S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, establishing the method and avoided cost calculation for **CONSUMERS ENERGY COMPANY** to fully comply with the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq*.	)	Case No. U-18090

At the February 22, 2018 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

ORDER

History of Proceedings

The Commission opened this contested case proceeding in an order issued on May 3, 2016 (May 3 order), in which it directed Consumers Energy Company (Consumers) to file proposed avoided cost calculation methods and costs in accordance with the requirements of the Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 (PURPA).

Pursuant to the May 3 order, Consumers filed various avoided cost methods and costs on June 17, 2016. Administrative Law Judge Mark E. Cummins (ALJ) held a prehearing conference on July 21, 2016. At the prehearing conference, the ALJ granted petitions to intervene filed by, among others, Independent Power Producers Coalition of Michigan (IPPC) and Environmental

Law & Policy Center, Ecology Center, Solar Energy Industries Association, and Vote Solar (collectively, ELPC). The Commission Staff (Staff) also participated in the proceedings.

On May 31, 2017, the Commission issued an order (May 31 order) finding: (1) the most appropriate method for determining Consumers' avoided capacity and energy costs is the Staff's hybrid-proxy method, which is based on the avoided capacity cost of a natural gas combustion turbine (NGCT) and the avoided energy cost of a natural gas combined cycle (NGCC) unit; (2) zonal resource credits (ZRCs) should be applied to intermittent resources like wind and solar; (3) a fixed investment cost attributable to energy (ICE) should be added to the energy portion of avoided costs; (4) a 10-year planning horizon is reasonable for determining whether Consumers requires additional capacity, and if the company requires any capacity during the planning period, it should pay qualifying facilities (QFs) for both capacity and energy; (5) expiring contracts for existing QFs should be renewed at the full avoided cost rate, whether or not Consumers forecasts a capacity shortfall; (6) if no capacity is needed during the 10-year planning horizon, then Consumers shall make a filing so indicating, and, going forward, the avoided cost for capacity shall be reset to the Midcontinent Independent System Operator, Inc.'s (MISO's) planning reserve auction (PRA) price; (7) the design capacity for the Standard Offer should be set at two megawatts (MW); (8) Standard Offer term lengths should be set at five, 10, 15, and 20 years at the option of the QF; (9) except for line losses, there was insufficient evidence in this record to quantify other avoided costs including reduced transmission costs, reduced air emissions and environmental compliance costs, and the hedging value resulting from QF power; however, this issue should be revisited in the company's next avoided cost review; (10) a line-loss credit of 2.37% should be applied to the energy portion of the Standard Offer, until more information is available, and the credit should be negotiated for other agreements; (11) renewable energy credits belong to the QF under both the Standard Offer and negotiated power purchase agreements (PPAs); (12) the next review of Consumers' avoided costs should be conducted in two years; and (13) additional PURPA issues, including rates for stand-by service, back up, and supplementary power are being addressed in other proceedings. The Commission further determined that the record should be reopened for the taking of additional evidence on the appropriate inputs for the hybrid proxy model.

After a second hearing and briefing, the Commission issued an order on July 31, 2017 (July 31 order), in which it: (1) approved inputs to the NGCT model; (2) upon further consideration, found that the MISO ZRC capacity structure should apply to all QF resources, not only solar and wind; (3) found that run-of-the-river hydro only may opt for a levelized energy payment in lieu of an escalating payment; and (4) determined an appropriate heat rate and assumed capacity factor for the NGCC proxy unit. However, the Commission also found that there was insufficient information in the record to develop an appropriate schedule of avoided energy costs. Accordingly, the Commission remanded the case a second time for the submission of additional evidence. After a hearing and one round of briefing, the Commission issued a final order in this proceeding on November 21, 2017 (November 21 order), approving final avoided cost methods and costs and a final Standard Offer tariff, subject to clarification of the early termination provision in the tariff. On December 20, 2017, the Commission issued an order suspending the implementation of new avoided costs.

On December 20, 2017, Consumers filed a motion to stay the company's obligation to purchase capacity from QFs. On that same day, Consumers filed a petition for rehearing and clarification. Also on December 20, 2017, IPPC filed a motion to stay the implementation of new avoided costs and petition for rehearing. On December 28, 2017, ELPC filed a response to IPPC's motion. On January 10, 2018, ELPC and the Staff filed responses to Consumers' motion to stay and its petition for rehearing, and Consumers filed a response to IPPC's petition for rehearing. On January 11, 2018, the Staff filed a corrected response to IPPC's petition for rehearing and motion to stay. On January 22, 2018, Cypress Creek Renewables LLC (Cypress Creek) filed a response to Consumers' motion to stay.

Petitions for Rehearing and Responses

Consumers' Petition for Rehearing

Consumers contends that the November 21 order contains several calculation errors in the locational marginal price (LMP) energy rates, the monthly capacity payment, the energy rate table in the Standard Offer tariff, the ICE adder, and the proxy plant inputs.

With respect to the LMP calculation, Consumers claims:

> On page 2 of Attachment 1 to the November 21, 2017 Order, Columns A through D and Columns E through H both indicate that they are calculated using an Annual On-Peak Average rate. This is depicted in the labels of Columns B and F, respectively. However, Columns E through H should represent the Annual Off-Peak Average Energy Rate for Energy Rate Option 2. As such, the heading on column F should be changed to read "Annual Off-Peak Average." Although Column F's heading is incorrect, the values in Column F appropriately represent the Annual Off-Peak Average Rate.

Consumers' petition for rehearing, pp. 3-4. Consumers adds that the levelized LMP rate should be reduced by $1.00 to reflect an administrative fee that was not included in the calculations in the attachments to the November 21 order.

Next, Consumers points out that the Commission approved an annual avoided capacity cost of $140,505.00/ZRC-year; however, Attachment 2 to the November 21 order expresses this amount as $11,709/ZRC-month. Consumers contends that while this number may have been rounded for simplicity, it is extremely important for contracting purposes that the avoided capacity cost be expressed as precisely as possible. Accordingly, Consumers asserts that the capacity cost should be $11,708.75/ZRC-month as shown in the company's attachment to its petition for rehearing.

Consumers maintains that to be consistent with the language in the November 21 order, the line loss credit applies to both energy and ICE. Although the calculations are correct, Consumers contends that the description of the available energy rate is incorrect and should be revised to reflect the application of line loss to energy and ICE.

Finally, Consumers states that based on the Commission's findings in the November 21 order, ICE should be calculated as the difference between the company's calculations for the fixed cost of an NGCT and an NGCC. Consumers contends that there is a calculation error in the attachments to the November 21 order that needs to be corrected. Similarly, Consumers points out that the fixed cost input for the NGCC is erroneous and should be revised to comport with the determinations in the November 21 order.

The Staff agreed with the company's recommended revisions to the avoided cost calculations.

In its second issue on rehearing, Consumers points out that under PURPA, a utility is only obligated to pay for energy and capacity from a QF that it avoids by that purchase, noting that the Commission recognized this in the May 31 order. Nevertheless, Consumers asserts that, in the November 21 order, the Commission changed the method for resetting the capacity purchase obligation from the process approved in the May 31 order. Specifically, in the May 31 order, p. 19, the Commission directed, "if no capacity is needed during the 10-year planning horizon, then Consumers shall make a filing so indicating, and the avoided cost for capacity shall be reset to the MISO PRA[,]" whereas in the November 21 order, p. 32, the Commission restated the directive as "if Consumers' capacity requirements are met over the subsequent 10 years, the company may make a filing so demonstrating and, after Commission approval, the capacity rate will be reset to the MISO PRA." Consumers states that the additional obligation that the company make a 10-year capacity demonstration prior to resetting the avoided cost has the unintended consequence of requiring the company to purchase unneeded capacity and "and has the potential to render the Integrated Resource Planning ('IRP') process from Act 341 of 2016 meaningless." Consumers' petition for rehearing, p. 9.

As supported by the affidavit of Keith G. Troyer, a Senior Engineer II in Consumers' Electric Grid Integration Department, there has been a significant uptick in interest by solar QFs seeking to enter into PPAs with the company, noting that "Since May 31, 2017, the Company received 118 interconnection requests for 296 MW of solar generation ranging in size from 0.15 MW to 20 MW." *Id*. Consumers adds:

> Although the Company does not have a capacity need, if it is required to sign 300 MWs of PURPA-based solar contracts that are compensated at $140,505/ZRC-yr, the Company's customers will be obligated to pay approximately $26 million annually. This annual expense would burden the Company's customers with up to $519 million of added expense over the next 20 years for a commodity that is unnecessary.

Consumers' petition for rehearing, p. 11. Therefore, Consumers urges the Commission to clarify that the avoided capacity cost should be reset to the MISO PRA as soon as the company makes its 10-year capacity demonstration filing, rather than when the Commission approves that application.[1]

The Staff recommends that the Commission deny Consumers' request for rehearing on the capacity issue, noting that approving the company's request "would allow Consumers or any other utility to be in the hegemonic position where it could signal no need for capacity as a way of stalling purchases from QFs." Staff's response, p. 3. The Staff agrees with Consumers that the

[1] Consumers has filed an application in Case No. U-18491 proposing to establish its capacity availability for the next decade.

appropriate place to determine the company's capacity needs over the planning horizon is in the IRP process, and requests that the Commission clarify that the IRP is the appropriate proceeding for this evaluation. However, the Staff disagrees that capacity purchases should be stayed until such time as the IRP proceeding is concluded.

In a related concern, the Staff advocates that the Commission establish a policy for when a legally enforceable obligation (LEO) arises, noting that some QFs may have already established LEOs before the Commission suspended the implementation of new avoided costs and the Standard Offer. The Staff points out that enforcement of an LEO is meant to prevent a utility from delaying the execution of a PPA until avoided costs are reduced. "Thus, if a QF can prove that it filed a *bona fide* request, along with the payment of a fee to establish an interconnection agreement, prior to when the Commission determines that Consumers Energy Company's capacity need became full, the Company should not be absolved of its obligation to contract with that facility." Staff's reply to Consumers' petition for rehearing, p. 5.

In its response to Consumers' petition for rehearing on the purported revision to the method for determining whether capacity avoided cost should be altered, ELPC argues that Consumers does not allege any factual errors, newly discovered evidence, or unintended consequences that would support rehearing. ELPC contends that:

> There is no conflict between the May 2017 and the November 2017 Orders regarding the "trigger" for adjusting capacity payments. In its November 21, 2017 Order, the Commission ordered that "if the company forecasts that no capacity is required in the next 10 years, Consumers shall make a filing so indicating, and upon Commission approval, the capacity price for new contracts shall be reset to the MISO PRA price." November Order at 32. This language is not in conflict with the Commission's prior Order that "if no capacity is needed during the 10-year planning horizon, then Consumers shall make a filing so indicating, and the avoided cost for capacity shall be reset to the MISO PRA." May Order at 19.
>
> The language in the November Order clarifies and expands upon the language of the May Order and makes clear that Commission approval of a utility's capacity

forecast is required before the utility may reset the capacity price for new QF contracts.

ELPC's consolidated response, p. 3. ELPC adds that "regardless of the procedural posture of the required filing – be it a contested case, *ex parte* proceeding, or request for a declaratory ruling— any utility filing would always require Commission approval because **only the Commission** may alter the rights of qualifying facilities[.]" *Id.*, citing *Indep Energy Producers Ass'n v Cal Pub Utils Comm'n*, 36 F3d 848, 859 (CA 9, 1994). Thus, according to ELPC, Consumers' claim regarding a conflict in the Commission's orders must fail.

ELPC further argues that Consumers' request for rehearing on the basis that it has no capacity need in the next 10 years is grounded on a number of untested assumptions, including keeping several older coal units operating until 2030, Commission approval of 525 MW of additional wind facilities, the continuation of contracts with existing QFs, and the significant expansion of demand response and energy efficiency programs. ELPC also objects to Consumers' claim that a capacity proceeding will render integrated resource planning meaningless, noting that PURPA and the IRP process should work together so that energy from QFs is incorporated into the IRP.

ELPC also contends that Consumers' claims about the number of QFs requesting interconnection are significantly overstated. Citing a supporting affidavit by Adam Schumaker, Director of Business Development for Sustainable Power Group LLC, ELPC argues that Consumers appears to have included ineligible projects and that there are few barriers to joining the interconnection queue, even if many of the projects currently in the queue will not ultimately be viable. ELPC points out that at this time, only one of the projects has completed an interconnection study. Thus, according to ELPC, any reliance on the number and size of projects in the queue is misplaced.

<u>IPPC's Petition for Rehearing</u>

IPPC claims that it was error for the Commission to delegate to Consumers the authority to determine an appropriate escrow or deposit for the early termination provision in the Standard Offer tariff. According to IPPC, it is the Commission's purview, and not the company's, to set PURPA avoided cost rates; thus, "There is no provision in MCL 460.6v(1) that allows the Commission to cede its regulatory authority to properly set PURPA rates and rate schedules to the utility." IPPC's petition for rehearing, p. 4. Further, IPPC claims that allowing Consumers to determine the appropriate early termination penalty violates 18 CFR 292.304(e)(2)(iii). Moreover, IPPC maintains that due process demands that the proposed early termination language be subject to a contested case proceeding, noting that Consumers had not filed the final tariff in the public docket.

Like Consumers, IPPC points to computation errors in the attachments to the November 21 order. IPPC also contends that the draft PPA[2] for PURPA contracts, which is not part of the instant case, was made available on December 8, 2017, and that the proposed PPA contains numerous provisions that violate PURPA and the Commission's orders. IPPC therefore requests that the Commission reopen the proceeding to review the final tariff sheets and the draft PPA.

In response, Consumers argues that IPPC's petition for rehearing should be denied. Consumers maintains that the Commission did not delegate unilateral authority to the company to craft an early termination provision, but rather considered this aspect of the Standard Offer throughout the proceedings. Consumers further notes that IPPC failed to contest the Standard Offer tariff, or the early termination provision, during most of the proceeding. In the November 21 order, the Commission found that an early termination provision was reasonable and directed the company to specify the options for how a security deposit would be calculated and how the

[2] The draft PPA is attached to IPPC's petition for rehearing and is available on the Commission's website.

security deposit should be returned to the QF. Thus, Consumers contends that IPPC's request for rehearing on this issue is merely an attempt to express disagreement on a matter that the Commission has already heard and decided.

Next, Consumers asserts that while it agrees with IPPC's general claims about computational errors in the avoided cost rates, the company maintains that IPPC's identification of these errors was not specific enough to warrant rehearing, noting that the company supplied detailed corrections in its petition for rehearing.

Finally, with respect to the draft PPA, Consumers argues that, contrary to IPPC's claims, the PPA is fully compliant with PURPA and the Commission's orders. Moreover, Consumers contends that IPPC's list of concerns "constitutes a failure to appropriately brief this issue[,]" adding "Michigan Courts have held that failure to brief an argument is tantamount to abandoning it." Consumers' response to IPPC's petition for rehearing, p. 15, citing, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Consumers further argues that IPPC never presented the PPA for review in this proceeding, noting that many of IPPC's objections to the draft PPA mirror the objections it had to the Standard Offer tariff.

The Staff expresses agreement with IPPC's request to correct the calculations in the avoided costs approved by the November 21 order, as well as IPPC's request that the Commission receive feedback on the final Standard Offer tariff and PPA. The Staff states:

> The Staff does not believe that the Commission intended for Consumers Energy Company or other utilities to create a Standard Offer tariff that could violate PURPA and the Commission's intent. Staff does believe that Rule 437 is the appropriate standard by which to reopen this docket, although, not for the same reasons articulated by IPPC.
>
> Having reviewed the tariff filed on December 5, 2017, Staff believes it is prudent for the tariff to be filed in this docket along with the draft standard offer power purchase agreement so that the Commission may review the documents in this contested proceeding.

Staff's corrected response to IPPC's petition for rehearing, p. 4.

Discussion

The Commission agrees with Consumers, the Staff, and IPPC that there were errors in some of the avoided cost calculations that need to be corrected. After review of the detailed calculations that Consumers provided in the appendix to its petition for rehearing, the Commission agrees that the avoided costs Consumers proposes are consistent with the determinations in the orders in this proceeding and should be incorporated into the final Standard Offer tariff. The Commission agrees with Consumers that IPPC's concerns about the avoided cost calculations were not sufficiently detailed to merit rehearing.

With respect to issues that were raised by IPPC concerning the early termination language in the Standard Offer tariff and the draft PPA, the Commission agrees with the Staff's recommendation and finds, once again, that this proceeding should be reopened to address the terms of early termination in the Standard Offer tariff and any disputes over the terms and conditions in the draft PPA to ensure conformance to the requirements of PURPA and the Commission's determinations in this case. The issues surrounding the creation of an LEO are being addressed in another order issued today in Case No. U-20095.

Accordingly, the Commission directs Consumers to file and serve its final Standard Offer tariff (including updated calculations as set forth in the appendix to the company's petition for rehearing and proposed early termination language) and draft PPA in this docket by March 1, 2018. A prehearing conference shall be held on March 13, 2018, at 9:00 a.m. before Administrative Law Judge Sharon L. Feldman (ALJ). The Commission intends to read the record and requests that the case be submitted with briefing completed by July 16, 2018. For good cause, the ALJ may extend the schedule by no more than 30 days.

The Commission urges the parties to settle these final issues and finds that pending the completion of this final phase of the proceeding, the implementation of avoided costs and the Standard Offer tariff should continue to be stayed.

The Commission further agrees with ELPC that only the Commission can approve changes to avoided cost rates and that for a utility to merely make a filing, then unilaterally reduce the payment for avoided capacity, would not comport with PURPA and would be an abdication of the Commission's responsibilities. Thus, the additional language in the November 21 order that capacity costs may only be reduced "upon Commission approval" is consistent with the requirements of PURPA as interpreted by the Supreme Court in *Indep Energy Producers Ass'n, supra.*

Although Consumers' capacity requirements over the 10-year planning horizon were not extensively litigated (the majority of the dispute was over whether the planning horizon should be five years or 10), a review of the confidential record in this case demonstrates that the company forecasted a need for capacity beginning in 2022, which increased until the end of the planning horizon. Moreover, the issue of the <u>type</u> of capacity the company may require necessitates not only looking at the company's overall capacity position, but also the additional renewable energy required under 2008 PA 295, as amended by 2016 PA 342. While Consumers' claim that it does not require additional capacity in the next decade is disputed, there is no question that the company's renewable energy portfolio must increase by 50% by 2021. MCL 460.1028.

While the Commission's solution is less-than-ideal, it nevertheless finds that the only record available indeed supports a need for capacity over the 10-year horizon and, as noted, Consumers must increase its renewable energy credit portfolio significantly by 2021. Nevertheless, to allay any concerns that the company may find itself paying the full avoided capacity payment and becoming awash in unneeded QF capacity, the Commission finds it appropriate to limit payment of the full avoided capacity cost to the first 150 MWs of new QF capacity in the queue. This amount is approximately 25% of the renewables that Consumers will need to add to meet the 15% renewable capacity requirement under Act 295, as amended by 2016 PA 342. New QF applicants and those already in the queue, but having a queue position outside of the first 150 MWs, may continue processing their applications and, in the event that the amount of QF capacity in the queue falls below 150 MW, Consumers shall add additional projects in the order that they were proposed. The 150 MW limit only applies to new QFs and not to existing facilities that are out-of-contract. The company shall notify each QF in the queue of its queue position relative to the first 150 MWs and file its queue list with the Staff under seal.

Motions for Stay and Responses

Consumers' Motion for Stay

Consumers claims that because the company has determined that it has no capacity need over the 10-year planning horizon, and because the suspension of capacity payments now requires Commission approval, it has filed a 10-year capacity position for Commission review in Case No. U-18491. Consumers notes that it has received numerous inquiries about solar development and interconnection since May 31, 2017, and until the Commission issues an order reducing the avoided capacity cost, the company will be forced to pay for unneeded capacity, unless the Commission issues a stay during the pendency of Case No. U-18491. Consumers reiterates its belief that it has approximately 300 MW of solar capacity in the queue which, if PPAs are executed, could result in $26 million in ratepayer costs annually for 20 years. And Consumers repeats its argument that a capacity review outside an IRP could render the central purpose of the IRP meaningless.

Cypress Creek argues that Consumers' motion for stay does not comply with the standards under MCR 7.123(E)(3), and should therefore be denied. According to Cypress Creek, in order to grant a stay, the Commission must find: (1) irreparable injury in the absence of a stay; (2) a likelihood of prevailing on the merits; (3) no harm to the public interest in granting the stay; and (4) the relative weight of the harm of the stay with regard to the parties to this proceeding. Cypress Creek points out that neither Consumers nor its shareholders would suffer any injury, because PPA costs are passed onto ratepayers. Similarly, ratepayers would not suffer any injury because avoided costs under PURPA do not exceed the costs the utility would incur to generate or purchase the energy itself. Cypress Creek adds that a stay, if granted, would harm the public interest, noting the number of solar developers who are prepared to build projects now that new avoided costs have been established.

Like Cypress Creek, ELPC argues that Consumers' motion should be denied, on grounds that the company failed to allege or prove all of the standards required under MCR 7.123(E)(3). Specifically, ELPC points out that Consumers does not claim any irreparable injury, nor does it claim that the public interest will be harmed if the stay is not granted. Even if alleged, Consumers could not prevail on its claims because the public interest would in fact be harmed if the stay were granted.

<u>IPPC's Motion for Stay</u>

IPPC points out that it has filed a notice of appeal with the Court of Appeals and requests that the Commission stay the November 21 order until such time as the appeal has concluded. IPPC contends that many of the Commission's determinations in the orders issued in this proceeding, especially the decision to apply MISO ZRCs to all QFs, will have "a severely detrimental and confiscatory effect to existing qualified facility . . . operations in the state." IPPC's motion for stay, p. 3. IPPC therefore requests that the Commission stay the implementation of new avoided costs until there is a final, unappealable decision from the courts. IPPC points out that a stay will not harm Consumers because it is currently paying previously-approved avoided costs to IPPC members whereas the absence of a stay could irreparably harm existing QFs.

IPPC further argues that it is likely to prevail on the merits of its appeal, either in the Court of Appeals or with the Federal Energy Regulatory Commission. IPPC contends that reducing avoided cost rates to existing QFs would be discriminatory, and the Commission's actions would be illegal because:

> The IPPC will be able to show that the Commission is allowing Consumers to recover far more favorable energy and capacity rates for its current and proposed utility-owned facilities than the proxy-methodology avoided cost rates that the Commission is allowing for independently-owned QFs in the state. As the proposed avoided costs do not reflect the Company's accurate and full avoided costs, they are discriminatory and in violation of PURPA and this state's statutes implementing the PURPA law. MCL 460.6v.

IPPC's motion for stay, p. 7.

IPPC alleges that the public interest will not be harmed if a stay is granted and that PURPA requires that the public interest be taken into consideration in setting avoided costs. Although "public interest" is not defined under PURPA, IPPC maintains that "'[p]ublic interest,' at a minimum, certainly must therefore mean 'to encourage cogeneration and small power production.'" IPPC's motion for stay, p. 8 quoting *American Paper Institute v American Electric Power Serv*, 461 US 402, 417; 103 S Ct 1921; 76 L Ed 2d 22 (1983). As such, the Commission's orders are contrary to the requirements of PURPA because existing QFs that have been generating reliable, renewable power, in some cases for a century, and many would no longer be able to operate under the new avoided costs.

In its response to IPPC's motion to stay, ELPC suggests that rather than issuing a full stay of the November 21 order, the public interest would be best served if the Commission issues a partial stay with respect to IPPC members. According to ELPC, a partial stay would protect the interests of IPPC members while allowing new QF developers to exercise their rights under PURPA. ELPC points out that IPPC failed to make an adequate demonstration on three of the four factors the Commission must determine in deciding to grant a stay. However, a partial stay would remedy this problem by protecting the interests of both IPPC members and prospective QFs.

The Staff responds that IPPC's petition is moot, in part because the Commission stayed the November 21 order in an order issued on December 20, 2017. Nevertheless, the Staff recommends that the Commission extend the stay only as long as necessary to address certain issues raised in the petitions for rehearing. The Staff contends that staying new avoided cost rates over the time that a final order is issued by the Court of Appeals would be unreasonable, because IPPC's application may not be addressed for a year or more. In the meantime, there are several QFs in the interconnection queue who are ready to proceed with building projects.

Discussion

When deciding a request for stay, the Commission considers the factors found in MCR 7.123(E)(3), which provides:

> The court may order a stay on appropriate terms and conditions if it finds that:
> (a) the moving party will suffer irreparable injury if a stay is not granted;
> (b) the moving party made a strong showing that it is likely to prevail on the merits;
> (c) the public interest will not be harmed if a stay is granted; and
> (d) the harm to the moving party in the absence of a stay outweighs the harm to the other parties to the proceedings if a stay is granted.

Thus, the Commission may grant a stay, but only if it finds (1) irreparable injury in the absence of a stay; (2) likelihood of prevailing on the merits; (3) no harm to the public interest in granting the stay; and (4) the relative weight of the harm of the stay with regard to the parties to this proceeding.

The Commission finds that the motions to stay should be denied. With respect to IPPC's motion, the Commission agrees with ELPC that IPPC failed to adequately demonstrate that it is likely to prevail on the merits, nor has it shown that the harm to IPPC if the stay is denied outweighs the harm to the other parties if the stay is granted. As for Consumers, the Commission agrees with the Staff and Cypress Creek that Consumers failed to allege, let alone demonstrate, all of the prerequisites the Commission must find before granting a stay.

THEREFORE, IT IS ORDERED that:

A. The motions for stay filed by Consumers Energy Company and the Independent Power Producers Coalition are denied.

B. The petition for rehearing filed by Consumers Energy Company is granted in part, and denied in part, as discussed in this order.

C. The petition for rehearing filed by the Independent Power Producers Coalition is denied.

D. By March 1, 2018, Consumers Energy Company shall file its final Standard Offer tariff and draft power purchase agreement in this docket.

E. A hearing shall be conducted by Administrative Law Judge Sharon L. Feldman at 9:00 a.m. on March 13, 2018. At the hearing, the Administrative Law Judge shall set a schedule so that the record is closed and briefing is completed by July 16, 2018, as discussed in the order.

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, pursuant to 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 February 22, 2018.

Kavita Kale, Executive Secretary