, p. 4, the Commission committed to reading the record and issuing a final determination on this financing application no later than August 31, 2017.⁵ Thus, the ALJ established a schedule for this case that dispensed with the PFD and accorded with that date. 1 Tr 24. On March 22, 2017, Consumers submitted revised testimony and exhibits to reflect the findings of the recently completed rate case, Case No. U-17990.

On May 8, 2017, the Commission held public hearings in Lawrence, Michigan, to provide an additional opportunity for members of the public to comment on the application pursuant to Mich Admin Code, R 792.10413.

On May 16, 2017, testimony was filed by the Staff, the Attorney General, ABATE, and the RCG. On June 7, 2017, rebuttal testimony was filed by ABATE, Entergy, and Consumers. On June 9, 2017, ABATE filed a motion to strike certain testimony offered by the Staff and Consumers. On June 12, 2017, Consumers and the Staff filed responses to the motion to strike. At the hearing conducted on June 13, 2017, the ALJ denied the motion. 2 Tr 51-52. On June 12, 2017, the RCG filed a motion for judicial notice. On June 15, 2017, Consumers filed a response to

⁵ The Commission was thereby attempting to accommodate the wishes of Entergy, who had indicated that a decision was needed by September 1, 2017, due to the fact that Palisades requires refueling by October 2018, and significant lead time is necessary.

that motion. At the hearing conducted on June 16, 2017, the ALJ denied the motion. 5 Tr 1044-1046.

Evidentiary hearings were held on June 13-16, 2017. Testimony and exhibits were bound into the record, and cross-examination took place.

On July 7, 2017, the parties filed a joint Stipulation and Agreement to extend the dates for initial and reply briefing to August 11 and September 1, 2017, respectively, and the date for a final determination to September 28, 2017. The stipulation stated that the parties were actively engaged in significant settlement discussions, an extension would facilitate settlement, and that “Entergy has determined that the one-month extension will not materially impair its operational decision-making for the Palisades facility.” Stipulation and Agreement, p. 2. On July 12, 2017, the Commission issued an order authorizing the ALJ to extend the date for a final order in this matter in accordance with the joint stipulation.

Based on communications from counsel for each party, on August 7, 2017, the ALJ reopened the record for the purpose of receiving Exhibit S-7.⁶

Consumers, the Staff, ABATE, the RCG, and Entergy filed briefs on August 11, 2017. Timely reply briefs were filed by Consumers, the Staff, ABATE, Entergy, and the Attorney General on September 1, 2017. On September 2, 2017, the RCG filed a reply brief and a motion for an extension of the time to file the reply brief.⁷ The Commission has read the record, which consists of 1,050 pages of transcript and 118 exhibits admitted into the record.

⁶ On August 17, 2017, Consumers filed the confidential affidavit of David F. Ronk, Jr. *See*, Consumers’ initial brief, p. 35, note 16. That filing is not part of the record in this proceeding.

⁷ The reply brief and motion appear to have been submitted to the Executive Secretary around 4:00 a.m. on September 2, 2017, thus about 11 hours late. The Commission grants the motion and will consider the reply brief, because no party should be prejudiced thereby and it will not delay the Commission’s consideration of this matter. Motion, pp. 2-3.

II.

APPLICABLE LAW

A financing order is governed by the mandates of MCL 460.10h-460.10o. Key sections provide as follows:

(1) Upon the application of an electric utility, if the commission finds that the net present value of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods and that the financing order is consistent with the standards in subsection (2), the commission shall issue a financing order to allow the utility to recover qualified costs.

(2) In a financing order, the commission shall ensure all of the following:

- (a) That the proceeds of the securitization bonds are used solely for the purposes of the refinancing or retirement of debt or equity.
- (b) That securitization provides tangible and quantifiable benefits to customers of the electric utility.
- (c) That the expected structuring and expected pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of the financing order.
- (d) That the amount securitized does not exceed the net present value of the revenue requirement over the life of the proposed securitization bonds associated with the qualified costs sought to be securitized.

MCL 460.10i(1) and (2). With regard to the meaning of “qualified costs” as used in

MCL 460.10i(1) above, MCL 460.10h(g) provides:

“Qualified costs” means an electric utility’s regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility’s existing debt and equity securities in connection with the issuance of securitization bonds. Qualified costs include taxes related to the recovery of securitization charges.

MCL 460.10k(2) provides, that “A financing order shall include terms ensuring that the imposition and collection of securitization charges authorized in the order are a nonbypassable charge.” The following definitions apply to this language:

“Securitization charges” means nonbypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to fully recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in the financing order.

“Nonbypassable charge” means a charge in a financing order payable by a customer to an electric utility or its assignees or successors regardless of the identity of the customer’s electric generation supplier.

MCL 460.10h(i) and (f).

A financing order must include a mechanism requiring that the securitization charges be reviewed and adjusted by the Commission at least annually, within 45 days of the anniversary date of the issuance of the bonds, to correct overcollections or undercollections from the preceding 12 months. MCL 460.10k(3).

Only the applicant may seek rehearing of a financing order. MCL 460.10i(7). Any party may seek appeal from the Court of Appeals; however, review is limited to whether the order “conforms to the constitution and laws of this state and the United States and is within the authority of the commission under this act.” MCL 460.10i(8); *see, Attorney General v Public Service Comm*, 247 Mich App 35, 42-43; 634 NW2d 710 (2001).

This proceeding involves Consumers’ fourth application for a financing order pursuant to Act 142. Consumers’ initial application was filed July 5, 2000, in Case No. U-12505, and resulted in an October 24, 2000 order that authorized Consumers to securitize up to \$468,592,000 in qualified costs (the 2000 order).⁸ Consumers’ second application was filed March 4, 2003, in

⁸ The 2000 order was affirmed by *Attorney General v Public Service Comm*, 247 Mich App 35; 634 NW2d 710 (2001) (*Attorney General*).

Case No. U-13715. On June 2, 2003, the Commission issued an order in that case authorizing securitization of certain assets, rejecting other assets, and adopting a surcharge for certain assets that excluded retail open access (ROA) customers from participation (the 2003 order).⁹ Consumers sought rehearing, and, following a remand for additional evidence, the Commission issued an order on October 14, 2004, denying the application and vacating the 2003 order. Consumers' third application was filed September 9, 2013, in Case No. U-17473, and resulted in a December 6, 2013 order that authorized Consumers to securitize up to \$389.6 million in qualified costs (the 2013 order).

III.

CONSUMERS' PROPOSAL

Richard T. Blumenstock, Executive Director of Electric Sourcing and Resource Planning, explains that, pursuant to the December 7, 2016 Agreement to Amend the Palisades PPA (Amendment) between Consumers and Entergy, on May 31, 2018, Consumers plans to make a one-time Palisades PPA buyout payment to Entergy in exchange for the termination of the remaining term of the Palisades PPA (June 1, 2018 through April 11, 2022) (buyout payment) of \$172 million. Exhibit A-2. In his testimony, Mr. Blumenstock compares the contract value of the remaining term of the Palisades PPA to the estimated cost at which equivalent energy and capacity could be acquired on the open market and concludes that the Palisades PPA has become uneconomic for Consumers' customers. Section 10.2 of the Palisades PPA provides for contract termination if the contract value becomes uneconomic for Entergy. Exhibit A-1. Mr.

⁹ The 2003 order was affirmed in part, reversed in part, and remanded by *Consumers Energy Co v Public Service Comm*, 268 Mich App 171; 707 NW2d 633 (2005) (*Consumers Energy*).

Blumenstock testifies that Entergy informed Consumers that it did not intend to terminate the Palisades PPA for economic reasons.

Consumers entered into negotiations with Entergy, which resulted in the Amendment. The Amendment provides for the buyout payment and a short-term energy-only power purchase agreement that would be in effect from June 1, 2018, through September 30, 2018.

Mr. Blumenstock explains that the buyout payment was negotiated by estimating the difference between the contract value of the remaining term of the Palisades PPA and the market value of replacement capacity and energy under a variety of scenarios, which included the impact of the retirement of the Palisades facility.¹⁰ Consumers and Entergy arrived at \$344 million as an estimate of this difference. The parties chose to split the difference evenly, which results in the proposed one-time buyout payment of \$172 million from Consumers to Entergy. Consumers contends that the remaining \$172 million of savings estimated from this market comparison would be realized by Consumers' customers.

Mr. Blumenstock testifies in support of the reasonableness of the buyout payment of \$172 million. He begins by explaining that the Palisades PPA provides 780.1 zonal resource credits (ZRCs) for the 2016-2017 Midcontinent Independent System Operator, Inc. (MISO) planning year (or PY, which runs from June 1 through May 31). For purposes of calculating the market value of the PPA, Consumers assumed that amount of ZRCs through the term of the PPA, except that Consumers assumed zero ZRCs for the 2021/2022 PY because the plant would not be available for the full PY. He notes that since the approval of the Palisades PPA in the March 27, 2007 order in Case No. U-14992, Consumers has annually recovered all of its PPA costs through the power supply cost recovery (PSCR) mechanism.

¹⁰ Entergy has announced that it plans to close Palisades permanently on October 1, 2018.

Mr. Blumenstock explains that Consumers proposes that the \$172 million be approved as qualified costs for securitization because “the above market cost of such a contract cannot be recovered in a competitive marketplace.” 2 Tr 93. He also notes that the buyout of a power purchase contract is an example of a cost presumed to be unlikely to be recovered in a competitive market under MCL 460.10h(g). He explains that the buyout amount was arrived at through negotiations. Applying a 4% discount rate, the net present value (NPV) of the PPA was determined to be \$1,427 million for the relevant term (June 1, 2018 to April 11, 2022). Exhibit A-3. The value of market energy for that term was determined with forecasted energy prices developed in May of 2016 using Strategist®, but this analysis did not include the energy or congestion price impact of the closure of Palisades. The value of market capacity for that term was determined by applying a forecasted capacity price assumed to be 50% of MISO cost of new entry (CONE) for 2016, escalated by 2% per year. The market values totaled \$996 million. No sensitivity analysis was performed.

Mr. Blumenstock testifies that, subsequently, Consumers calculated the impact of transmission congestion caused by the closure of Palisades on the estimated savings. Consumers made its calculation by looking at historical transmission congestion from October of 2007 through May of 2016 during periods when Palisades was out of service, and estimated the NPV of the congestion costs arising from the plant’s closure to be \$123 million. Entergy estimated the NPV of the congestion costs to be only \$28 million. Mr. Blumenstock states that the two parties arrived at \$71 million as a compromise position for use in calculating the net savings. Consumers also calculated an annual increase to power supply costs as a result of the loss of the plant, which resulted in a \$16 million reduction to the value of the contract. Mr. Blumenstock explains that

subtraction of the market value, congestion costs, and energy costs from the total contract value results in the \$344 million figure, which is then halved to arrive at the proposed buyout payment.

Todd A. Wehner, Director of Corporate Finance, testifies that there are two definitions for “qualified costs” in MCL 460.10h(g), which he describes as (1) a regulatory asset as determined by the Commission, or (2) any costs that the Commission determines that an electric utility would be unlikely to collect in a competitive market, including, but not limited to, the costs of a Commission approved restructuring, buyout, or buy-down of a power purchase contract.¹¹ 3 Tr 442-443. Mr. Wehner asserts that the buyout payment meets both statutory definitions, though it need only satisfy one. He states that the Palisades PPA buyout payment is a cost that Consumers would be unable to collect in a competitive market. Mr. Wehner also points out that the buyout payment is a one-time payment that will occur in 2018, but the benefits of this buyout will be experienced by Consumers’ customers over a much longer period.

Mr. Wehner states that qualified costs also include the annual costs of the SPE as it pays debt service, both interest and principal amortization, on the securitization bonds, as well as the SPE’s Ongoing Other Qualified Costs. Mr. Wehner testifies that Ongoing Other Qualified Costs include an annual servicing fee of up to 0.1% of the original principal amount of the securitization bonds if Consumers is the servicer, and up to 0.75% if another entity becomes the servicer. These costs also include the auditor expenses relating to the securitization bonds, trustee fees, legal fees, independent manager fees, rating agency fees, Securities & Exchange Commission (SEC) reporting expenses, the administrative fee, and, to the extent deemed necessary, a letter of credit

¹¹ MCL 460.10h(g) actually provides that qualified costs “means an electric utility’s regulatory assets as determined by the commission . . . plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market . . .” (Emphasis added.)

and/or an overcollateralization subaccount. Mr. Wehner estimates that these ongoing expenses will total approximately \$475,000 per year. 3 Tr 447; Exhibit A-25. Variations in the actual amount of ongoing costs will be addressed through the true-up mechanism.

Mr. Wehner states that the Initial Other Qualified Costs include the issuance costs and debt retirement costs, and are presented by category in Exhibit A-24. They are estimated to total approximately \$12.6 million. 3 Tr 444. Initial Other Qualified Costs include the underwriting discount and financial advisor fee, as well as the underwriter's reimbursable expenses, SEC registration fees, legal fees, rating agency fees, auditor expenses, blue sky fees, SPE organization costs, and advisory fees of the Commission.

Mr. Wehner testifies that the SPE will use the proceeds from the sale of the securitization bonds to pay the Initial Other Qualified Costs, or to reimburse Consumers for those costs; and the balance will be used by the SPE to purchase the securitization property from Consumers. He states that Consumers will use the proceeds from the sale of the securitization property to retire a portion of its existing debt and/or equity. According to Mr. Wehner, though the utility has not yet decided what specific type of debt to retire, the company will consider: "1) the cost of each of Consumers' debt instruments and securities outstanding at the time proceeds from the sale of the securitization property to the SPE that issues the securitization bonds are received, 2) the mandatory cost of retiring each of those existing securities, and 3) market conditions which might impact tender offer opportunities for existing securities." 3 Tr 440. Mr. Wehner testifies that Consumers expects to pay down debt and equity in a proportion approximately equal to its current capital structure mix, and that the company will make a cash payment to its parent, CMS Energy Corporation, to pay down equity. He requests that the Commission grant Consumers the ability to

authorize the potential early retirement or refunding of these securitization bonds with new securitization bonds.

Mr. Wehner states that Consumers would support the imposition of substantially the same requirements on the reporting of the use of the proceeds as were put into place by the financing orders issued in Case Nos. U-12505 and U-17473. Those requirements are described by Mr. Wehner as follows:

The Company will file reports with the Commission substantially similar to the reporting requirements imposed by the Commission in MPSC Case No. U-12505 and MPSC Case No. U-17473 related to the previous sale of securitization bonds by a special purpose entity of the Company. In my opinion, these reporting requirements related to the previous sale of securitization bonds were reasonable. The reports will specify the principal amount of the securitization bonds, the amounts expended for Initial Other Qualified Costs, the net amount of proceeds remaining after such expenses, and the amount of debt and equity paid down as of the date of the report. The report will be substantially in the form of Exhibit A-23 (TAW-1). The Company will file the first report within 30 days of the bonds' issuance (or any portion of their issuance), and file quarterly from that date until all bond proceeds have been disbursed.

3 Tr 441-442.

Wayne M. Leja, Principal Rate Analyst in Consumers' Rates and Regulatory Affairs Department, offers Exhibit A-26 (Revised), which compares the NPV of the estimated annual revenue requirements for the qualified costs to be securitized under conventional financing methods to the NPV of the estimated annual revenue requirements associated with the securitization bond payments, with both revenue requirement streams being discounted at Consumers' current authorized pre-tax cost of capital of 8.58% from Case No. U-17990. Mr. Leja states that Consumers' requested securitization amount is less than the amount to be recovered over the remaining life of the qualified costs under conventional financing methods, with the difference being \$10.8 million. 5 Tr 988. According to Mr. Leja, the exhibit demonstrates that

customers will receive tangible and quantifiable benefits from securitization, and thus demonstrates compliance with the requirements of MCL 460.10i(1).

According to Mr. Leja, Consumers expects the weighted average interest rate for the securitization bonds to be 2.4% based upon current market conditions, which will be lower than the company's pre-tax cost of capital of 8.58% from its most recent rate case, and thus Mr. Leja opines that this demonstrates compliance with the requirements of MCL 460.10i(2)(b). He also states that Exhibit A-27 (Revised) shows that the proposed transaction will comply with the requirements of MCL 460.10i(2)(d), and the amount recovered through securitization cannot exceed \$184.6 million. Finally, he testifies that any securitization bond interest rate lower than 5.405% will comply with MCL 460.10i(1). 5 Tr 992.

Steffen Lunde, a Director in the Global Securitized Products Group of Citigroup Global Markets Inc., describes the securitization process and provides an overview of Consumers' proposal. As explained by Mr. Lunde, securitization separates the credit quality of the issued bonds from that of the company in order to achieve higher credit ratings and lower financing costs. In order to accomplish this, he states, Consumers proposes to sell the revenue stream and other entitlements and property created by the financing order (i.e., the securitization property) to a bankruptcy remote SPE, which sale, consistent with Act 142, will constitute a "true sale" for bankruptcy purposes. MCL 460.10l(1) and (2). This "true sale" is designed to insulate the securitization property from creditors of Consumers and, thereby, from the credit risk of the company. According to Mr. Lunde, a trustee will also be appointed to: (1) act on behalf of the bondholders; (2) remit payments to the bondholders; and (3) ensure that the bondholders' rights are protected in accordance with the terms of the financing documents. The securitization

property and certain other related collateral will be pledged to the trustee, and the SPE will then issue bonds supported by the underlying collateral to investors.

Mr. Lunde explains that, in addition to the bankruptcy remote status of the SPE, credit enhancements, such as capital contributions at the outset of the transaction and a true-up mechanism, will be used to obtain the desired triple-A rating for the securitization bonds. Although he does not believe it will be needed in this case, Mr. Lunde states that Consumers would like to be authorized to use a letter of credit and/or an overcollateralization subaccount, which may later be deemed necessary as additional credit enhancement in the context of the credit ratings review process, the optimal bond structure, and market conditions. 3 Tr 573-577.

Mr. Lunde testifies that the securitization property that is sold to the SPE is composed of the rights and interests of Consumers under the financing order, including the right to impose, collect, and receive from Consumers' customers amounts necessary to pay principal and interest on the bonds, as well as the SPE's Ongoing Other Qualified Costs, including the right to adjust the amounts of securitization charges through the periodic use of a true-up mechanism.¹² In this case, Ongoing Other Qualified Costs refers to certain "qualified costs arising from the issuance of

¹² As stated in MCL 460.10j(2), securitization property shall constitute a present property right even though the imposition and collection of securitization charges depends on further acts of the electric utility or others that have not yet occurred. Moreover, pursuant to MCL 460.10m(2) and MCL 460.10m(4), the lien and security interest of the trustee in the securitization property shall attach automatically once value is received for the bonds, shall constitute a continuously perfected lien and security interest, and shall not be impaired by any later modification of the financing order or by the commingling of funds arising from securitization charges with other funds. As stated in MCL 460.10n(2), the State of Michigan pledges not to take or permit any action that would impair the value of the securitization property or that would reduce or alter (except as allowed in the context of a true-up procedure undertaken pursuant to MCL 460.10k(3)) or otherwise impair the securitization charges approved in this financing order (nonimpairment pledge). Finally, as set forth in MCL 460.10m(8), any changes to either the financing order or the securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

securitization bonds that will be payable from securitization charge collections on an ongoing basis over the transaction's life." 3 Tr 573. These primarily include servicing fees, trustee fees and expenses, auditor expenses and administrative fees, rating agency fees, independent manager fees, SEC reporting expenses, and other operating expenses incurred by, or on behalf of, the SPE.

Mr. Lunde further explains that, when put into effect, Consumers' proposal is designed to establish a nonbypassable securitization charge expressed in cents per kilowatt-hour (kWh).

Mr. Lunde proposes a system of periodic true-up adjustments to the securitization charges intended to ensure that the dedicated revenue stream from the securitization charge is adequate to make all scheduled payments of the principal and interest on the bonds, as well as all other qualified costs. He states that, at least initially, Consumers will act as the servicer for the SPE. In that capacity, Consumers will bill and collect the securitization charge, perform the periodic true-ups, and calculate any necessary adjustments to that charge.

Mr. Lunde stresses that any financing order approving Consumers' proposal must contain certain elements. 3 Tr 596-597. He states that among the most significant of these are:

(1) irrevocability of the financing order and a reaffirmation by the Commission of the state's nonimpairment pledge; (2) nonbypassability of the securitization charges among the retail electric distribution customers of Consumers and its successors, irrespective of the source of generation provided to customers, with limited, predefined exceptions; (3) an annual true-up mechanism (with semi-annual or more frequent true-ups if needed) subject only to mathematical review by the Commission; and (4) securitization charges to customers for all such transactions which do not exceed levels likely to result in stress. He asserts that the financing order should specifically reserve to Consumers the sole discretion as to whether and when to issue securitization bonds, which he says is critical to Consumers' achieving the lowest financing cost possible. Likewise, he

requests that Consumers be authorized to refinance outstanding securitization bonds if indenture provisions so provide and refinancing would allow for the creation of sufficient additional savings.

With regard to satisfying the requirements of MCL 460.10i(2)(c), Mr. Lunde provides a description of the securitization bond marketing plan. He anticipates that this transaction will have only one tranche, and indicates that the following steps would be used to minimize Consumers' securitization charges: (1) the bonds will be rated by at least two rating agencies; (2) legal final maturity of the bonds will not exceed six years from the date of issuance; (3) an extensive investor education program will be provided by the company and the underwriters of the bonds; (4) one or more underwriters will be used to market the bonds, who will have specific experience in the marketing of utility securitization bonds; (5) the book-running lead underwriter may adjust the prices and coupon rates to ensure maximum distribution of the bonds at the lowest bond yields consistent with a fixed price offering; and (6) taking into account the actual demand for the securitization bonds on the day of pricing, the underwriters will agree to purchase the bonds at specified prices and coupon rates. 3 Tr 598-601. Mr. Lunde indicates that over \$52.1 billion in securitization bonds have been issued successfully by electric utilities in various states. 3 Tr 580-581.

Mr. Lunde states that the precise terms and conditions of the securitization will not be known until just prior to the time of the sale, which Consumers anticipates will take place around June 2018, with a final payment date in May 2022, and a legal final maturity date in May 2024. He explains that the final maturity date was selected in order to provide time for charges to be collected to make up for any shortfall. He states that partial payments made by customers should be allocated among the 2014 securitization payment (resulting from the 2013 order), this

securitization payment, and other billed amounts, based on the ratio of each component to the total bill.

Mr. Lunde reiterates that the most important elements of the order are irrevocability, nonbypassability (other than the exceptions described by Mr. Stubleski), true-ups, and reaffirmation of the nonimpairment pledge. He testifies that collection of the charge must be ensured, even in the face of reductions in usage or increases in payment delinquency or self-generation. With regard to allocation of the charge, Mr. Lunde states, “I believe that a different securitization charge for each customer rate class where a uniform per kWh charge is applied within each customer rate class would be acceptable to the rating agencies as long as the mechanics for determining such charges are pre-defined and specific.” 3 Tr 608.

Stephen P. Stubleski, Director of Cost Analysis, Pricing, and Rate Administration in the Rates and Regulation Department, describes the rate design, implementation, and billing of the securitization charge, the proposed true-up mechanism, and the expected reduction to power supply costs that would be reflected in the PSCR factor and rates charged to Consumers' customers. Mr. Stubleski developed the proposed securitization charge. Exhibit A-30.

According to Mr. Stubleski, Consumers proposes initial securitization charges that will be applied uniformly within each customer class based upon cost allocation principles, similar to the methodology used in Case No. U-17473 (Consumers' most recent financing order). Mr. Stubleski applied the percentages of production capacity and total energy consumption, as well as the 4 coincident peak (CP) 75/0/25 production capacity allocator from Consumers' then-most-recent rate case. He notes that production capacity costs represent 87.7% of total Palisades PPA costs, and energy costs represent 12.3% of that total. Exhibit A-31. Mr. Stubleski proposes that the Commission approve for each customer class a cents per kWh securitization charge on each

customer's energy usage, which will be separate from the Case No. U-17473 charge.

Mr. Stubleski states that for the typical residential electric customer with an average monthly consumption of 648 kWhs, the Palisades PPA securitization charge will represent an incremental \$1.00 per month. Added to the 2014 charge, securitization charges will represent an aggregate monthly residential customer cost of approximately \$1.80. The first billing month is expected to be July 2018.

Consistent with the 2013 order, Mr. Stubleski asserts that: (1) any customers who participate in Consumers' electric choice program as of the date of this financing order should not pay the securitization charge; (2) customers who subsequently switch to ROA service after the date of this financing order should continue to pay the securitization charge; and (3) ROA customers who return to full service after the date of this financing order should be assessed the securitization charge applicable to their rate class from the date of the change forward. The initial securitization charge will be placed on customer bills beginning with the first billing cycle of the first billing month after the securitization bonds are issued, and will remain unchanged until a true-up adjustment is implemented. Because it is contemplated that the securitization bonds will be issued around the same time that the Palisades PPA will end, Consumers proposes to implement the new securitization charge around the same time that customers might begin experiencing associated reduced power supply costs through the PSCR factor. Mr. Stubleski indicates that Exhibits A-32, A-34, and A-35 illustrate the expected securitization charge by customer class and the expected reduction in the power supply costs.

Mr. Stubleski discusses the factors that necessitate the periodic adjustment of securitization charges. He notes that charges are based on forecasted sales and the estimated Ongoing Other Qualified Costs of the securitization bond issuer, which are unlikely to ever exactly match actual

sales and actual costs. Thus, the revenues collected are unlikely to ever exactly match the cash required by the SPE for the purposes of making the scheduled principal and interest payments on the bonds and covering the SPE's ongoing operating costs, thus the need for true-ups.

Mr. Stubbleski further explains that the next period's charges must reflect not only the costs attributable to the upcoming period, but also the impact of any over- or undercollections from the previous period. Even absent any over- or undercollections from the prior period, however, Mr. Stubbleski notes that these charges must be adjusted to reflect changes in such things as forecasted sales, expenses, and customer payment patterns for the upcoming period. Mr. Stubbleski proposes that a true-up mechanism similar to that adopted in Case No. U-17473 be adopted in this proceeding. He testifies that, consistent with other securitizations, the Commission's review should be completed within 45 days of the date that the true-up is filed, and be limited to confirming the mathematical computations contained in the proposed true-up adjustment. He recommends that, consistent with the 2013 order, more frequent (e.g., semi-annual) true-ups may be implemented without a Commission order, unless a semi-annual or more frequent true-up is contested. Mr. Stubbleski sets forth the proposed procedure in new Rule C9.3, contained in Exhibit A-37.

Katherine L. Allen, Director of General and Property Accounting in the Controller's Department, sponsors Exhibit A-29, which reflects the accounting entries that Consumers believes will be needed to record the securitized qualified costs on Consumers' books, including the establishment of a regulatory asset for the Palisades PPA buyout payment. Ms. Allen testifies that Consumers specifically seeks the authority needed to record on its books all financial transactions necessary to undertake securitization, including those between Consumers and the proposed SPE. Ms. Allen states that this set of authorizations is similar to those granted by the Commission in the

2000 and 2013 orders, and forms the basis for the accounting currently being followed by Consumers. The authority being requested would permit all accounting entries needed to record: (1) the securitized qualified costs, including the establishment of a regulatory asset for the buyout payment; (2) the issuance of the securitization bonds; (3) the use of the securitization bond proceeds to retire existing debt and equity; (4) the receipt of revenues arising from the proposed securitization charge; (5) the payment of principal, interest, and expenses relating to the securitization bonds; (6) the retirement or refunding of the securitization bonds; and (7) the amortization of securitized qualified costs. 3 Tr 516. According to Ms. Allen, consistent with Consumers' two prior securitizations, the amount securitized will be recorded as a financing of the SPE for financial reporting purposes; and, because the SPE will be consolidated with Consumers for financial reporting purposes, the amounts financed will also appear as a financing in Consumers' consolidated financial statements. She explains that the cost of the Palisades PPA will be removed from Consumers' power supply base.

Carolee Kvoriak Smith, Director of Tax Planning and Tax Counsel, presented testimony regarding the Internal Revenue Service (IRS) tax treatment of the securitization transaction. Ms. Smith testifies that the securitization bond issuance is sought for the gross amount of securitized assets rather than net of tax because "the cost to buy out the Palisades PPA would be ultimately recovered on a gross basis." 2 Tr 325. She states that the IRS treats the recovery through securitization as a financing under the safe-harbor requirements of IRS Revenue Procedure 2005-62, as long as those requirements are met. Ms. Smith testifies that these safe-harbor provisions require that the financing order give Consumers an intangible property right to charge, collect, and receive amounts necessary to provide for the full recovery of the qualified costs, and that the right to charge must be nonbypassable.

Thomas P. Clark, Manager of the Resource Planning Section of Electric Sourcing and Resource Planning, testifies that although the Amendment was negotiated using market comparisons, Consumers has an actual plan for the period from June 1, 2018, through April 11, 2022, for replacing the capacity and energy currently obtained through the Palisades PPA. Mr. Clark posits that implementation of this replacement plan will ensure reliability within MISO Local Resource Zone 7 (LRZ 7 or Zone 7), and he opines that the plan will result in greater savings to Consumers' customers than were estimated for the purpose of negotiating the buyout payment. Mr. Clark states that in developing the replacement plan, Consumers considered the results of recently completed integrated resource plan (IRP) modeling, although the utility did not conduct a new IRP.

Although Consumers does not seek approval of the costs associated with the replacement power in this proceeding, Mr. Clark testifies that he describes the replacement plan in order to demonstrate that Consumers can maintain reliable service throughout its service territory at less cost to ratepayers than through the Palisades PPA, even with the closure of the plant. He describes the eight components of the buyout replacement plan (BRP) as follows: (1) increased energy efficiency (EE); (2) increased commercial and industrial (C&I) demand response (DR); (3) accelerated increase in the size of the Cross Winds Energy Park (CWEP); (4) amendment of the company's existing power purchase agreement with T.E.S. Filer City (Filer City PPA); (5) continued operation of the Gaylord, Straits, and Campbell peaking combustion turbines; (6) a short-term capacity purchase in PY 2018; (7) the purchase of an existing natural gas fueled generation resource located in Zone 7; and (8) increased participation in interruptible Rate GI. 2 Tr 196-197, 221, 312. Mr. Clark further explains the portion of the required 780.1 ZRCs that will be represented by each of these components during each year for PYs 2018 through 2022, and the

respective estimated cost of each component. Exhibit A-10. Mr. Clark states that the analysis of the estimated cost of each component was done using a combination of Strategist® production cost modeling and Excel models, and included evaluation of the risk of gas capacity market price increases. Exhibit A-10 reflects that the savings associated with some replacement resources are not fully realized by customers until 2040. Exhibit A-8 shows the incremental amount of capacity expected from each of the resources included in the replacement plan by year. Mr. Clark notes that the buyout will result in the elimination of Consumers' only nuclear fueled capacity resource.

Mr. Clark states that Consumers is providing this information in response to the January 20, 2017 order in Case No. U-18218, and as evidence in support of the savings expected from the buyout. He points out that approval of each replacement plan step will occur in the regulatory proceedings for each of the resources, which will include general rate cases, PSCR cases, and energy optimization and renewable energy cases. He explains that the projected savings will be realized by customers through a combination of PSCR costs, general rates, securitization, and surcharges.

Mr. Clark also describes Consumers' ability to purchase short term capacity from auction as a contingency, in the event that one of the components of the capacity replacement plan needs to be replaced. He states that the utility intends to hold a reverse capacity auction in April of 2017.¹³ Mr. Clark analyzes the difference between the contract cost of the Palisades PPA and the aggregate cost of the company's replacement plan under a variety of capacity price and gas price scenarios, and states that under any reasonable scenario the buyout of the Palisades PPA and the

¹³ This auction has taken place and is the subject of Case No. U-18382.

implementation of the BRP results in significant customer savings. Mr. Clark opines that the early retirement of the Palisades facility is unlikely to cause a reliability issue within Zone 7.

Mr. Clark explains that Consumers will issue a request for proposals (RFP) through a third party evaluator to purchase an existing natural gas fueled generation resource within Zone 7, with results available in August of 2017. He indicates that the utility may consider purchase of CMS Enterprises' Dearborn Industrial Generation (DIG) facility, and the calculations associated with a purchase of DIG are incorporated in Exhibit A-10.

Mr. Clark also describes Consumers' plan for replacing the energy currently provided by the Palisades PPA. He testifies that the Palisades PPA currently provides approximately 6,800 gigawatt-hours (GWh) of energy annually, and Consumers estimates that the pending retirement of the Palisades facility will result in an additional 500 GWh of production annually from the company's existing generation assets due to redispatch. Mr. Clark states that Consumers intends to purchase approximately 5,000 GWh annually over the period from June 2018 through April 2022. Mr. Clark testifies that the results of Strategist® production cost modeling show that, over the buyout period, energy markets will be relatively stable and will yield the best outcome for customers. Regarding the impact of the loss of the plant on Zone 7, he states:

The retirement of Palisades will result in a shortfall of capacity of 110 ZRCs for the [local clearing requirement] LCR position and a shortfall of 1,425 ZRC for the [planning reserve margin requirement] PRMR for the 2018/19 Planning Year. However, after implementing the Palisades PPA Buyout Replacement Plan, the Company believes that the LCR net position will improve to a surplus of 270 ZRC and the PRMR net position will improve to a shortfall of 1,046 ZRC for the 2018/2019 Planning Year.

2 Tr 223-224.

David F. Ronk, Jr., Executive Director for Electric Transactions and Wholesale Settlements, describes the milestones that must be reached in order for the improvements required by the Filer

City PPA amendment to be put in place and to realize the increased capacity by 2018. He also describes the milestones necessary for Consumers to purchase capacity at auction, and to purchase an additional generating asset in Zone 7 through a solicitation. Mr. Ronk states that Consumers expects to acquire up to 585 ZRCs for PY 2018 through the auction and that affiliates, along with other independent entities, will be allowed to bid. He explains that an independent third party will administer a competitive blind auction, and will issue the RFP for a generating resource in Zone 7, and affiliates will again be included in that process. Mr. Ronk notes that Filer City is an affiliate of Consumers, and opines that the proposed PPA amendment will not present any Code of Conduct issues because the proposed price will be consistent with the requirements of the Code of Conduct. *See*, October 29, 2001 order in Case No. U-12134, Exhibit A. He also notes that Filer City will need to obtain recertification from the Federal Energy Regulatory Commission (FERC) as a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq.*, (PURPA). Finally, Mr. Ronk discusses the fact that Entergy is wholly responsible for the obligation to manage the spent nuclear fuel located at Big Rock Point. He states that Entergy has reported that the decommissioning trust contains \$407,805,918.¹⁴

Teri L. VanSumeren, Executive Director of Energy Efficiency & Renewable Resources, explains the company's expanded electric energy efficiency/energy waste reduction (EE/EWR) program, the expected results and anticipated costs of this program, and the milestones that need to be met to ensure the program is in place for the period of the BRP. She explains that Consumers proposes to expand its EE/EWR program by a half percent for 2017 through 2021.

¹⁴ The Commission is mindful that the U.S. Nuclear Regulatory Commission has authority over the long term disposition of spent nuclear fuel at the Palisades plant. Nevertheless, the Commission advocates that storage of spent nuclear fuel continue at the plant in a manner that protects public health and safety and the environment.

Julio H. Morales, Executive Director of Customer Services, explains the company's expanded DR program for C&I customers, the expected results and anticipated costs, and the milestones that must be met to ensure that the C&I DR program is in place for the relevant period of the BRP. He explains that the DR program is designed as a resource to reduce the utility's PRMR, and that Consumers estimates that it could provide 150 megawatts (MW) of capacity within three years.

IV.

POSITIONS OF THE PARTIES

A. Direct and Rebuttal Testimony

1. The Staff

Catherine E. Cole, Manager of the Resource Adequacy and Retail Choice Section of the Financial Analysis and Audit Division (FAAD), testifies regarding the Staff's position on the approval of any qualified costs. Ms. Cole states that the buyout payment proposed by Consumers should not be approved for regulatory asset treatment. Ms. Cole concludes that Consumers' analysis and plan are deficient because the utility fails to consider the significant risk of increased capacity obligations beginning in 2018 associated with the state reliability mechanism (SRM), and because Consumers provided no analysis of any alternative capacity replacement plan, "particularly one that avoids the early buyout payment and implements replacement capacity in 2022. The deficiencies in the Company's analysis make it difficult, if not impossible, to make an informed decision regarding the reasonableness and prudence of the early buyout payment. As such, the Company has not adequately supported its request for regulatory asset treatment of the buyout payment." 3 Tr 727-728.

Beginning with the SRM issue, Ms. Cole notes that the Commission has opened Case No. U-18239 for implementation of the SRM in Consumers' service territory, and she provides

Mr. Ronk's testimony from that case as Exhibit S-1.0. As Ms. Cole explains, the SRM (which results from the passage of 2016 PA 341 (Act 341)) effectively assigns to an incumbent utility such as Consumers the responsibility to act as provider of last resort with respect to the capacity obligations of alternative electric suppliers (AESs) in its territory; which means that Consumers may be required to provide additional capacity (beyond what is addressed in its evidence) as a result of the SRM obligation. *See*, MCL 460.6w. According to Ms. Cole, if Consumers were assigned the forward capacity obligations for all 749 MW of its AES load, the utility might have to come up with 807 ZRCs with an effective date as early as June 1, 2018; and she notes that AES capacity demonstrations will not be made until February 9, 2018. Since the assignment of this additional capacity could come as soon as June 1, 2018, Ms. Cole describes Consumers' plan as deficient for failing to consider it at all. Ms. Cole states that Consumers currently has no cushion to absorb any additional ROA customer capacity obligation. She also states that Consumers should be considering capacity options beyond the MISO planning resource auction (PRA).

Ms. Cole notes that Mr. Ronk has provided testimony in Case No. U-18382 (a case addressing long-term power purchase contracts) indicating that Consumers concurs with MISO and the Commission regarding the potential for a capacity shortfall for LRZ 7 for PY 2018. Exhibit S-1.5. She concludes:

[A]ssuming that sufficient capacity would be available in the 2018 MISO PRA does not appear to be a reasonable expectation. . . . Regulatory asset treatment for the early buyout of the Palisades Contract should be granted only upon a satisfactory showing by the Company that it will be able to meet all of its obligations, including a contingency plan to meet potential ROA capacity obligations under a SRM, throughout the time period when the contract would have otherwise been in effect.

3 Tr 741-742.

Ms. Cole describes the fact that the time period during which Consumers proposes to recover the buyout payment from customers (2018-2022) does not line up with the time period during which customers are supposed to realize the majority of the savings from this transaction (2022-2040). She states that the cumulative NPV of the BRP associated with the time period matching the PPA is only about \$79 million. She further notes that the ability to provide customers with savings from certain elements of the BRP exists whether or not there is a buyout. For example, she explains, the bulk of the proposed EE measures will be implemented in order to qualify for the maximum financial incentive whether or not there is a buyout.

Ms. Cole indicates that the Staff analyzed the potential change to the NPV by the inclusion of the SRM risk for 2018, and found that addition of the full potential 2018 SRM risk drops the projected customer savings to about \$28 million. She adds that even the \$28 million is unlikely to be realized because adding in the SRM risk for the full buyout period means that additional capacity purchases will likely be made in 2019-2022 that would eliminate those savings. She notes that all of the existing resources listed in Exhibit S-1.7 for meeting capacity obligations in the 2018-2022 period have higher average costs than the Palisades PPA, and states that the alternative of continuing the existing PPA should have been considered by Consumers. She recommends that regulatory asset treatment for the buyout payment be denied.

If the Commission chooses to grant regulatory asset treatment, Ms. Cole testifies that the Staff believes that the buyout payment should be no more than approximately \$135 million. She begins by noting that the \$172 million buyout was the result of negotiations, and states “Staff finds it interesting that Entergy shows the net book value of the Palisades Plant is \$172 million, identical to the negotiated buyout payment, which purportedly represents a projection of customer savings.”

3 Tr 753; Exhibit S-1.9. Ms. Cole explains that Consumers’ proposed NPV of the savings from

the BRP relies on a time period that extends far beyond 2022, and that the actual projected NPV of those savings from 2017 through 2022 is only about \$98.8 million. She further notes that the PPA is currently in place until 2022, and Consumers would be required to implement replacement capacity at that time in any case, making the bulk of the alleged savings actually irrelevant to the determination in this case. She points out that Consumers has refused to guarantee any amount of savings for customers, over any time period. Exhibit S-1.10. She notes that customers bear all of the risk, while Entergy is guaranteed a lump-sum payment, and Consumers is guaranteed recovery through securitization. Ms. Cole states:

If the Commission approves regulatory asset treatment in this case, an amount no higher than 50% of the expected savings from the combination of the early buyout and the projections of the implementation of the capacity replacement plan during the buyout period should be approved. Because all of the risk of future projections could erode the total amount of savings from the early buyout, possibly a lower percentage, such as 30% of the expected savings, could be considered a reasonable and prudent amount for an early buyout payment in order to protect customers from a portion of the risk.

3 Tr 756-757. The Staff has calculated the 50% amount to be \$135,398,000.

As an alternative, if the Commission grants regulatory asset treatment for the full \$172 million, Ms. Cole recommends that the Commission require Consumers to file a reconciliation of its BRP in 2023 in a contested case, where the actual results of the buyout and BRP for 2017 through 2022 could be examined, and a refund could be directed to customers if savings are shown to be less than \$98.795 million (the Staff's NPV of the projected customer savings from the BRP over the buyout period of 2017 through 2022). Exhibit A-10. She further recommends that the minimum amortization period for recovery of the buyout should extend through 2024 (for a total of six years) to better align the timing of the savings with the recovery from customers.

Eric W. Stocking, an Economic Specialist in the Resource Adequacy and Retail Choice Section of FAAD, testified regarding risk and uncertainty associated with the proposed

transaction. Mr. Stocking concludes that the retirement of Palisades will increase the likelihood that LRZ 7 does not meet its LCR. He states that removal of the 780 ZRCs associated with the Palisades plant (and physically located in LRZ 7) “would leave LRZ 7 only 142 ZRCs above its LCR. A surplus of only 142 ZRCs in Zone 7, which had a LCR of 21,109 ZRCs in 2017, is a narrow margin and would introduce significant additional risk to resource adequacy in LRZ 7.” 3 Tr 710. He further states that additional or early retirements of other generation resources would increase the risk of Zone 7 being unable to meet its LCR in the near term. He opines that the retirement of Palisades “increases the risk that any minor deviation in peak demand projections, projections of future LCR, unforeseen unit retirements, delayed operation of new generating units, or unforeseen outages at existing generating units this summer resulting in a decreased [unforced capacity] UCAP rating in 2018, will all place LRZ 7 at risk of falling short of federal resource adequacy standards, and significantly increasing capacity costs for Michigan customers.” 3 Tr 712.¹⁵

Mr. Stocking criticizes Consumers’ calculation of the market value of the PPA termination for its lack of any sensitivity analysis. He states that the valuation of the contract is actually within a range, rather than an absolute number. He notes that Entergy’s estimate of the congestion value was approximately \$28 million, and Consumers’ estimate was about \$123 million. By using Consumers’ proposed value, Mr. Stocking points out that the total pool of savings is reduced by \$51.6 million. He states, “In Staff’s view, this constitutes a significant impact to the total pool of savings, hinging on one singular assumption about the future. By extension, the lack of sensitivity analysis performed by the Company in the derivation of this number only makes the actual amount of benefits ultimately realized by the ratepayer from this agreement more uncertain.” 3 Tr 714.

¹⁵ The Commission has no jurisdiction over Entergy’s decision to retire the plant.

Mr. Stocking also posits that certain scenarios will put ratepayers at risk for the price differential between the contracted price of capacity in the Palisades PPA and CONE for those ZRCs. He concludes that any value placed on the amount to be allegedly realized by ratepayers carries significant uncertainty.

Mr. Stocking also posits that Consumers' proposed capacity replacement plan fails to mitigate the risk of LRZ 7 not meeting its LCR in 2018. While the plan results in the addition of 223 ZRCs in LRZ 7 that will count towards the zonal LCR in 2018, this still leaves 557 ZRCs missing. He notes that the proposed purchase of DIG does not help to satisfy the LCR because DIG is physically located in LRZ 7. He also states that the purchase of DIG will not result in savings to ratepayers concurrent with the buyout time period, because Consumers' analysis shows that the DIG asset purchase results in a net cost to ratepayers until 2024. Exhibit A-10 (Revised). Mr. Stocking testifies that it would likely be less costly to ratepayers for Consumers to enter into a capacity-only contract with the DIG facility in the near term. He further opines that continued operation of peaking combustion turbines results in a net cost to ratepayers until 2020, stating that Consumers has used an unrealistically optimistic cost forecast.

Kirk D. Megginson, a Financial Specialist in the Revenue Requirements Section of FAAD, testifies that Consumers' application meets the requirements of MCL 460.10i(1) because the NPV of the revenues to be collected under the financing order is lower than the amount to be recovered over the remaining life of the proposed qualified costs using conventional financing methods. Exhibit S-5.1. The Staff calculated the applicable NPV to be \$184.6 million. Exhibit S-5.2. He testifies that the application also meets the requirements of MCL 460.10i(2)(b) and (2)(d) because there is a calculated net benefit to the customer, and the NPV of the revenue requirement is less than or equal to the requested amount.

Mr. Megginson further testifies that he could not opine on whether the application meets the requirements of MCL 460.10i(2)(a) or (2)(c) because what the proceeds are used for, and how the bonds are structured and priced, will only be known after the issuance of the bonds.

Mr. Megginson recommends that the Commission impose the same reporting requirements on Consumers in this case as were imposed in the January 4, 2001 order in Case No. U-12505, p. 67. Finally, he testifies that the alternative financing scenarios presented by Ms. Cole meet the requirements of MCL 460.10i(1) and (2).

Theresa McMillan-Sepkoski, an auditor in the Revenue Requirements Section of FAAD, testifies that the Staff has no objection to Consumers' proposed annual true-up mechanism or inclusion of the overcollateralization subaccount in the Ongoing Other Qualified Costs, and recommends that, within 45 days of mid-year true-up filings, Consumers should implement the securitization charge.

Nicholas M. Revere, Manager of the Rates and Tariffs Section of the Regulated Energy Division, testifies that the allocation of the securitization costs should be updated to reflect the allocations most recently approved in the February 28, 2017 order in Case No. U-17990, and supplies the updated surcharge calculations. Exhibit S-6.2.

Patricia M. Poli, Manager of the Energy Waste Reduction Section of the Electric Reliability Division, testifies regarding Consumers' proposed expansion of its EE/EWR programs, and the associated financial incentive. She opines that Consumers can meet or exceed the accelerated energy and demand savings projections.

Marc H. Vatter, Ph.D., a consulting economist, presents alternative market forecast projections. Dr. Vatter testifies that projections should consider the possibility that the actual price of fuel will differ from the expected price. Dr. Vatter forecasts market prices using xmp for the

buyout period of June 1, 2018, through April 12, 2022. He testifies that Mr. Blumenstock's testimony is deficient because it "does not examine scenarios across which fuel prices differ," and does not count the capacity provided under the PPA through until April of 2022 (in some amount).

3 Tr 691. Dr. Vatter uses natural gas and fuel oil prices based on the Energy Information Administration's (EIA) low and high quarterly scenarios. His high fuel price market value scenario exceeds Consumers' base case, and his low fuel price market value scenario falls lower than Consumers' base case scenario. Exhibits S-2.4, 2.5, and 2.6.

On rebuttal, Mr. Ronk responds to Ms. Cole, contending that any consideration of SRM issues in this matter is premature, and that such issues will be dealt with in Case No. U-18239 (Consumers' SRM capacity charge case), along with the AES capacity demonstrations that occur thereafter. He asserts that Consumers expects to have ample capacity through execution of the BRP, and that full service customers should not be prevented from benefiting from the BRP out of concern that some ROA customers may have to face a capacity charge at some point in the future. He points out that the coincident peak demand for PY 2016 of ROA customers was 567 MW. Exhibit A-8 (Revised). Mr. Ronk further testifies that if the buyout is not approved for securitization, then Consumers would not necessarily implement all aspects of the BRP, particularly to address capacity obligations resulting from the SRM. He opines that purchasing capacity, or ramping up DR or EE efforts, may not be effective at a later date.

On rebuttal, Mr. Clark responds to Ms. Cole. He explains that the nature of the electric supply business is that significant upfront investment will be required in order to realize the value of an asset over time, and that it is necessary for the Commission to consider the costs and benefits for a term that is longer than the PPA term. He asserts that certain specific capacity replacement options would not be available in 2022 and so were not included in the capacity expansion models.

He states that Consumers is not overly reliant on the PRA, and that the BRP was designed to minimize uncertainty. Exhibit A-8 (Revised).

On rebuttal, Mr. Blumenstock also responds to Ms. Cole (and to Mr. Stocking, Dr. Vatter, Mr. Evans, Mr. Phillips, and Mr. Peloquin) on the issue of the buyout payment, and offers new information regarding financial instruments investigated by Consumers with a view to providing a hedge against the possibility of unrealized savings for customers. Exhibit A-39. Mr. Blumenstock asserts that the buyout will allow Consumers to change the status quo, and notes that the BRP planning included sensitivity analyses. He claims that the amount that Entergy would save is not relevant to this proceeding and would not affect the savings to customers. Mr. Blumenstock avers that it is reasonable in a negotiation to agree on a mid-point such as with the congestion costs. He testifies that the assumption of 50% of MISO CONE for capacity is reasonable because capacity prices have historically cleared at less than that, and notes that Consumers recently agreed to purchase capacity for about 50% of CONE. Mr. Blumenstock posits that it is undisputed that the PPA is substantially above market, and that Entergy will refuel the plant in the fall of 2018 if the buyout is unsuccessful. Exhibit A-4.

On rebuttal, Mr. Clark responds to Mr. Stocking. Mr. Clark asserts that Consumers' full service customers should not be asked to maintain the reliability of Zone 7 for the benefit of ROA customers or the customers of other utilities. He indicates that sensitivity analyses were performed in determining the makeup of the BRP, and that Mr. Stocking's criticism applies only to the market analysis performed for the negotiation. Mr. Clark asserts that the BRP savings are only marginally affected by fluctuations in gas prices, and notes that the BRP was designed to minimize reliance on the short-term capacity market. He argues that Consumers is well positioned to manage the risk associated with the other capacity options.

On rebuttal, Mr. Gorman responds to Mr. Megginson. Mr. Gorman asserts that Consumers will use the proceeds from the bonds to make the buyout payment, which is debt. Mr. Gorman avers that Mr. Megginson did not perform an analysis of traditional utility financing options that could serve as alternatives to securitization, and ignored the reduced carrying charge associated with the use of traditional financing. Mr. Gorman also claims that the buyout payment is not a traditional stranded cost, because it does not currently appear on the utility's books and is not a recurring cost. He avers that neither Consumers nor the Staff have demonstrated tangible and quantifiable benefits to customers as required under the statute, and that using long-term capital sources to finance a four-year asset is not a prudent financing option. Mr. Gorman supports the use of an intermediate- to short-term borrowing source.

On rebuttal, Mr. Stubleski responds to Mr. Revere and offers revised exhibits. Mr. Stubleski agrees with Mr. Revere's adjustments to the allocation factors and charges to reflect the most recent electric rate case (Case No. U-17990) findings. However, he notes that Consumers has a pending electric rate case, Case No. U-18322, which could result in the need for another adjustment. Mr. Stubleski notes that the final order in that rate case will be issued around March 1, 2018, which is before the date that the bonds will be issued. He indicates that after issuance of the bonds, Consumers will submit revised tariff sheets reflecting the actual initial PPA securitization charges, based on the allocation factors adopted in the most recent completed rate case, for each rate class.

2. The Attorney General

George W. Evans, President of Evans Power Consulting, Inc., testifies that Consumers' estimation of the savings associated with the PPA termination is flawed because: (1) it does not include the full cost of congestion pricing that is discussed in Mr. Blumenstock's testimony;

(2) the claimed savings occur over the period of 2017 through 2040, but the buyout occurs in 2018 through 2022; (3) the replacement plan includes resources the utility should procure whether or not the PPA termination and buyout occur; and (4) the claimed savings ignore the societal cost associated with increased carbon dioxide (CO₂) production as a result of closing Palisades.

Mr. Evans criticizes the model employed by Consumers because it does not include the impacts of congestion that are expected to occur when Palisades is retired. He states that Mr. Blumenstock calculated the impact at \$123 million, but this was not included in Mr. Clark's analysis. He argues that the cost savings should be reduced by \$123 million to account for congestion pricing. Exhibits AG-2, AG-3. He also notes that ratepayers will be forced to wait a long time to receive their share of the claimed savings, while Entergy receives an immediate payment. He avers that demand side resources and the associated savings should be included in Consumers' planning in any case, whether or not the PPA is terminated.

Mr. Evans also criticizes the calculation of the buyout amount because it assumes that capacity can be purchased in the MISO market in 2018 through 2022 at 50% of CONE. He asserts that a more realistic assumption would be 75% of CONE through 2022. With regard to congestion costs, Mr. Evans contends that Entergy's low estimate should be ignored and Consumers' should be used, rather than relying on an average.

Regarding CO₂, Mr. Evans used the Regional Greenhouse Gas Initiative's (RGGI) most recent auction price for CO₂ emissions of \$3.00 per ton to monetize the CO₂ impact. Additionally, he notes that any benefit to ratepayers in the future is dependent upon the future costs of MISO capacity and energy as well as other unknown resources.

Mr. Evans recommends that the Commission deny the application. If approved, he recommends that the buyout payment be reduced to \$76 million based on the changes that he

suggests. Finally, he recommends that the Commission provide a mechanism whereby ratepayers would actually receive the purported benefits, which he describes as follows:

In each of the 2018 through 2022 PSCR reconciliation Cases, the Company would identify the resources and the cost of the resources that replaced the capacity and energy that would have been provided (but for the buyout) under the Palisades PPA. The cost to ratepayers of these resources would then be capped by the capacity and energy costs utilized by the Company to compute the Palisades Buyout Payment (Exhibit A-4), or a modified Exhibit A-4 based on a reduced buyout amount. This process would ensure that ratepayers receive the benefit that the Company claims.

3 Tr 779.

On rebuttal, Mr. Blumenstock contends that Consumers is not subject to the RGGI or any other carbon related initiative, and that early termination of the PPA will have no impact on the state's carbon emissions. He also asserts that proposals to use the PSCR process are in conflict with the PSCR mechanism, and states "All of the proposed guarantee mechanisms seek to shift the risk of energy and capacity market price volatility from the customers who will benefit from power supply cost savings to the Company who will not." 2 Tr 117. He claims that such a mechanism would place Consumers in the position of guaranteeing events over which it has no control, and suggests that investors should be able to earn a return on capital investments that result in savings to customers. He states that the BRP will shield customers from capacity market volatility, and they will be exposed to only a small amount of energy price volatility.

Mr. Blumenstock describes Consumers' efforts to explore financial instruments to manage risk, relating that the utility reached out to financial institutions for pricing and details on futures contracts, forward contracts, and bilateral heat rate alternatives, and explains that the utility could not precisely determine the benefits of such alternatives without performing a formal solicitation and analysis. He concludes "the Company would not execute any of these risk management

alternatives without the Commission's direction, authorization to do so and assurance of cost recovery." 2 Tr 125.

3. ABATE

Nicholas L. Phillips, a consultant with Brubaker & Associates, Inc., testifies that the PPA provides for termination without the necessity of a buyout payment. He states that Consumers' proposal will shift substantial new risk onto Consumers' ratepayers, and this shifting of risk is not considered in the transaction. Mr. Phillips testifies that Consumers will increase opportunities for earnings for investors and Entergy will see a large cash payment, while both companies offload risk onto ratepayers. Thus, he recommends that the Commission consider adopting ratepayer protections if the application is granted.

Mr. Phillips notes that Consumers does not earn a return on the Palisades PPA, but the opportunity to replace that capacity with new Consumers-owned assets, such as DIG (currently owned by an unregulated affiliate of Consumers), would mean investors will earn regulated returns on the replacement capacity. He opines that Consumers' use of 50% of CONE as an assumed capacity price is reasonable for a base case assumption (even though the most recent capacity auction results for MISO LRZ 7 cleared at 1% of CONE), because the loss of Palisades' 800 MW of capacity presents a reasonable probability that capacity in LRZ 7 will clear at CONE. 4 Tr 919. He also avers that Consumers' use of modeling for forecasting market prices is reasonable.

Mr. Phillips testifies that the loss of 800 MW of capacity and the need to replace 7 million megawatt-hours (MWh) of energy annually will come at the expense of ratepayers alone. He notes that the customers who pay the buyout cost will not be the customers to receive the ultimate benefits, if any, due to the lengthy period over which the benefits are alleged to be realized. He also posits that the Commission should give the energy and capacity replacement plan no weight

in making a determination on the application, because it is illustrative only and the economic analysis is flawed. He states that there is no reference case against which to perform a comparison of the BRP. Mr. Phillips testifies that there should have been either an analysis limited to the 2017-2022 time period, or a more comprehensive long-term analysis, to act as comparisons to the base case offered by Consumers. He reiterates that both DIG and Filer City are owned at least in part by affiliate companies, and will add to investors' earnings when they enter rate base.

Mr. Phillips also testifies that in the buyout analysis, Consumers should have included the costs of financing, and should have used its weighted average cost of capital (WACC) as the discount rate for purposes of determining the NPV, which he appears to place at 7.65%. He criticizes the lack of a sensitivity analysis. Mr. Phillips performed his own (based on Mr. Clark's workpapers), and he finds that:

[I]f capacity prices do increase to CONE, then virtually all the estimated savings disappear, even without a change in gas prices. Furthermore, just a 5% change in gas prices under 100% CONE capacity prices would cost ratepayers \$24 million. Similarly, if capacity prices reach 75% of CONE, but gas prices increase 10%, ratepayers barely breakeven. This analysis demonstrates the significant risk levels that ratepayers would face if the PPA buyout were approved under the current Consumers' proposal. In my opinion, that risk is unacceptable.

4 Tr 920. Mr. Phillips recommends that the buyout payment be no more than \$101 million, and that any buyout be accompanied by a mechanism guaranteeing that ratepayers will see the claimed benefit, in the form of the contested annual PSCR reconciliation proceeding wherein, after the Commission had determined a required annual minimum level of savings, Consumers would be required to show that the cost of the replacement capacity and energy procured during the relevant time period was at least equal to or lower than the contractual value less the required savings. 4 Tr 928-929. Replacement costs above that amount would result in an adjustment to the PSCR factor.

He testifies that this should incentivize Consumers, and that the Commission should periodically re-examine the ratepayer savings guarantee mechanism.

Michael P. Gorman, a Managing Principle of Brubaker & Associates, Inc., testified on behalf of ABATE regarding the method for recovering the buyout payment from retail customers. He concludes that, rather than securitized bonds, utility debt is the lowest cost option available to customers for providing Consumers with full recovery of any buyout amount. 4 Tr 868-872. He also criticizes Consumers' proposed demand and energy allocation of the buyout amount, recommending that the cost be allocated based on a 100% production demand class allocator, because the buyout payment is a fixed cost and will not vary with energy usage. 4 Tr 872. He also recommends that the cost allocated to the Rate GPD class be stated as a demand rate rather than an energy rate.

Mr. Gorman testifies that securitization is not the least cost option for ratepayers. He states that the projected 2.4% interest on the bonds is not attractive compared to traditional utility debt financing, and does not justify the significant issuance and annual servicing expenses of approximately \$12.6 million. He suggests that the utility record the buyout as a regulatory asset and fund it with utility debt, and reconcile the amount in the PSCR reconciliation. He states:

If Consumers used a dedicated utility debt facility to carry the Palisades PPA buyout amount at an assumed interest rate of 4%, the cost to customers is about the same as the securitization interest rate on the carrying balance. If utility debt interest is only applied to the after-tax balance during the amortization period, then the net interest cost to customers would be approximately 60% of the 4% cost, or a net cost to customers of 2.4%, relative to the full buyout cost, which is approximately the same interest rate as the use of securitization bonds.

4 Tr 868 (note omitted). He opines that the debt would not put pressure on Consumers' bond rating.

Mr. Gorman notes that Mr. Stubbleski proposes to allocate the annual buyout cost across rate classes, allocating 87.7% based on a production capacity allocator and 12.3% based on an energy allocator. Mr. Gorman states that the buyout amount will not fluctuate with energy use and should be allocated 100% based on the production capacity allocation factor. He states that this would result in no over-allocation to either high or low load factor customers. Mr. Gorman testifies that the proposal for a uniform energy charge within Rate GPD should be rejected because the buyout should be recovered in demand charges, and separately for all voltage levels. Exhibit AB-7. He recommends that the forecasted billing units and allocation factors be updated, and contends that Consumers has used allocation factors for rate classes that no longer exist.

On rebuttal, Mr. Clark indicates that the utility has filed for approval of Phase III of CWEP in Case No. U-18345, and has filed for approval of the Filer City PPA amendment in Case No. U-18392, thus rendering the BRP more than just illustrative. He indicates that Consumers has filed an amended energy optimization plan in Case No. U-17771 increasing its EE target, and has registered 50 MWs (56 ZRCs) of C&I DR for the 2017/2018 PY. Mr. Clark also reports that Consumers completed the reverse capacity auction in April 2017 and has filed an application for approval of the purchase of 525 ZRCs in Case No. U-18382; and that the average purchase price of capacity achieved in the auction is equal to 51.1% of projected CONE for PY 2018/2019. He states that bids on the generation asset RFP were due in May 2017.

Mr. Clark asserts that all aspects of the BRP would not necessarily be implemented in the absence of the buyout, due to the uncertain nature of the availability of capacity in Zone 7 in the future. He does acknowledge that expansion of CWEP would likely have happened regardless of the buyout. Mr. Clark asserts that all of the replacement options were chosen because customers will either save money or break even at any gas price sensitivity if the value of the capacity is

assumed to be at 50% of MISO CONE, and that Consumers does not have a capacity need until the PPA is terminated.

On rebuttal, Ms. Smith states that any tax benefits from the buyout will be directly passed on to customers through general rate cases, and Mr. Leja states that, under conventional utility financing, the buyout amount would be recovered at the company's overall cost of capital (8.58%) which includes both debt and equity, and could not simply be assigned the lower cost of long-term debt.

On rebuttal, Mr. Stubbleski states that a 100% production capacity allocator would conflict with how the PPA is currently allocated and recovered from customers in rates, where energy costs represent 12.3% of the total, based on the allocation adopted in the most recent electric rate case. With respect to Mr. Gorman's proposal that securitization charges should be differentiated by voltage level for Rate GPD, Mr. Stubbleski points out that Consumers offers several primary rate schedules that are differentiated by voltage level, and contends that, if the Commission agrees with Mr. Gorman, then that should be applied consistently across all primary rate schedules that are currently differentiated. Exhibit A-30 (Second Revision) and A-37 (Revised). Mr. Stubbleski disagrees with the proposal to adopt demand based charges on grounds that it is not the traditional approach and would be inconsistent with the prior securitization orders.

4. The Residential Customer Group

William A. Peloquin, a consultant, testifies that the application should be denied because the securitization debt will be substantially more expensive than conventional debt, and the proposed amount is speculative and arbitrary. He suggests that the utility could make the buyout payment and then apply to the Commission for recovery as a regulatory asset over a number of years. He describes the buyout payment as wholly generation related. Mr. Peloquin opines that

securitization is intended to address stranded costs, and that the Commission decided in the October 14, 2004 order in Case No. U-13715, p. 10, that generation related costs that are not stranded costs are not appropriate for securitization. He further states that the same \$172 million cannot be used to both pay Entergy and to retire debt. He notes that Entergy may operate Palisades at full capacity without the payment, and disputes the need to offer Entergy 50% of the benefit of the transaction. He opines that the appropriate present value discount rate should be Consumers' overall rate of return of 8.92% rather than 4%. Mr. Peloquin suggests the use of PSCR proceedings as an alternative method for recovering the buyout payment.

On rebuttal, Mr. Leja states that his analysis contains the NPV comparison, and that the Commission has consistently found that the cost of conventional financing is determined using the utility's overall cost of capital and not just the cost of long-term debt. Mr. Leja contends that securitization provides an NPV benefit of \$10.8 million. Exhibit A-26 (Revised).

On rebuttal, Mr. Wehner states that it is not the receipt of the securitization proceeds that creates the regulatory asset, but rather the issuance of the Commission order authorizing the asset.

On rebuttal, Mr. Ronk indicates that recovery of the buyout payment through the PSCR may not be feasible, since the payment does not appear to be a power supply cost, and the PSCR reconciliation is wholly unrelated to the securitization reconciliation.

5. Entergy

On rebuttal, Entergy filed the testimony of T. Michael Twomey, Vice President, External Affairs – Wholesale, for Entergy Services, Inc., a subsidiary of Entergy Corporation. He testifies that Entergy is not facing materially or economically adverse operating conditions at Palisades, and thus is not terminating the PPA under Section 10.2. Mr. Twomey states that the buyout amount is the result of lengthy negotiations between Consumers and Entergy, and has nothing to

do with the book value of the plant and related assets as of March 31, 2017. He asserts that if the Commission does not approve the buyout, then Entergy will review its commitment to provide \$8 million in community transition funding. 4 Tr 800. He states that if the plant continues to operate beyond 2018, then it will need to be refueled in October of 2018; but if the application in this matter is approved, Entergy will shut down the plant on October 1, 2018.

B. Initial and Reply Briefs

1. Consumers

Consumers begins by asserting that it is providing the Commission with an opportunity to authorize termination of an over-market PPA, and by assuring the Commission that it will replace the Palisades related capacity and energy for much less than the \$1.5 billion that it would cost under the PPA over the final four years of that contract. Consumers contends that no party disagreed with the assertion that this PPA is priced substantially above market. The company urges the Commission to issue an order similar to the orders issued in Case Nos. U-12478, U-12505, and U-17473.

Consumers explains that a regulatory asset is one for which it is probable that the utility's incurred cost will be recovered through future revenues based on the decisions of the regulator, and argues that the buyout payment is a regulatory asset because it is a one-time payment that will result in customer benefits over many years. 3 Tr 513, 443; 18 CFR 101. The Commission has broad authority to declare a regulatory asset. December 6, 2013 order in Case No. U-17473, p. 46. Consumers states that, for the June 2018 through April 2022 time period, the utility will need to purchase about 780 ZRCs of annual replacement capacity. 2 Tr 90-91. Consumers also states that it will be required to replace 26,460,874 MWh of energy. Exhibit A-3.

Consumers explains that Entergy approached Consumers in April of 2016 about a buyout. Consumers' preliminary analysis showed potential savings of \$466.3 million over the PPA price through use of the markets. The savings estimate was lowered after congestion costs (caused by the closure of the plant) were considered and negotiated, and the two parties settled on a savings estimate of \$344 million, which they proposed to split. For the market savings analysis, Consumers used a 4% discount rate (though the company's current pre-tax cost of capital is 8.58%). 2 Tr 94; Exhibit A-4. Consumers asserts that a comparison of the PPA costs to the BRP costs shows an actual savings of about \$566 million, even more than the market-based comparison.

Consumers explains the eight elements of its BRP, noting that the amended Filer City PPA could not provide capacity for 2018 and thus the company purchased ZRCs through a reverse capacity auction in April 2017 instead. 2 Tr 231. Consumers states that 2018 is the only year in which auction purchases are included in the BRP. Consumers also describes its energy replacement plan, which relies heavily on market purchases. 2 Tr 220; Consumers' initial brief, p. 13, Table 2. Consumers describes the benefits of the BRP and how it modeled various scenarios including increased natural gas and ZRC prices. The utility asserts that the BRP will result in estimated savings ranging from \$54 million to \$1.11 billion. 2 Tr 218-219. Consumers contends that about \$72 million in customer savings will occur during the period in which the PPA would have been in place. Exhibit A-10; Consumers' initial brief, p. 15, note 8. Consumers reminds the Commission that termination under Section 10.2 of the PPA is at the unilateral and sole discretion of Entergy.

While acknowledging that much of the benefit of the BRP accrues to ratepayers many years from now, Consumers argues that focusing on the short term means ignoring the significant long

term benefits of its proposal. Consumers explains that many of the BRP elements have up-front costs that cut into the savings in the early years, and argues that even a savings of \$79 million is significant, especially when considering the additional \$474 million in savings over the life of the BRP. Consumers contends that utilization of a mid-point in a negotiation is a reasonable outcome (referring to the congestion costs), and these criticisms should be ignored, particularly in light of the fact that only one-half of the Palisades' outages since 2008 have resulted in increased congestion costs. Consumers also disparages the intervenors' attempts to renegotiate the PPA Amendment, noting that it is a completed deal. Consumers argues that the BRP is reasonable and will result in additional capacity for the utility.

Consumers maintains that the closure of the plant can be accommodated in Zone 7 and will not have an impact on costs for customers. The company explains that by PY 2021 the BRP will have the effect of actually improving the LCR and PRMR in the zone. Consumers points out that the BRP does not include plans to use the PRA, and notes that as a result of the summer 2018 energy-only PPA, Palisades will be on-line during that summer even though it will not count for MISO planning purposes. Consumers contends that approval of the buyout "may actually help the Company plan to meet SRM load obligations in future years with something other than ZRCs purchased from the MISO PRA." Consumers' initial brief, p. 31. Consumers advises that the SRM should be dealt with in Case No. U-18239, and urges the Commission to ignore the criticisms based on capacity market risk because the BRP does not rely on use of the capacity market. While acknowledging that energy market risks exist, Consumers argues that volatility in that market is unlikely, that sensitivity analyses show that price risk is insignificant, and that the company will make use of financial hedging tools to manage risk. 2 Tr 119-125. Consumers also states that it plans to manage the regulatory risks associated with the affiliate transactions that are

part of the BRP. Consumers notes that nothing about the buyout affects Entergy's federal obligations to manage spent fuel and decommission the plant, and points out that the utility is not subject to any duties imposed by the RGGI or any other carbon initiative.

Consumers contends that the various proposals to include the buyout payment in some form in the PSCR reconciliation are fundamentally at odds with the PSCR mechanism, and would put the utility in the position of guaranteeing events over which it has no control. Consumers offers an alternate market-based replacement plan that would rely on PPAs to replace all of the energy at market value, and to replace the components of the capacity that are viewed as controversial.¹⁶

Turning to the securitization proposal, Consumers explains that it seeks total qualified costs of \$184.6 million, and that the proposed securitization is modeled on the ones approved in Case Nos. U-12505 and U-17473. The qualified costs include the \$172 million buyout payment, \$6.2 million in transactional costs, and \$6.4 million in debt retirement costs (or \$12.6 million in Initial Other Qualified Costs). Exhibit A-24. Consumers states that its cost estimates are based on the company's experience with its other two securitizations, and are intended to be conservative. The Ongoing Other Qualified Costs, which are the operating costs of the SPE, are estimated at \$475,000 annually. Exhibit A-25. The company notes that the financing law appears to explicitly contemplate the buyout of a power purchase contract as a qualified cost and a cost that would be unlikely to be collected in a competitive market. MCL 460.10h(g). As in 2013, Consumers seeks the right to include an overcollateralization subaccount in case such an account is required by the credit ratings agencies. 3 Tr 576-577.

¹⁶ The Commission declines to consider the new capacity and energy replacement proposal introduced in the utility's initial brief for purposes of examining savings. It is not in the record, thus the parties had no opportunity to test the proposal. Moreover, the proffered equation for determining the savings fails to include the other components of the capacity BRP, making the proposal seem less than thoroughly thought through.

Consumers asserts that its application satisfies all of the statutory criteria. In accordance with Section 10i(1), Consumers contends, it has shown that the NPV of the revenues to be collected under the financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing, where its current annual pre-tax cost of capital is 8.58%, and the Staff agreed. The company asserts that the amount in satisfaction of this requirement is approximately \$11 million. 5 Tr 989; 3 Tr 624. In response to the arguments made by the RCG and ABATE about the meaning of “conventional financing,” Consumers notes that “the Commission has consistently used the utility’s overall cost of capital and not the cost of long-term debt alone. See June 2, 2003 Order, pp 36-39, in Case No. U-13715; see also December 6, 2013 Order in Case No. U-17473, pp 14, 17-18 and 49 and October 24, 2000 Order, pp 16-17; see also Exhibit S-42 in Case No. U-12505.” Consumers’ initial brief, p. 65. Consumers further contends that neither intervenor actually identified an alternative source of funding, an interest rate, or transaction costs on the record.

Consumers asserts that it has satisfied Section 10i(2)(a), which requires that the proceeds of the bonds are used solely for the purposes of refinancing or retiring debt or equity, where it provided evidence that it would make a final determination about this later and eventually pay down debt and equity. 3 Tr 440-442. Consumers explains that it will provide verification to the Commission through the required reporting. Consumers states that the buyout payment will be made in May of 2018, and that ABATE and the RCG are mistaken in assuming that the payment would not be made until the utility received the proceeds from the bonds. 3 Tr 891, 959. The payment will be made “through an infusion of reserves from the Consumers’ existing capital structure.” Consumers’ initial brief, p. 68.

Consumers states that it has demonstrated tangible and quantifiable benefits in accordance with Section 10i(2)(b) through satisfying the NPV test, and that the Staff agreed. 5 Tr 990-991. Consumers also posits that it has satisfied the Section 10i(2)(c) requirement that the transaction will result in the lowest securitization charges consistent with market conditions through Mr. Lunde's testimony, which explains how the bonds will be rated and marketed, and the Staff agreed. 3 Tr 598-600; 3 Tr 626. Consumers notes that no party took issue with Consumers' plan for achieving the lowest charges. Finally, Consumers asserts that it has satisfied Section 10i(2)(d), which requires that the amount securitized does not exceed the NPV of the revenue requirement over the life of the bonds, and the Staff agreed. Exhibit A-27 (Revised); 5 Tr 991; 3 Tr 626.

Consumers maintains that it has accurately designed the charges, generally consistent with the way they were designed in Case No. U-17473. However, unlike that case, Consumers has proposed a different rate per kWh for each rate class instead of a uniform charge applicable to all rate classes, because the Palisades PPA includes both production capacity and energy costs, whereas the coal plant retirement costs securitized in the last case did not include energy costs. 3 Tr 539. Consumers proposes to apply a uniform per kWh charge within each rate class. Exhibit A-32. All current ROA customers will be excluded. The company states that it agreed with the Staff's recommendations, and plans to use the final order in Case No. U-18322 as the basis for the initial cost allocations and surcharge calculations. 3 Tr 553. Consumers disagrees with ABATE's proposal to use a 100% production cost allocator, arguing that would be inconsistent with how the existing PPA costs are allocated to customers; however, Consumers agrees with ABATE that rates for the securitization charge should be differentiated by voltage to account for line losses to Primary customers. 3 Tr 556-557; Exhibits A-30 and A-31 (Revised). The charge will appear on bills in the first billing cycle of the first billing month after the bonds are issued, which is expected

to be the July 2018 billing month, and will remain unchanged until the first true-up – to be billed for four years with an additional two-year period for any remaining balance to be reconciled. 3 Tr 542-543.

In its reply, Consumers largely repeats the arguments made in its brief. Consumers asserts that the retirement of the plant will not adversely affect LRZ 7, and that the Staff indicates the same conclusion in its report filed in Case No. U-18197. The utility also asserts that the SRM issues are outside the scope of this proceeding. Consumers indicates that the Commission should not simply hope that Entergy will unilaterally terminate the Palisades PPA, and that the criticisms of the buyout amount are irrelevant. Consumers maintains that the amount should be reviewed for reasonableness and prudence in light of the claimed savings the termination will bring. Consumers points to evidence that several components of the BRP will not be available in 2022, and notes that it has already received approvals for its EO plans in Case No. U-17771. The utility urges the Commission to adopt the alternate PPA-based replacement plan presented in its brief. Consumers again states that it will not accept any savings guarantee mechanism, but would accept the reconciliation it has proposed for the PPA-based replacement plan.

Finally, in its reply, Consumers states that it agrees to the Staff's proposal of a six year amortization period, and to ABATE's proposed allocation method for Rate GPD customers.

2. The Staff

The Staff argues that the Commission should deny regulatory asset treatment for the payment because there is simply too much risk placed on ratepayers and Consumers failed to make its case. If the Commission decides to grant securitization, the Staff recommends that the payment be reduced, the amortization period be increased, and ratepayers be held harmless via a reconciliation process that would guarantee a level of savings.

The Staff argues that “aiding in the early retirement of the Palisades plant increases both reliability risk and financial risk to customers in the Lower Peninsula,” because removal of the 780 ZRCs of physical capacity from MISO LRZ 7 would leave the zone only 142 ZRCs above its LCR for 2018, based on 2017 numbers. Staff’s initial brief, p. 3; 3 Tr 710. The Staff notes that the BRP does not replace all of the lost capacity from the plant closure, leaving Zone 7 down by at least 557 ZRCs, because most of the ‘replacement’ ZRCs are procured from pre-existing in-zone sources and thus do not add ZRCs to the zone. 3 Tr 716-717.¹⁷

The Staff points out that Consumers failed to provide any alternative capacity replacement plan for comparison purposes, including one that relies on the status quo. The Staff argues that the projected savings for 2022-2040 under Consumers’ proposal would be realized regardless of a buyout of the PPA, rendering the buyout payment an unnecessary expense. The Staff points out that many elements of the BRP would be implemented in any case, buyout or not, including the CWEB expansion and increased EE/EWR. The Staff contends that the buyout payment amount is simply the result of negotiations, and comparing the PPA costs to market purchases provided no actual gauge for the Commission of the reasonableness of the deal, since market forecasts are only relevant if they are intended to be used. The Commission needed to be provided with what the company’s plan would have been when the PPA expired in order to make a meaningful comparison. 3 Tr 754. The Staff points out that, using Consumers’ data and considering only the time period during which the PPA would have been in place, the customer savings are only \$79 million. 3 Tr 771. Finally, the Staff notes that Consumers has failed to take into account the real possibility that it will accrue additional capacity obligations as a result of the SRM proceedings,

¹⁷ Again, the Commission has no jurisdiction over Entergy’s decision to close the plant.

which could result in the need to procure capacity at a cost greater than the cost under the PPA.¹⁸

For all of these reasons, the Staff urges the Commission to deny regulatory asset treatment.

If the Commission chooses to approve that treatment, the Staff argues that no more than 50% of the expected savings from the implementation of the BRP during the buyout period should be approved. The Staff points out that most of the savings alleged to accrue from the BRP come in the 2022-2040 timeframe, and will not align with the customers who will be refunding the buyout payment. The Staff asserts that customers would only realize up to \$98.8 million of projected savings during the buyout period. 3 Tr 753. Ms. Cole puts total projected savings at no more than about \$270.8 million, and thus offers a buyout amount of \$135.4 million as an alternative. 3 Tr 757. Based on Consumers' estimate of congestion costs, Mr. Stocking testified that any payment over \$146.1 million is unreasonable. 3 Tr 714.

The Staff also supports a reconciliation of the actual costs of the BRP against the projected costs at the end of the buyout period in 2022, in order to provide a means of ensuring savings to ratepayers from the securitization; and recommends that the amortization period be extended from four years to six, through 2024. 3 Tr 759-760. Relying on Exhibit A-10 and applying a 4% discount rate, the Staff states that the NPV of the savings from 2017 through 2024 is about \$213.1 million. The Staff suggests that Consumers file a reconciliation of the BRP in 2023 in a contested case, to compare actual results to the projections on Exhibit A-10 for the 2017 to 2022 time period, and if the net benefit to ratepayers is less than \$98.8 million customers would receive a refund. The Staff supports the same reporting requirements as were mandated in Case No. U-17473.

¹⁸ In the September 15, 2017 order in Case No. U-18197, the Commission delayed imposition of a locational requirement for the first four planning years covered by MCL 460.6w, thus potentially reducing the likelihood that additional capacity obligations will fall upon Consumers during that time period.

Exhibit S-1.10; 3 Tr 762. Finally, in response to the RCG's argument, the Staff notes that a regulatory asset is created when the Commission issues a ruling making it probable that an incurred cost will be recovered in future rates; and the Commission may grant regulatory asset treatment on generation assets at the same time that it authorizes securitization of those assets.

November 2, 2000 order in Case No. U-12478, p. 27; the 2013 order, p. 47; *Attorney General*, 247 Mich App at 43.

In the event that the Commission approves regulatory asset treatment for the buyout payment, the Staff recommends securitization. The Staff opines that the NPV test of Section 10i(1) is met, and the payment is a qualified cost under Section 10h(g). 5 Tr 989. The Staff notes that Consumers, in its conventional financing analysis, applied the pre-tax rate of return of 8.58% determined in the most recent completed rate case (Case No. U-17990).¹⁹ The Staff supports the Initial Other Qualified Costs of \$12.6 million on Exhibit A-24, and the Ongoing Other Qualified Costs to support the SPE and service the bonds of about \$475,000 annually on Exhibit A-25. 3 Tr 447-449. The Staff notes that Mr. Megginson found a \$10.9 million positive NPV result, thus satisfying the statutory requirement, where he applied 2.4% as the financing costs of the securitization, as compared to the pre-tax overall cost of capital of 8.58%. 3 Tr 624; Exhibit S-5.1.

With respect to the Section 10i(2)(a) requirement that the proceeds of the bonds be used solely for refinancing or retirement of debt or equity, the Staff states that this can only be known after the bond issuance, and requests that the reporting requirements applied in Case Nos. U-12505 and U-17473 be again used. The Staff makes the same assertion and request with respect to the

¹⁹ In his testimony, Mr. Leja stated that in its June 2, 2003 order in Case No. U-13715, the Commission stated that the pre-tax rate of return should be used as the discount rate for the NPV test. 5 Tr 990; see, June 2, 2003 order in Case No. U-13715, p. 39, and Attachment A to that order.

Section 10i(2)(c) requirement that the pricing and structuring of the bonds result in the lowest securitization charges consistent with market conditions and the terms of the financing order. Consumers has agreed to follow those reporting requirements. 3 Tr 411. The Staff states that it agrees with Consumers' evaluation of the NPV test of Section 10i(2)(b) with respect to the estimated revenue requirements, and that statutory criterion is met. 5 Tr 990; 3 Tr 625. The Staff also agrees with Consumers' evaluation of the Section 10i(2)(d) requirement regarding the maximum recovery. 5 Tr 991; 3 Tr 626; Exhibit S-5.2. The Staff notes that Consumers showed that any interest rate lower than 5.405% would result in compliance with Section 10i(1). Exhibit A-28 (Revised); 5 Tr 992.

The Staff further notes that the alternative scenarios laid out by Ms. Cole also comply with the requirements of Section 10i(1) and (2). 3 Tr 627-628.

The Staff agrees with the proposed true-up mechanism, which is the same as that approved by the Commission in Case No. U-17473. 3 Tr 653; Exhibit A-37. The Staff also agrees with the nonbypassability proposal, which excludes all current ROA customers, but includes current full service customers even if they later transition to ROA and all current ROA customers who transition back to full service, noting that this is also identical to Case No. U-17473. The Staff agrees with the requested accounting authorities.

In its reply, the Staff reiterates its concerns about capacity in Zone 7 and the potential for prices reaching CONE. The Staff argues that the company's unwillingness to consider a savings guarantee illustrates Consumers' lack of confidence in the savings. The Staff again urges the Commission to ensure that ratepayers are held harmless, if the application is granted, by adopting the one-time reconciliation proposed by the Staff.

3. The Attorney General

The Attorney General filed no initial brief. In his reply, the Attorney General supports the alternative PPA-based replacement plan proposed in Consumers' initial brief, which, he argues, is supported in the record evidence. He also argues that the amortization should be extended by two years, and that the Commission should reject ABATE's allocation proposal.

4. ABATE

ABATE begins by arguing that Consumers has not shown, and refuses to guarantee, tangible and quantifiable savings to customers. ABATE states that Mr. Phillips described several scenarios in which ratepayer savings could disappear, including by simply using the company's congestion cost estimate. Since the BRP is not before the Commission in this proceeding, ABATE argues that all of the savings are merely conjecture, and urges the Commission to include a savings guarantee mechanism.

ABATE contends that in a typical securitization the applicant is buying down debt or equity supporting investment in a stranded asset such as a generating facility. Here, Consumers seeks to fund a payment that has not yet been made and is not related to an asset owned by the company, and the buying down of debt and equity are not necessary to the transaction. Thus, ABATE argues, this transaction does not meet the statutory requirement of Section 10i(2)(a) that the funds be solely used for refinancing or retirement of debt or equity.

ABATE posits that the logical implication of Entergy's decision to close the Palisades plant is that the plant is no longer economically viable, in which case Section 10.2 should be invoked and a ratepayer-funded buyout payment becomes unnecessary. ABATE argues that a full explanation of why the PPA should be bought out has never been provided.

ABATE argues that the proposal also fails to meet the NPV test of Section 10i(2)(d) and should be rejected – the buyout payment is the product of negotiations and is too high, and leaves Consumers needing 800 MW of annual capacity and 7 million MWh of energy annually. ABATE avers that the market analysis fails to adequately consider market price risk and the possibility of prices in Zone 7 reaching CONE and thereby eliminating any potential ratepayer savings. ABATE maintains that the buyout payment fails to take into account any of the benefits that will accrue to Entergy as a result of the early PPA termination, such as the benefit of transferring risk and expense to Consumers' ratepayers. ABATE refers to the BRP as merely illustrative, noting that Consumers provided no reference case – either for the period of the remainder of the PPA, or for a long-term planning horizon – against which to make a comparison. ABATE contends that this renders the BRP largely useless for actually evaluating the risk to customers. ABATE notes that there will be intergenerational inequity between customers who fund the buyout and those who receive the alleged benefits, where the breakeven point is nine years down the road and the benefits extend to 2040. ABATE further points out that Entergy and Consumers, going into the PPA, did not expect that contract to start delivering savings until 2016.

ABATE states that its analysis shows only \$106 million in NPV savings, and that, if capacity prices reach CONE or if natural gas prices increase, customer savings can easily disappear. Meanwhile, Consumers' investors will realize increased returns due to the increase to rate base that results from the BRP, noting that some of those BRP assets involve Consumers' affiliates. ABATE urges the Commission to deny the application; or to reduce the buyout payment and add a ratepayer protection mechanism.

ABATE also argues that Consumers has not shown that it will achieve the lowest securitization charges consistent with market conditions, as required by Section 10i(2)(c). ABATE contends that

this payment is a temporary, non-recurring asset that should be financed by a short-term temporary capital source, especially given that bonds require extensive additional fees and charges, including specialized legal, accounting, and financial experts. ABATE points out that the additional costs amount to \$12.6 million. “Effectively, because the fully securitization [sic] bond debt amount is carried over, the lower interest rate does not lower costs below the total amount of the interest and lower after-tax balance of traditional debt. Indeed, Mr. Gorman testified that the Company’s proposed use of securitization bonds results in a revenue requirement for full recovery that is approximately \$4 million to \$7 million larger than if traditional utility financing was used.”

ABATE’s initial brief, p. 24 (notes omitted). ABATE argues that the Staff failed to evaluate alternative traditional financing options, and that the projected 2.4% bond interest rate does not actually produce enough savings relative to traditional financing to justify the initial and annual costs associated with the bonds. Thus, ABATE argues, the proposal does not pass the NPV test or show tangible and quantifiable benefits for customers.

ABATE also claims that the buyout cost should be allocated on a 100% production demand basis, arguing that the company’s 87.7% production capacity and 12.3% energy allocation is not reasonable because the buyout amount is fixed and will not fluctuate with energy. ABATE also urges the Commission to reject Consumers’ proposed uniform energy charge for the same reason. Within Rate GPD, ABATE argues, the charge should differ for different service voltage levels. ABATE posits that the annual buyout amount should be included in the annual PSCR reconciliation proceeding to ensure that it is trued-up. To ensure that the proposal is fair to ratepayers, ABATE contends that the amount securitized should be not more than \$101 million and some level of ratepayer benefits should be guaranteed, such as through a flat minimum savings guarantee enforced through a regular reconciliation process.

In its reply, ABATE indicates its support for the PPA-based replacement plan proposed in Consumers' initial brief.

5. The Residential Customer Group

The RCG begins by describing Consumers' proposal as a "self-serving sweetheart deal between CECO and Entergy." RCG's initial brief, p. 24. The RCG characterizes the request as a gambit to force the Commission to make a management decision for Consumers, whereby the Commission would exceed its authority under statutory and case law. The RCG posits that the utility must first make its own decision as to whether to make the buyout payment, and only after the liability has been incurred can it seek regulatory asset treatment from the Commission. The RCG avers that Consumers is simply floating a trial balloon to see if this risk free transaction will be approved before making a management decision.

The RCG asserts that the record fails to demonstrate that this amount of capacity and energy can reasonably be terminated in 2018, and that the \$172 million amount is reasonable and prudent, particularly since it is the result of negotiations. The RCG posits that, were the payment not made, Entergy may close the plant in any case, negating the need for the payment. The RCG characterizes the BRP as uncertain and likely containing elements that would be pursued without the PPA termination. The RCG expresses concern over the components of the BRP that involve Consumers' affiliates, and over the fact that the utility has ignored the implications of the SRM proceedings. The RCG urges the Commission to adopt "an effective annual and final reconciliation process to ensure and guarantee net savings to ratepayers, based upon actual data and experience over the 4-year period, to include hold-back and claw-back" provisions. RCG's initial brief, p. 34.

The RCG contends that Consumers' proposal does not meet the requirements of the securitization statutes, firstly because there are no stranded costs at issue in this case. The RCG asserts that there is no asset or liability to convert to a regulatory asset, unlike every other securitization the Commission has approved. The RCG points out that Consumers receives all of its PPA costs through the PSCR, and would continue to do so. The RCG argues that Consumers has not met any of the NPV tests, nor shown that the proceeds will be used in compliance with the statute, because its testimony is ambiguous and noncommittal. The RCG notes that Palisades is the last of Entergy's merchant nuclear plants.

The RCG argues that the benefits to ratepayers are speculative, and that conventional financing could be interpreted to include debt only, thus potentially lowering the relevant interest rate for comparison. The RCG notes that Consumers' short-term debt rate in its most recent rate case is approximately 2.4%, and the estimated bond interest rate is the same; and posits that use of short-term debt financing of the buyout would eliminate all of the additional costs that come with the securitization, which the RCG describes as excessive.

In its reply, the RCG reiterates the arguments made in its initial brief. The RCG asserts that Consumers failed to comply with the orders issued in Case No. U-18218. The RCG offers an analysis applying the discount rate of 8.58% set in Case No. U-17990. The RCG notes that there has been no buyout yet, and asserts that, under these circumstances, regulatory asset treatment cannot be granted. The RCG indicates that the parties have identified a range of potential alternative scenarios, and urges the Commission to approve a savings guarantee mechanism and to reject ABATE's allocation proposal.

6. Entergy

In its initial brief, Entergy begins by noting that the Staff's concerns about capacity in the summer of 2018 have been alleviated, as evidenced by the July 31 order in Case No. U-18197, p.

5. Entergy goes on to argue that all attempts to renegotiate the terms of the PPA Amendment, such as those alternatives offered by Mr. Peloquin, have no legal or other basis because they are not part of the pending application. With respect to ABATE's argument that Entergy could terminate the PPA for economic reasons, Entergy notes that the PPA Amendment is conditioned on Section 10.2 not being applicable, and further states that the plant's cash flow is positive. 4 Tr 818-820; Confidential Exhibit ENT-1.

In its reply brief, Entergy argues that there is no basis for establishing a savings guarantee mechanism, and no precedent for doing so. Entergy indicates its support for the alternative PPA-based replacement plan proposed by Consumers in its initial brief. Entergy reiterates that the Palisades plant is economically beneficial.

IV.

DISCUSSION

A. Qualified Costs

Qualified costs are defined in Section 10h(g) of Act 142 as follows:

"Qualified costs" means an electric utility's regulatory assets as determined by the commission, adjusted by the applicable portion of related investment tax credits, plus any costs that the commission determines that the electric utility would be unlikely to collect in a competitive market, including, but not limited to, retail open access implementation costs and the costs of a commission approved restructuring, buyout or buy-down of a power purchase contract, together with the costs of issuing, supporting, and servicing securitization bonds and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds.

Thus, the plain language of the statute describes three potential categories of qualified costs:

(1) regulatory assets as determined by the Commission; (2) any costs that the Commission determines that the electric utility would be unlikely to collect in a competitive market; and (3) the costs of issuing, supporting, and servicing the bonds and costs of retiring and refunding the electric utility's existing debt and equity. The first category grants broad discretion to the Commission; the second category requires a finding that the costs are unlikely to be recovered under the current regulatory scheme; and the third category is subject to automatic approval if securitization is granted and the proposed costs meet the statutory definition.

Consumers has proposed that the buyout of a power purchase contract is an appropriate qualified cost, and the Commission agrees. In addition to the fact that the statute explicitly includes "buyout or buy-down of a power purchase contract," the Commission has previously found, and the Court of Appeals has affirmed, that the Commission may confer regulatory asset status on generation assets at the same time that the Commission authorizes securitization of those assets. 2000 order, p. 12; *Attorney General*, 247 Mich App 35. The Commission finds that the buyout payment approved by the Commission is a generation-related asset that qualifies for treatment as a regulatory asset as that term is used in Act 142, and that the buyout payment and the costs of issuing, supporting, and servicing securitization bonds in the amount of the buyout payment and any costs of retiring and refunding the electric utility's existing debt and equity securities in connection with the issuance of securitization bonds are qualified costs. The Commission notes that it is supportive of Consumers' efforts to identify savings opportunities that benefit its customers and, in authorizing recovery from ratepayers, ultimately finds that the savings reasonably expected to be produced through this plan are meaningful and compelling.

The Commission does not, however, find that Consumers' approach to calculating its qualified costs and the proposed amount of qualified costs are reasonable, in particular the buyout payment. From the outset, the Commission has stressed the importance of having a definitive capacity and energy replacement plan to maintain reliability and to ensure cost savings materialize for customers. In the orders in Case No. U-18218, the Commission made detailed and specific requests for definitive costs, timelines, and regulatory approvals. Having certainty around the replacement portfolio is integral to the Commission's determination on whether a regulatory asset should be granted because it will ultimately affect electric reliability and whether savings will be achieved. Accordingly, the replacement portfolio is the underpinning of the Commission's evaluation and approach to the regulatory asset determination.

Yet, even at the tail end of this seven-month proceeding, the major components of Consumers' plan – the purchase of a gas plant and the expansion of Filer City – are either not near the conclusion of the regulatory process or, in the case of the gas plant purchase, have not yet been filed. Consumers was forced to conduct a reverse auction for 2017 because the Filer City PPA Amendment could not be achieved, and the proposed acquisition of DIG or another generation resource has not progressed from a regulatory perspective. Meanwhile, these two elements of the BRP are both the largest and the riskiest in terms of capacity replacement.

Uncertainty abounded in the record. Mr. Stocking pointed out that simply using Consumers' estimate of the full congestion costs brings the savings estimate down to \$292 million from \$344 million, and applying the contracting parties' 50/50 savings split concept makes any buyout over \$146 million unreasonable. If the PRA clearing price goes to CONE in the 2018/2019 PY, the total pool of savings is \$306 million, and if the buyout payment remained at \$172 million, then \$135 million would be left for ratepayers. The reality that additional capacity could be required as

a result of the SRM proceedings simply adds to the uncertainty. As Ms. Cole noted, if Consumers is required to make additional PRA purchases between 2019 and 2022 due to SRM obligations, and those costs are coupled with the cost of new generation in 2021-2022, there are no savings left for ratepayers. 3 Tr 746. And Ms. Cole points out that assuming that sufficient capacity will be available from MISO in PY 2018 is not a safe assumption. Ms. Cole found that, using Mr. Clark's Exhibit A-10 showing the elements of the BRP, and applying a 4% discount rate, the total savings for 2017-2022 would be \$270 million, with half being \$135 million. Mr. Phillips showed that if capacity prices increase to CONE, almost all of the savings disappear, even if gas prices remain stable; and that a 5% change in gas prices under 100% CONE capacity prices actually costs ratepayers \$24 million; or, if gas prices increase by 10% and capacity prices reach 75% of CONE, ratepayers will only breakeven.

Thus, intervenors and the Staff showed that, under both the BRP and market analyses, even relatively minor changes to key assumptions changed the savings projections in a significant manner. Consumers argued such analyses lacked merit or were not needed because of the four-year horizon and its confidence in market projections. However, the Commission finds that evaluation of such scenarios is essential, especially without a definitive and approved replacement plan in place, and in light of Consumers' planned reliance on market energy purchases and the decades-long horizon for the benefits to actually materialize for customers. That is, the more uncertainty there is about the costs and timing of the various components of the replacement plan, the more uncertainty there is in the expected savings values – for example, if the plant purchase fails to materialize or does not come in at the projected price, and Consumers instead is looking at building a new combustion turbine generating facility, the savings could be wiped out entirely if new capacity obligations are placed on the utility. The Commission understands it is impossible to

project the savings with complete precision, but needs to have confidence at the time it is approving cost recovery that, under a range of potential scenarios, ratepayers will be adequately protected. Through securitization, Consumers is asking for a guaranteed recovery of the buyout costs from ratepayers, while leaving considerable risk for customers based on the analyses presented and the fact that the BRP, at least as presented to the Commission, is not fully developed. Moreover, the Commission's decision-making in this matter would have been better informed had Consumers presented an analysis for comparison showing the savings associated with implementing a replacement plan at the end of the original contract period. This was suggested by the Staff and other intervenors, and yet even on rebuttal the utility failed to present such an analysis.

The Staff raises concerns with the cost implications of Consumers having to potentially acquire additional capacity to meet the needs of choice load returning to bundled service, or obtaining capacity service under the new SRM framework set forth in MCL 460.6w. Specifically, the Staff criticizes Consumers for not accounting for this potential load, and Consumers responds that issues concerning Section 6w are not relevant to this proceeding. The Commission is committed to ensuring the availability of adequate electricity supplies to reliably serve Michigan homes and businesses. This commitment to reliability covers not only customers of Consumers but also the entire state, as reinforced by the guidance provided, and authority vested in the Commission, under Act 341. The new law requires all providers to own or have contractual rights to capacity supplies four years into the future. MCL 460.6w(8).

Thus, the Commission cannot merely focus on Consumers' capacity arrangements and ignore the outlook for Zone 7 as a whole. And while the Commission believes that the potential closure of Palisades, if it occurs in 2018, will make Michigan's supply outlook more constrained in the

near term, there appear to be supplies available at the regional level that may help mitigate resource adequacy concerns during this transition period. *See*, July 31, 2017 and September 15, 2017 orders in Case No. U-18197. Significantly, Consumers appears to be on track to implement certain replacement options such as demand response, energy waste reduction, and wind farm projects, as indicated on this record. As discussed above, however, the options for replacing the bulk of the Palisades capacity (i.e., the Filer City PPA amendment and the purchase of a generating plant) are still under consideration by the company and/or the Commission. And the plant purchase does not add incremental generation in Zone 7.

The Commission cannot emphasize enough the need for Consumers to move expeditiously to secure arrangements for capacity to replace Palisades should it move forward with this transaction under the original timeline. Moreover, the Commission admonishes Consumers that it would have been prudent to have examined and presented potential supply arrangements assuming choice load would need to be served by Consumers, either as full service or as capacity-only service through the SRM. That said, the Commission finds that, given the findings addressing the uncertainty of the savings estimates and corresponding reduction in the amount authorized for securitization financing, as well as the implementation of the new energy laws, these issues will be addressed in: (1) future proceedings in which Consumers may be seeking cost recovery of specific capacity acquisitions, additions, or purchases, as applicable; (2) the new capacity assessment docket for planning years 2018-2021 established pursuant to Act 341 and the September 15, 2017 orders in Case Nos. U-18197 and U-18441; and (3) upcoming IRP filings to be made by Consumers pursuant to Section 6t of Act 341.²⁰

²⁰ The Commission also notes that, while analysis of the *potential* cost to serve *potential* choice load that *may* become the responsibility of the utility at some future date would have been helpful, until the utility has the clear responsibility for such obligations (at the earliest during mid-2018),

Faced with this degree of uncertainty, the Commission is not persuaded that the proposed figure of \$172 million is sufficiently supported in the record – which, the Commission acknowledges, would be difficult to do since it is the product of a negotiation and thus, in general, not appropriate for ratemaking purposes in a financing order. The Commission begins with Consumers' calculation of the total savings, which includes Consumers' analysis of the full congestion costs. Though not adopting ABATE's final position, the Commission finds Mr. Phillips' calculation of the total savings to be the most reliable offered on the record. He adjusts Consumers' total pool of savings of \$291.4 million, applying a discount rate of 7.65%, and assuming 50% of CONE and energy prices at business as usual (BAU), and arrives at a total savings of \$273.3 million. Exhibit AB-4, line 5.²¹ As far as how the projected savings are allocated between Entergy and customers, the 50/50 split was discussed in the record, and the Commission did not find compelling evidence to make an adjustment. Accordingly, the Commission finds in this instance that it is reasonable to leave the savings split as-is, which reflects the same methodology in how the \$273.3 million is allocated, and approves a buyout payment of \$136,650,000 as qualified costs. The Commission cautions that approval of the 50/50 savings split should not be construed as a precedential policy position, but rather has been determined on the basis of the record in the instant case. The Commission adopts the 50/50 split for purposes of the calculation of the amount of the recovery from ratepayers.

the Commission is not expecting that the utility plan new resources or incur costs in *anticipation* of serving such incremental load. Again, the Commission expects to examine these issues in other proceedings as new information becomes available.

²¹ Mr. Phillips applied 7.65% as the discount rate because that rate was used by Mr. Clark in Exhibit A-10, the Economic Evaluation by Resource Option. 4 Tr 918-921. The 7.65% rate is consistent with other pending or recently decided cases involving Consumers, including Case Nos. U-18166 and U-17990.

Critical to a determination in a securitization proceeding is the relationship between a number of financial variables and a numerical analysis that produces the best results for ratepayers. Some intervenors argue that Consumers strategically used a lower interest rate to make some arguments, and a higher interest rate as a basis for other arguments. The Commission agrees. Utilizing a 4% discount rate to project savings from the replacement portfolio is inappropriate because replacement portfolio assets would be financed using Consumers' traditional capital avenues of debt and equity, currently 7.65% as noted previously, not the cost of the securitization bonds themselves. *See*, Exhibits A-9 and A-10. Accordingly, the Commission's revised savings amount includes the discount rate adjustment as made by ABATE. The Commission urges that any future securitization applications utilize consistent assumptions to provide an accurate basis for comparison in the record in order for the Commission to perform the calculations required by the statute.

The Commission notes that the amount of \$136.65 million approximates buyout amounts discussed in the testimony of Mr. Stocking and Ms. Cole, and relies on an amount calculated by Mr. Phillips, but applies a different percentage split. While predicting the future is an impossibility, the Commission views the evaluation of multiple approaches to replace the capacity and energy lost from the Palisades PPA as yielding the most realistic results. A utility would most likely evaluate two primary options – build or acquire a generating asset or purchase the electricity from the market. It is noteworthy that both approaches, when the Commission's adjustment to the replacement plan is included, produce ratepayer savings that are very close to one another and provide a further basis for the reduced savings.

The Commission accepts Consumers' calculation of the Ongoing Other Qualified Costs, but finds that the adjusted buyout payment amount impacts the Initial Other Qualified Costs. The

Commission authorizes Underwriting Discount and Fees of \$540,000 (line item 1 on Exhibit A-24), based on the approved buyout payment. This represents the same proportional amount as was originally presented and only reflects the reduction in bond par amount.

Additionally, the Commission finds that the legal fees should be adjusted. Exhibit A-24 shows the total amount of issuance expenses is estimated at \$6,200,000, and the largest single line item is for legal fees at \$4,100,000. The Commission notes that, in connection with the 2013 order authorizing securitization of approximately \$390 million, Consumers filed a post-issuance report that reflected estimated total costs of issuance of \$6,562,238, with legal fees estimated at \$3,316,104. On August 21, 2014, Consumers filed a 30-day Report in Case No. U-17473 showing actual legal fees through July 31, 2014, to be about \$1.95 million. The Commission realizes that this does not represent the full amount of legal expenses associated with that securitization. However, it does indicate that legal fees of \$4.1 million would be excessive in light of the fees associated with the most recent securitization, and the fact that Consumers failed to adequately explain why the legal fees for this securitization need to be a higher percentage of the total issuance expenses than they were in the last securitization. The Commission finds that the legal fees should be reduced by \$500,000. Accordingly, the maximum amount of legal fees that the Commission will approve as qualified costs under Initial Other Qualified Costs is \$3,600,000 for the current proceedings.

Exhibit A-24 also includes line item 15 in the amount of \$6,400,000 for “Call or Tender Premiums and Associated Costs to Retire Debt.” As explained further in Section B.2. herein, the Commission views the debt in this instance as the obligation to make a buyout payment to Entergy. Accordingly, no proceeds from the sale of the securitization bonds will be used to pay

call or tender premiums and there is no need for the Initial Other Qualified Costs to include a line item for “Call or Tender Premiums and Associated Costs to Retire Debt.”

Thus, the Commission authorizes Initial Other Qualified Costs of \$5,501,600, for a qualified cost total of \$142,151,600 authorized for regulatory asset treatment. Consumers is authorized to securitize this amount. The Commission understands that the actual amount of the securitization bonds issued will depend upon the timing of the issuance of the securitization bonds, which timing will occur at Consumers’ sole discretion.²²

Finally, the Commission finds that the amortization period should be extended to six years. While not nearly long enough to rid the proposal of the intergenerational inequity caused by the long wait until all of the claimed savings accrue, adding two years will reduce the burden on ratepayers to some extent by lowering debt service payments. In addition, as noted by Ms. Cole, extending the bond amortization is favorable to ratepayers because in the immediate term, costs for ratepayers will be nominally higher under the replacement plan. Amortizing the bonds over a longer period of time shifts the ratepayer payments to the medium term, more closely matching the savings generated by the portfolio replacement plan. Exhibits A-9 and A-10. As requested, Consumers will be able to extend the amount of time customers pay the surcharge for up to two years beyond the final maturity of the bonds, as necessary for final true-ups.

B. Satisfaction of Statutory Criteria

1. Section 10i(1)

The Commission finds that the NPV of the revenues to be collected under this financing order is less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods, by about \$17.4 million. *See, Attachment A.* This analysis

²² Consumers has indicated that it will issue the bonds in June 2018.

applies a 2.4% securitization financing cost, and compares it to the 8.58% conventional financing costs, which is the pre-tax rate of return as set in the utility's most recent rate case.

2. Section 10i(2)(a)

Section 10i(2)(a) of Act 142 requires that the proceeds derived from the sale of Consumers' securitization bonds be used solely for the purposes of refinancing or retiring the utility's existing debt or equity. The Commission finds that at such time, if any, that Consumers is obligated to make a payment to terminate the Palisades PPA, then that obligation itself will constitute debt to be retired for purposes of Section 10i(2)(a). The record reflects that the purpose of the proposed securitization bonds is to finance a payment to terminate the Palisades PPA. As all the parties point out, this is different from every other securitization proceeding the Commission has addressed, in that there is no stranded cost associated with an asset that the utility already owns or controls which the applicant seeks to securitize. In those previous instances, the asset was financed with traditional debt and equity and extinguishing the corresponding debt and equity was appropriate. Until such time that there is a definitive obligation for Consumers to make a payment to terminate the Palisades PPA, there is no liability or debt associated with a buyout payment. At such time, however, that Consumers is obligated under a definitive agreement to make a payment to terminate the Palisades PPA, then there will be a debt obligation of Consumers. In these unique circumstances, the Commission finds that if and when Consumers is obligated under a definitive agreement to make a payment to terminate the Palisades PPA, such obligation shall constitute "debt" for purposes of Section 10i(2)(a) of Act 142 and the proceeds of the securitization bonds will be used for retiring this utility debt. In other words, the Commission finds that the debt does not only refer to bond instruments, but obligations to pay in a broader context as described in this order.

As a result, the Commission does not find it necessary for Consumers to utilize traditional debt and equity to fund any buyout payment to Entergy with the purpose of satisfying statutory requirements. Furthermore, by using the proceeds of the securitization bonds to pay the debt associated with a buyout payment, as the Commission has defined debt in the instant case, Consumers (and ultimately ratepayers) will not incur the redemption costs of \$6,400,000 to retire debt and equity discussed in Mr. Wehner's testimony. This produces the lowest transaction cost for ratepayers. As a practical matter, the Commission acknowledges that this definition of debt payment may require adjustments to the payment mechanics and timing from Consumers to Entergy as currently contemplated in the existing PPA Amendment, but finds that Consumers should be granted the flexibility to make a payment to terminate the PPA as outlined in this order and such payment qualifies for regulatory asset treatment and securitization. Retiring debt incurred under a definitive agreement to make a payment to terminate the Palisades PPA satisfies the requirements of Section 10i(2)(a).

3. Section 10i(2)(b)

The Commission finds that securitization will provide tangible and quantifiable benefits to customers of the utility. As shown above, the securitization as approved by the Commission satisfies the NPV test by \$17.4 million. The weighted average interest rate for the bonds is expected to be 2.4% based upon current market conditions, whereas the utility's current pre-tax cost of capital stands at 8.58%. The Commission finds adequate support for concluding that the statutory requirement set forth in Section 10i(2)(b) of Act 142 is satisfied.

4. Section 10i(2)(c)

Section 10i(2)(c) of Act 142 requires that the securitization bonds be structured and priced in a manner that will result in the lowest securitization charges consistent with market conditions and

the terms of the financing order. The Commission finds that Consumers' securitization proposal satisfies Section 10i(2)(c). The detailed marketing plan developed by Consumers shows that the utility plans to take reasonable steps in structuring and pricing the securitization bonds to achieve the lowest possible securitization charges consistent with market conditions.

The Commission notes that annual principal and interest payment amounts provided by Consumers differ from the amount of revenues projected to be generated by the securitization surcharge paid by customers. Exhibit A-4. Consumers posits that the marketability of the bonds is enhanced by this design, and potentially further by the ratepayer funding of an overcollateralization account, as necessary. The Commission grants these structuring features in this order on the basis that they will reduce bond interest costs and thereby are in the best interest of ratepayers, but strongly encourages additional analyses demonstrating the value in any future securitization applications.

The Commission adopts the reporting requirements supported by Consumers and the Staff, which are the same as those adopted in the 2000 and 2013 orders.

5. Section 10i(2)(d)

The last of the statutory mandates requires the Commission to find that the amount of qualified costs to be securitized does not exceed the NPV of the revenue requirement for those qualified costs over the life of the securitization bonds. The Commission finds that the securitization meets this requirement. Because the NPV figure does not exceed the proposed amount of the securitization bonds, the statutory requirement spelled out in Section 10i(2)(d) of Act 142 has been satisfied up to the amount of qualified costs approved by this financing order.

Based on the above analysis, the Commission finds that this financing order and the proposed sale of securitization bonds in an amount up to \$142,151,600 is consistent with the standards set forth in Section 10i(1) and (2) of Act 142.

C. Proposed Amortization and Accounting Approvals

Ms. Allen testified regarding the requested authority necessary to record on Consumers' books all financial transactions necessary to undertake securitization, including those between the utility and the proposed SPE. As testified to by Ms. Allen, this set of authorizations is similar to those requested by Consumers and granted by the Commission in the 2000 and 2013 orders. The authority being requested would permit, among other things, all accounting entries needed to record: (1) the securitized qualified costs on Consumers' books, including the establishment of a regulatory asset for the costs being securitized; (2) the issuance of the securitization bonds; (3) the use of the securitization bond proceeds to retire existing debt; (4) the receipt of revenues arising from Consumers' proposed securitization charge; (5) the payment of principal, interest, and expenses relating to the securitization bonds; (6) the retirement or refunding of the securitization bonds; and (7) the amortization of securitized qualified costs. No party disputed these accounting requests. The amount securitized will be recorded as a financing of the SPE for financial reporting purposes and, because the SPE will be consolidated with Consumers for financial reporting purposes, the amounts financed will also appear as a financing in the utility's consolidated financial statements. The Commission finds that the authority requested by Consumers is appropriate and should be granted.

Consistent with Section 10i(9) of Act 142, the Commission also authorizes the early retirement or refunding of the securitization bonds for the purposes of generating additional NPV

savings, as this would be a benefit to ratepayers. The Commission approves the overcollateralization subaccount as requested.

D. Proposed Use of Securitization Cost Savings

Consumers initially proposes to reduce customer rates after the termination of the PPA by reducing the PSCR factor. This is expected to be in the billing month following the month securitization bonds are issued, which may also be the first month in which the securitization charge will appear on customer bills. The PSCR factor reduction will result in an equal reduction per kWh for customers. The reduced PSCR factor will be reflected in Consumers' 2018 PSCR Plan, and in Consumers' next rate case the company will update the base PSCR, so that the reduced power supply costs, including the costs of replacement energy and capacity, are reflected in base rates. Additional savings may eventually accrue as a result of implementation of the BRP. The Commission approves Consumers' proposed treatment of future cost savings resulting from securitization.

E. The Securitization Charge

The Commission finds that the charge shall be imposed using the production cost allocator as determined in the company's most recent rate case as of the date the bonds are issued. It is currently 4CP 75/0/25. The Commission rejects ABATE's 100% demand cost allocation proposal. This would not reflect the allocation used in the most recent rate case, the allocation used in all other securitization cases, or the allocation used to currently collect costs under the PPA. The Commission is not persuaded that the allocation in this case should deviate from all three of those precedents. However, the Commission agrees with ABATE and Consumers that the rate design should recognize the difference in line losses associated with the various rate schedules for Primary customers, and approves the differentiation by voltage level agreed to by Consumers for

the Primary class. 3 Tr 556-557; Exhibit A-37 (Revised) and A-38 (Revised). The production cost allocator method assigned by this order (though not necessarily the current percentages) shall be frozen as of the date the bonds are issued. Any change in the allocation methodology in future rate cases will not apply to the securitization charge. The allocator percentages resulting from updating the inputs to the methodology, however, will apply. The allocator shall determine each rate class' annual responsibility for the total revenue requirement of the securitization. The charge shall be applied as a uniform per kWh charge within each class. Consumers shall, after issuance of the bonds, submit revised tariff sheets reflecting the actual initial securitization charge for each rate class.

The Commission approves Consumers' proposal to exclude current choice customers. Full service customers who transition to choice service any time after the date of this order will carry the securitization obligation, including applicable true-ups, with them; and any current choice customer who transitions to bundled service shall thereafter be subject to the charge applied to that customer's class. This is identical to the application of charges in the 2013 order.

F. Periodic True-Ups

Periodic securitization charge true-ups are necessary to provide the certainty needed to obtain a high credit rating for the bonds, and they need to be undertaken in a way that allows for their swift and certain resolution. The Staff supports Consumers' proposal for annual and potential additional interim true-ups. The Commission approves Consumers' and the Staff's proposal that mid-year true-ups be implemented absent a Commission order, unless the true-up is contested. The Commission's role in true-ups is largely a mathematical one, and the more expeditiously the true-up occurs, the better for all parties.

G. The Findings

In accordance with the requirements of Act 142, the Commission makes the following findings:

1. Consumers is an electric utility as defined by MCL 460.10h(c).
2. Consumers' complete application was filed on February 10, 2017.
3. The \$136,650,000 payment intended to be made in order to terminate the Palisades PPA constitutes a qualified cost as defined in MCL 460.10h(g), may be recorded as a regulatory asset, and is recoverable by Consumers through securitization bond issuance.
4. Consumers should be allowed to establish an SPE, capitalize and direct the administration of the SPE, and sell to the SPE the securitization property as set forth in this order. The SPE will be an assignee as defined in MCL 460.10h(a) once an interest in securitization property is transferred to the SPE. For purposes of this order, the term "assignee" as defined in MCL 460.10h(a) refers only to an individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred, other than as security.
5. Consumers' and the SPE's Initial Other Qualified Costs as approved in this financing order of \$5,501,600 are qualified costs pursuant to MCL 460.10h(g) and are therefore appropriate to be included as part of the principal balance of the securitization bonds issued pursuant to this financing order.
6. The holders (otherwise known as the purchasers) of the securitization bonds and their indenture trustee will each be a financing party as defined in MCL 460.10h(e).
7. The SPE may issue securitization bonds in accordance with this financing order and may pledge all of its interest in the securitization property, as defined in MCL 460.10j, and related assets, to secure those bonds.

8. The proceeds of the securitization bonds are the amounts realized from the sale of the securitization bonds, after payment of the costs of issuance, and paid to Consumers by the SPE as the purchase price for the securitization property. The securitization transaction approved in this financing order satisfies the requirements of MCL 460.10i(2)(a) because the proceeds to Consumers of the securitization bonds shall be used solely for the purposes of the refinancing or the retirement of debt or equity of Consumers.

9. The securitization transaction approved in this financing order satisfies the requirements of MCL 460.10i(2)(b) because it provides tangible and quantifiable benefits to customers of Consumers.

10. The SPE's issuance of securitization bonds in compliance with this financing order will satisfy the requirements of MCL 460.10i(2)(c) because the expected structuring and pricing of the securitization bonds will result in the lowest securitization charges consistent with market conditions and the terms of this financing order.

11. The amount of qualified costs approved for securitization in this financing order does not exceed the NPV of the revenue requirement over the life of the securitization bonds associated with the qualified costs sought to be securitized, as required by MCL 460.10i(2)(d).

12. The securitization transaction approved in this financing order satisfies the requirements of MCL 460.10i(1) because the NPV of the revenues to be collected under this order will be less than the amount that would be recovered over the remaining life of the qualified costs using conventional financing methods.

13. This financing order adequately details the amount of qualified costs, including the Ongoing Other Qualified Costs, to be recovered by Consumers through securitization charges. Consumers' securitization bond issuance shall not exceed \$142,151,600 as the principal amount of

such bonds, and the period over which Consumers will be permitted to recover nonbypassable securitization charges does not exceed 15 years, as required by MCL 460.10i(3).

14. As provided in MCL 460.10i(4), this financing order, together with the securitization charges authorized by this financing order, are irrevocable and not subject to reduction, impairment, or adjustment by further action of the Commission, except by use of the true-up procedures approved in this order.

15. The method for implementing the initial securitization charge as described in this order, and the method for making subsequent adjustments to the securitization charges through the use of a true-up mechanism, as set forth in Exhibit A-37 and as illustrated in Exhibit A-33, satisfy the requirements of MCL 460.10k(3) and are approved in this financing order. Partial payments of bills by customers should be allocated ratably among the securitization charges authorized pursuant to the financing order in Case No. U-17473, the securitization charges authorized by this financing order, and other billed amounts based on the ratio of each component of the bill to the total bill.

16. Consumers' request to establish securitization property, including a nonbypassable securitization charge as described herein, from which the utility's securitization bonds are to be paid, is granted as set forth herein.

17. Consistent with MCL 460.10j(1), the securitization property established hereby includes, without limitation: (1) the right to impose, collect, and receive securitization charges in an amount necessary to allow for the full recovery of all qualified costs; (2) the right to obtain periodic adjustments of securitization charges as described herein; and (3) all revenue, collections, payments, money, and proceeds arising out of the rights and interests described above.

18. Consistent with MCL 460.10j(2), all securitization property arising as a result of this financing order constitutes a present property right even though the imposition and collection of securitization charges depends on further acts by Consumers or others that have not yet occurred.

19. Consistent with MCL 460.10m(2), any lien and security interest created in the securitization property (through the execution and delivery of a security agreement with a financing party in connection with the issuance of the securitization bonds) will arise and be created only in favor of a financing party and shall attach automatically from the time that value is received for the bonds and, further, shall be a continuously perfected lien and security interest in the securitization property and all proceeds of the property.

20. The priority of any lien and security interest in the securitization property and all proceeds of the property arising from this financing order will not be considered impaired by any later modification of this financing order or by the commingling of the funds arising from securitization charges with any other funds, consistent with MCL 460.10m(4). The securitization property shall constitute an account under the Uniform Commercial Code and shall be in existence whether or not the revenue or proceeds have accrued and whether or not the value of the property right is dependent on the customers of an electric utility receiving service, consistent with MCL 460.10m(6).

21. The structure of the securitization transactions, the expected terms of the securitization bonds, and the use of the securitization bond proceeds, as proposed by Consumers and approved in this order, are reasonable and should be approved.

22. If and when Consumers transfers the securitization property to the SPE, including the right to impose, collect, and receive the securitization charges, the servicer will be authorized to

recover the securitization charges only for the benefit of the SPE in accordance with the servicing agreement.

23. If and when Consumers transfers the securitization property to the SPE under an agreement that expressly states that the transfer is a sale or other absolute transfer in accordance with the “true sale” provisions of MCL 460.10l(1), that transfer will constitute a “true sale” and not a secured transaction or other financing arrangement, and title (both legal and equitable) to the securitization property will immediately pass to the SPE. As provided by MCL 460.10l(2), this “true sale” shall apply regardless of whether the purchaser has any recourse against the seller, or any other term of the parties’ agreement, including the seller’s retention of an indirect equity interest in the securitization property by reason of its equity interest in the SPE, the fact that Consumers acts as the collector of securitization charges relating to the securitization property, or the treatment of the transfer as a financing for tax, financial reporting, or other purposes.

24. As provided in MCL 460.10m(5), if the servicer defaults on its obligation to remit revenues arising with respect to the securitization property, on application by or on behalf of the financing parties, the Commission or a court of appropriate jurisdiction shall order the sequestration and payment to those parties of revenues arising with respect to the securitization property.

25. Pursuant to MCL 460.10n(2), the State of Michigan pledges, and the Commission reaffirms, for the benefit and protection of all financing parties and Consumers, that the State of Michigan will not take or permit any action that would impair the value of the securitization property, reduce or alter, except as allowed under MCL 460.10k(3), or impair the securitization charges to be imposed, collected, and remitted to the financing parties, until the principal, interest, and premium, as well as any other charges incurred and contracts to be performed in connection

with the securitization bonds have been paid and performed in full. The SPE, when issuing securitization bonds, is authorized, pursuant to MCL 460.10n(2) and this financing order, to include this pledge in any documentation relating to the securitization bonds.

26. This financing order, as well as Consumers' written acceptance of all conditions and limitations imposed by the order, will remain in effect and unabated notwithstanding the bankruptcy or insolvency of Consumers, its successors, or its assignees, as required by MCL 460.10k(1).

27. Consumers retains sole discretion regarding whether or when to cause the issuance of any securitization bonds authorized by this order.

28. Any securitization bonds issued pursuant to the authority granted in this financing order are not a debt or obligation of the State of Michigan and are not a charge on its full faith and credit or taxing power.

29. As required by MCL 460.10m(8), any subsequent changes in this financing order or changes to the customer's securitization charges do not affect the validity, perfection, or priority of the security interest in the securitization property.

30. As required by MCL 460.10j(2), this financing order shall remain in effect and the securitization property shall continue to exist until the securitization bonds authorized for issuance by this order, as well as all expenses related to those bonds, have been paid in full.

31. The securitization charges authorized in this order shall be billed, collected, and delivered to the trustee by Consumers, as the initial servicer, and by any successor servicer pursuant to a servicing agreement. Any payment of the securitization charge by a customer to the SPE, or to the servicer on behalf of the SPE, will discharge the customer's obligations regarding

that charge to the extent of that payment, notwithstanding any objection or direction to the contrary by Consumers.

32. As required by MCL 460.10k(2), the imposition and collection of the securitization charges authorized in this financing order are a nonbypassable charge.

33. Consumers should file a report, within 30 days following the receipt of any proceeds from the sale of its securitization bonds, and quarterly thereafter, until all bond proceeds have been disbursed, specifying: (1) the gross amount of proceeds arising from the sale of those bonds; (2) any amounts expended for payment of Initial Other Qualified Costs relating to that sale; (3) the amount of proceeds remaining after payment of those costs; and (4) the precise type and amount of debt, originally held by Consumers, that was retired through use of those proceeds, consistent with this order.

34. Consumers should continually monitor the bond market and notify the Commission, within seven days, of: (1) any reduction in applicable bond rates or other change in market conditions that might make refinancing its securitization bonds economically advantageous, and (2) what steps, if any, Consumers intends to take as a result of that reduction or change.

35. In the event that a decline in interest rates or other change in market conditions leads Consumers to refinance any of its securitization bonds, Consumers should file, within seven days, a report disclosing the details of that refinancing.

36. All amortization, accounting, and ratemaking approvals, as well as all other authorizations, provided for in this financing order should be tolled pending Consumers' express written acceptance of all conditions and limitations that this order places on the utility.

37. This financing order is final and is not subject to rehearing by the Commission, except by the applicant as provided in MCL 460.10i(7), and is not subject to review or appeal, except as

provided in MCL 460.10i(8). This order is a financing order within the meaning of MCL 460.10h(d).

THEREFORE, IT IS ORDERED that:

A. The general structure of the securitization transactions, the expected term of the securitization bonds, and the use of the securitization bonds' proceeds, as proposed by Consumers Energy Company and modified by this order, is approved, and Consumers Energy Company is authorized to proceed, at its sole discretion, with the sale of securitization bonds as set forth in this order.

B. Consumers Energy Company is authorized to treat a payment to terminate the Power Purchase Agreement between Entergy Nuclear Palisades, LLC (as subsequently assigned by Entergy Nuclear Palisades, LLC, to Entergy Nuclear Power Marketing, LLC) and Consumers Energy Company, dated July 11, 2006, at the time of issuing the securitization bonds authorized in this financing order, up to the total amount of \$136,650,000, as a regulatory asset and qualified costs as defined in MCL 460.10h(g).

C. Consumers Energy Company is authorized to proceed with the issuance of securitization bonds for up to \$142,151,600 of its qualified costs, as detailed in this order.

D. Consumers Energy Company, and any successor to Consumers Energy Company, shall impose and collect from customers, in the manner provided by this financing order, securitization charges in amounts sufficient to provide for the full and timely recovery of the amount securitized, the Ongoing Other Qualified Costs of the special purpose entity, and federal, state, and local taxes related to the securitization charge.

E. Consumers Energy Company shall include, as part of its electric tariffs and before any securitization bonds are issued, new language consistent with Exhibit A-37 (Revised) and A-38

(Revised), as approved by this order. Consumers Energy Company shall file, no less than seven days prior to the initial imposition and billing of its securitization charges, revised tariff sheets reflecting all the terms of this order.

F. Consumers Energy Company, and any successor to Consumers Energy Company, is authorized to bill to its full service customers, following the sale of securitization bonds, an initial securitization charge applying the allocation method described in this order. The 4CP 75/0/25 allocator, or, if necessary, a new allocator approved in Case No. U-18255, shall determine each class' annual responsibility for the total revenue requirement of the securitization. The charge shall be applied as a uniform per kilowatt-hour charge within each class. Full service customers who transition to retail open access service after the date of the bond issuance will carry the securitization obligation with them, including applicable true-ups, at the same rate at which they were paying as full service customers. Any current choice customer who transitions to full service after the date of the bond issuance shall thereafter be subject to the charge applied to that customer's class. The production cost allocation method assigned by this order shall be frozen. Any change in the allocation method in future rate cases will not apply to the securitization charge. The allocator percentages resulting from updating the inputs to the methodology, however, will apply. Such charges shall remain in effect until changed pursuant to the true-up mechanism approved in this financing order. The initial securitization charge shall be placed on customers' bills beginning with the first billing cycle after the issuance of the securitization bonds and shall be subject to subsequent true-ups in the manner directed in this order. Partial payments shall be allocated ratably among the components of the bill as provided in this order.

G. The securitization charges related to Consumers Energy Company's securitization bonds shall be billed to each customer for recovery over a period of not greater than eight years after the

beginning of the first complete billing cycle during which the securitization charges were initially placed on any customer's bill. However, Consumers Energy Company may continue to collect any billed but uncollected securitization charges after the close of this eight-year period. Amounts of the securitization charges remaining unpaid after the close of this eight-year period may be recovered through use of collection activities, including the use of the judicial process.

H. True-ups of the securitization charges shall be conducted periodically, in accordance with the schedule and the methodology approved in this order. Mid-year and interim true-up results may be implemented immediately for any such true-up that is uncontested.

I. Consumers Energy Company is authorized to create a special purpose entity to which it may transfer securitization property. The special purpose entity will be an assignee, as defined below, once an interest in securitization property is transferred to the special purpose entity. In turn, the special purpose entity is authorized to issue securitization bonds in the manner specified in this financing order. All securitization bonds shall be binding in accordance with their terms, regardless of whether this order is later vacated, modified, or otherwise held to be invalid, in whole or in part. The special purpose entity shall be funded with sufficient capital to carry out its intended functions and to obtain the desired ratings for the securitization bonds that it issues. For purposes of this order, the term "assignee" as defined in MCL 460.10h(a) refers only to an individual, corporation, or other legally recognized entity to which an interest in securitization property is transferred, other than as security.

J. Consumers Energy Company is authorized to initiate and complete the refinancing of its securitization bonds when justified by financial market conditions.

K. All securitization property and other collateral shall be pledged by the special purpose entity to the indenture trustee for the benefit of the holders of the securitization bonds and the other parties specified in the indenture.

L. Consumers Energy Company is authorized to enter into a servicing agreement with the special purpose entity that it creates and to perform the servicing duties contemplated by this financing order in return for an annual servicing fee of the lowest rate not to exceed 0.10% of the original principal amount of the securitization bonds consistent with market conditions at the time of the bond issuance. If some other entity is selected to serve in place of Consumers Energy Company, that replacement servicer shall perform the servicing duties in return for an annual fee not to exceed 0.75% of the bonds' original principal amount. The servicer shall remit all collections of the securitization charges to the indenture trustee for the special purpose entity's account, in accordance with the terms of the servicing agreement.

M. Upon the issuance of securitization bonds, the special purpose entity shall pay the proceeds from the sale of the securitization bonds (after payment of the Initial Other Qualified Costs) to Consumers Energy Company as the purchase price of the securitization property. The proceeds from the sale of the securitization property (after payment or reimbursement of all Initial Other Qualified Costs) shall be applied to retire Consumers Energy Company's debt incurred in making the buyout payment as described in Ordering Paragraph B. No proceeds from the sale of the securitization property shall be used to (i) retire equity of the company, (ii) retire debt other than the debt payment as described, or (iii) pay any redemption premium on debt of Consumers Energy Company.

N. Consumers Energy Company has the continuing, irrevocable right to cause the issuance of securitization bonds in one or more series in accordance with the terms of this financing order for

a period of two years following the later of the date upon which this order becomes final and no longer appealable or, if appealed, is no longer subject to further judicial review.

O. Consumers Energy Company shall provide the Commission with a copy of each registration statement, prospectus, or any other closing documents filed with the Securities & Exchange Commission as part of its securitization transaction immediately following the filing of the original document.

P. This financing order, together with the securitization charges authorized by the order, shall be binding upon Consumers Energy Company and any of its successors or affiliates that provide distribution service directly to customers in Consumers Energy Company's service area as of the initial date of issuance of the securitization bonds. This order is also binding upon any servicer or other entity responsible for billing and collecting securitization charges on behalf of the owners of securitization property, and upon any successor to the Commission.

Q. Subject to compliance with the requirements of this financing order, Consumers Energy Company and the special purpose entity that it creates shall be afforded flexibility in establishing the terms and conditions of the securitization bonds, including the final structure of the special purpose entity as either a business trust or limited liability company, repayment schedules, term, payment dates, collateral, credit enhancement, required debt service, reserves, interest rates, other reasonable and necessary financing costs, and the ability of Consumers Energy Company, at its option, to cause the issuance of one or more series of securitization bonds.

R. All regulatory approvals within the jurisdiction of the Commission that are necessary for the securitization of the qualified costs identified in this financing order, and all related transactions, are granted. Accordingly, following Consumers Energy Company's submission of an unconditional acceptance letter, the utility will be deemed to have satisfied all state-imposed

prerequisites to the execution of a security agreement, the Commission will have taken all necessary steps with regard to approving Consumers Energy Company's request for securitization, and, pursuant to 2000 PA 142, a valid and enforceable lien and security interest in the securitization property will be created (and will be created only in favor of a financing party) following the execution and delivery of the applicable security agreement in connection with the issuance of the securitization bonds.

S. Consumers Energy Company shall file a report, within 30 days following the receipt of all or any portion of the proceeds from the sale of the securitization bonds and quarterly thereafter until all bond proceeds have been disbursed, specifying: (1) the gross amount of proceeds arising from the sale of those bonds; (2) any amounts expended for payment of Initial Other Qualified Costs relating to that sale; (3) the amount of proceeds remaining after payment of those costs; and (4) the precise type and amount of debt retired through use of those proceeds consistent with this order. The initial report filed following receipt of securitization bond proceeds shall include a copy of the closing documents (generally referred to as the "closing transcript") arising from the sale of the bonds.

T. Consumers Energy Company shall continually monitor the bond market and notify the Commission, within seven days, of (1) any reduction in applicable bond rates or other change in market conditions that might make refinancing its securitization bonds economically advantageous and (2) what steps, if any, Consumers Energy Company intends to take as a result of that reduction or change.

U. In the event that a decline in interest rates or other change in market conditions leads Consumers Energy Company to refinance any of its securitization bonds, Consumers Energy Company shall file, within seven days of the refinancing, a report disclosing the details of that

refinancing, in which case, upon Consumers Energy Company's request, as accompanied by demonstration of an ability to refinance under applicable bond covenants and that securitization charges to service new securitization bonds, including transaction costs, would be less than the future securitization charges required to service the securitization bonds being refunded, pursuant to MCL 460.10i(9), this financing order shall constitute a financing order adopted by the Commission in accordance with MCL 460.10i(9).

V. All amortization, accounting, ratemaking approvals, and other authorizations provided for in this financing order shall be tolled pending Consumers Energy Company's express written acceptance of all conditions and limitations that the order places on the utility.

W. Following Consumers Energy Company's express written acceptance of all conditions and limitations established by this financing order, the order and each of its terms shall be irrevocable. Consumers Energy Company's acceptance likewise shall be irrevocable and, therefore, shall survive bankruptcy or any other change in the utility's legal or economic structure.

X. This financing order shall, consistent with MCL 460.10i(4), be irrevocable. No adjustment through the true-up adjustment mechanism shall affect the irrevocability of this financing order. Consistent with MCL 460.10n(2), the Commission reaffirms that it shall not reduce, impair, postpone, terminate, or otherwise adjust the securitization charges approved in this financing order or impair the securitization property or the collection of securitization charges or the recovery of the qualified costs and Ongoing Other Qualified Costs. Consistent with MCL 460.10k(3), the Commission affirms that it will act pursuant to this financing order to ensure that the expected securitization charges are sufficient to pay on a timely basis scheduled principal of and interest on the securitization bonds issued pursuant to this financing order and the Ongoing Other Qualified Costs in connection with the securitization bonds.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner,

Rachael A. Eubanks, Commissioner

By its action of September 22, 2017.

Kavita Kale, Executive Secretary

MICHIGAN PUBLIC SERVICE COMMISSION

Consumers Energy Company

Securitization Rate Case U-18250

Test Compliance

Attachment A

Demonstration of Compliance with Act 142 Section 10i(1)

\$ in Millions

Conventional Financing

		2018		2019		2020		2021		2022		2023
1 Balance		136.7		125.3		113.9		102.5		91.1		79.7
2 Pre-tax Rate of Return	8.58%		4.29%		4.29%		4.29%		4.29%		4.29%	
3 Return (Line 1 * Line 2)		5.9		5.4		4.9		4.4		3.9		3.4
4 Depreciation		11.4		11.4		11.4		11.4		11.4		11.4
5 Revenue Requirements (L3 + L4)		17.3		16.8		16.3		15.8		15.3		14.8
6 NPV of Line 5	8.58%		\$136.7									

Securitization Financing

		2018		2019		2020		2021		2022		2023
7 Revenue Requirements		0		26.6		12.9		12.9		12.9		12.9
8 NPV of Line 7	8.58%		\$119.3									

9 Amount in satisfaction of test

\$17.4

Line:

2 Pretax RoR reduced from 9.13 to 8.58% to reflect the RoR from Consumers last rate case U-17990

* Securitization revenue requirement estimated at \$142.15million, which includes \$136.7 million in

securitization proceeds plus around \$5.5 million in initial other qualified costs and \$475 thousand

in annual fees and expenses.

Secrtzn rev. req.	26,588,947
	12,903,500
	12,899,500
	12,900,500
	12,897,500
	12,897,500
	12,892,500
	12,894,500
	12,896,500
	12,894,500
	12,892,500