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June 29, 2018

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-18351

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/daf

Enclosures

c. All parties of record.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
regarding the regulatory reviews, revisions,)
determination and/or approvals necessary for)
CONSUMERS ENERGY COMPANY to comply)
with Section 61 of 2016 PA 342.)
_____)

Case No. U-18351

INITIAL BRIEF OF THE
MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL,
INSTITUTE FOR ENERGY INNOVATION,
AND ADVANCED ENERGY ECONOMY

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Contents

I. INTRODUCTION.....1

II. ARGUMENT.....2

A. Michigan EIBC, IEI, and AEE Appreciate the Commission’s Process to Develop Clear Criteria for Evaluation of Section 61 Filings2

B. As Proposed, Consumers Energy’s VGPP Offerings Fall Short of Meeting the Requirements of Section 61 and the Clear Criteria Established by the Commission and Reiterated by Commission Staff.3

1. Consumers’ VGPP Offerings Do Not Include Sufficient Offers Available to Different Customers with Different Preferences and Objectives4

2. The LC-REP Program Relies on Cost-Based Pricing Constructs, But Should Also Include an Open and Transparent Competitive Solicitation Process.9

C. The Commission’s Consideration of the Consumers’ Section 61 Application Should Not be Impacted or Affected by the Company’s Recently Filed Integrated Resource Plan.12

III. CONCLUSIONS AND PRAYER FOR RELIEF.....13

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**INITIAL BRIEF OF THE
MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL,
INSTITUTE FOR ENERGY INNOVATION,
AND ADVANCED ENERGY ECONOMY**

I. INTRODUCTION

This Initial Brief is filed on behalf of the Michigan Energy Innovation Business Council (“Michigan EIBC”), the Institute for Energy Innovation (“IEI”), and Advanced Energy Economy (“AEE”) by its attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

Our organizations appreciate the efforts of both the Commission and Consumers to ensure that implementation of Section 61 of PA 342 of 2016 ("Section 61") results in renewable energy offerings that meet the needs of a range of Michigan customers. Both Michigan EIBC and AEE work with member companies that are large commercial and industrial (“C&I”) customers seeking to increase their access to renewable energy to power their operations, as well as companies that supply C&I customers with renewable energy in many markets. Our perspective in this case is therefore focused on ensuring that implementation of Section 61 results in

opportunities for large customers to access renewable energy through program offerings that are consistent with their needs and preferences.

Given this focus on C&I customers, we applaud the company's initial Large Customer Renewable Energy Pilot ("LC-REP") offering, which responds to many of the needs and preferences of C&I customers. However, we are concerned that Option B is not available for existing Michigan customers unless they are significantly expanding their operations, and Option A has very limited remaining available capacity. Furthermore, under Option A, the project selection process and lack of sufficient range of term options fall short of meeting customer needs. These issues are discussed in Section II, below. The shortcomings of the LC-REP program and of Consumers' Voluntary Green Purchasing ("VGP") filing overall would be straightforward to address, and in Section III we recommend a provisional approval of the company's application with specific amendments to ensure that all customers' needs are met, consistent with the requirements of Section 61.

II. ARGUMENT

A. Michigan EIBC, IEI, and AEE Appreciate the Commission's Process to Develop Clear Criteria for Evaluation of Section 61 Filings

Michigan EIBC, IEI, and AEE applaud the Michigan Public Service Commission ("MPSC" or "Commission") for the thoughtful and thorough process initiated in 2017 to consider appropriate criteria for evaluation of Section 61 filings well in advance of the deadline for utility applications. Specifically, we appreciate the Commission's recognition that the statutory language of Section 61 provided helpful but incomplete guidance to ensure successful outcomes for customers, and that additional direction from the Commission was needed. Numerous companies, organizations, and other commenters provided input via the public comment process initiated by the Commission, and the Commission's July 12, 2017 Order

consolidates in a clear manner the Commission's view of what utilities should include in their filings.

Our organizations agree with many of the criteria set out in that Order, especially the Commission's emphasis on fair, cost-based programs, experimentation, reliance on competitive solicitation, lack of a need for program caps or limitations, and the importance of meeting the different needs of different customers. It is on the basis of the criteria in that Order and our experience working with large C&I customers and renewable energy developers and suppliers that we have evaluated the appropriateness of Consumers' filing, with a particular focus on the LC-REP program and its ability to meet the needs of large customers.

B. As Proposed, Consumers Energy's VGPP Offerings Fall Short of Meeting the Requirements of Section 61 and the Clear Criteria Established by the Commission and Reiterated by Commission Staff.

The statutory language of Section 61 states that "[t]he customer is responsible for any additional costs incurred and shall accrue any additional savings realized by the electric provider as a result of the customer's participation in the program." MCL 460.1061. This statutory language clearly lays out a requirement for cost-based programs that fairly charge customers according to the actual cost to supply them with renewable energy.

In its July 12, 2017 Order, the Commission set forth more specific criteria that it would consider when reviewing the utilities' VGPP offerings. These guidelines were reiterated by the MPSC Staff testimony of Katie Trachsel, who laid out four clear criteria based on the Commission's Order. The first criteria recognizes the intent of Section 61 to apply to all customers, asking "...the extent to which the VGP programs include offers available to different customers with different preferences and objectives." 2 Tr 87-88. The remaining three criteria relate to program costs and fees, consistent with the requirement in Section 61 that customers be responsible for any additional costs and accrue any additional savings. Specifically, Ms. Trachsel

lists as the second criteria, "...the reasonableness and transparency of the calculation of the cost of the VGP products." 2 Tr 88. She lists the third as, "...the extent to which program fees are used for marketing and administration versus the VGP product offered." *Id.* And she lists the fourth as, "...whether the accounting for the program is clear and whether the program is based on cost-of-service principles." *Id.*

The shortcomings of Consumers' VGP programs as proposed, which can and should be addressed with a few straightforward adjustments, are explained below in order of the criteria set out by Ms. Trachsel.

1. Consumers' VGPP Offerings Do Not Include Sufficient Offers Available to Different Customers with Different Preferences and Objectives

The Commission made clear in its Order that utilities should provide offerings to meet the different needs of "different customers with different preferences and objectives." Order at 13. Commission Staff reiterated this requirement in the testimony of Ms. Trachsel. The Commission Order specifically recognized the importance of providing solutions for large C&I customers, stating:

"Recognizing that the preferences and objectives of many commercial and industrial customers are perhaps more easily satisfied with an approach that allows independent contracting between customers and third-party renewable energy providers, the Commission encourages utilities to work in cooperation with these customers to source and contract for renewable energy that meets individual corporate sustainability goals at a competitive price... there are myriad ways that a VGP program, contract, or tariff can be structured in a regulated market and the Commission recommends the providers explore various opportunities in collaboration with interested customers." [Order, p. 12.]

Our organizations have significant experience working with companies seeking to meet their own renewable energy and sustainability goals, and based on this experience we agree with the Commission's assessment and recommendations.

In its filing, Consumers does provide a variety of offerings, namely its Solar Gardens Pilot Program, Green Generation Program, and Large Customer Renewable Energy Pilot (“LC-REP”) program. Our organizations applaud Consumers’ effort to address the needs of C&I customers through the LC-REP program. However, the program currently falls short of meeting these needs. Here, we provide some additional detail regarding the needs and preferences of C&I customers, and explain why and how Consumers’ application, and the LC-REP program in particular, falls short of meeting the needs of C&I customers.

a. Commercial and Industrial Customers Have Clearly Articulated and Demonstrated Their Needs and Preferences Regarding Renewable Energy.

As demand for renewable energy among C&I customers has grown, these customers have made clear—through their statements and their actions—what their needs and preferences are regarding utility renewable energy offerings. While different C&I customers have different needs, there are common threads that unite such customers. In Direct Testimony, Ms. Marquis details these criteria, drawing from the Renewable Energy Buyers Principles, a set of six guiding principles that 75 companies have signed onto, and AEE’s *Essential Elements of Renewable Energy Tariffs*, a set of criteria for designing utility renewable energy offerings developed in conjunction with AEE’s members, which include both large C&I customers and renewable energy developers familiar with the needs of these customers.¹ See 2 Tr 159-163.

To summarize, Ms. Marquis emphasizes that customers are looking for cost-competitive resources chosen through a competitive process; fair, market-based pricing; long- and variable-term contracts; clear additionality and impact; and flexibility and variety. In addition, it is

¹ Renewable Energy Buyers Principles are available here: <https://buyersprinciples.org/principles/>, accessed June 28, 2018; see also Making Corporate Renewable Energy Purchasing Work for All Utility Customers, available at: <https://info.aee.net/making-corporate-renewable-energy-purchasing-work-for-all-utility-customers>, accessed June 28, 2018.

important to note the scale of corporate demand for renewable energy: since 2013, over 11 GW of offsite renewable energy projects have been signed by corporate offtakers, with an average project size of 96 MW.² 2 Tr 160.

b. The LC-REP Program Contains Many Elements Consistent with Customer Needs, but Should Not be Deemed Sufficient as Proposed.

First, it is important to note that there are many things the LC-REP program gets right. Option A is structured to provide customers with bundled Renewable Energy Certificates (“RECs”) and energy from specific local projects, and allows customers flexibility with respect to renewable energy quantity. Already, after being provisionally approved for one year in October 2017, the program has two participants, Switch and General Motors.³ Option B provides customers with significant flexibility regarding project selection. Both programs rely on market-based pricing constructs, as described in more detail below.

However, the LC-REP program cannot be considered a viable option as currently proposed. In Direct Testimony, Ms. Marquis details the shortcomings of the program, which can be summarized as follows:

- **Most importantly, the program has very limited availability for existing C&I customers in Michigan.** Option A is limited to 155,000 MWh annually, with 115,000 MWh already fully subscribed by just two customers.⁴ Therefore, the program now has just 40,000 MWh available for all additional interested

² Business Renewables Center, BRC Deal Tracker, available at <http://businessrenewables.org/corporate-transactions/>, accessed April 20, 2018.

³ Consumers Energy, “Consumers Energy’s New Renewable Energy Program Helps General Motors and Switch in Michigan” (March 8, 2018), <https://www.prnewswire.com/news-releases/consumers-energys-new-renewable-energy-program-helps-general-motors-and-switch-in-michigan-300610715.html>.

⁴ Consumers Energy Company’s Large Customer Renewable Energy Pilot Program Report, U-18393-0017, filed May 17, 2018 in Docket U-18393.

customers. Furthermore, as noted in Ms. Marquis's testimony, the Company indicated in response to discovery requests that "at this time the Company is not considering a second phase of the pilot."⁵ 2 Tr 170-171. Therefore, Option A cannot currently be considered to be a meaningful option for large customers. Existing Michigan customers also are unlikely to qualify under Option B, which is restricted to customers with aggregated *new* Maximum Demand of over 3 MW and a load factor of at least 70%, meaning that existing customers will not be eligible unless they fit a specific load profile and are significantly expanding their operations. Given that Option B is based on delivery of renewable energy into the Midcontinent Independent System Operator, Inc. ("MISO") footprint, and is designed as a rider such that the customer's billing and service does not change, there should be no impact on nonparticipating customers and there is no need or justification for limiting this program to customers with new load.

- **The LC-REP Option A program as amended in this proceeding does not include term options that are consistent with many customers' needs.** One change to the program when it was filed for compliance with Section 61 was the specification that customers participating in Option A must choose either a 3-year term or a 20-year term. This leaves a significant gap between a relatively short contract and a very long-term contract, with no medium-term or long-term options in-between. As noted by Ms. Marquis, "Some customers are unable to make a 20-year commitment, but are comfortable with long-term contracts of 10 or 15 years." 2 Tr 168, As an example, Ms. Marquis notes that Walmart has publicly

⁵ Response to ELPC discovery request ELPC-27, included as Exhibit EIB-1.

stated, “for corporate governance reasons, we don’t sign contracts over 15 years... we can’t look at a program that’s 20 years because we couldn’t sign it.”⁶

2 Tr 169. Other customers have the same restriction, and many similar subscription-style programs across the country have addressed this requirement, including Xcel in Minnesota and Colorado, Georgia Power in Georgia, and Puget Sound Energy in Washington. *Id.* To provide a meaningful option for customers, any C&I program must include term options in the 10-year to 15-year range.

- **Option A does not include an open and transparent competitive solicitation process to source resources.** The lack of a transparent project selection process leads to concerns regarding program costs, as described in more detail below in Section II.B.2.
- **Both Option A and Option B are restricted to wind resources, rather than allowing all resources to compete.** The program description specifies, “Renewable Energy under Option A and B shall be provided from wind facilities placed into commercial operation after December 2017” Consumers Application, Exhibit A. While Option A is sourced from a specific wind project that has already been selected, it appears to be the Company’s intent to limit future tranches to wind energy only, although as noted above no future resources are currently planned under Option A. Under Option B, customers have flexibility to source their own projects physically located within the MISO footprint, and this

⁶ See Joel Makower, “How Google and Walmart work with utilities to procure clean power,” Greentech Media (April 9, 2018), <https://www.greenbiz.com/article/how-google-and-walmart-work-utilities-procure-clean-power, as cited at 2 Tr 169>.

flexibility will hold significant appeal for many customers, with the limitation to wind resources unnecessarily limiting customers' options.

- **Under Option A, it is unclear whether customers can aggregate load from multiple locations to reach the 1,000 kW maximum annual demand eligibility threshold.** The Commission Order states that, “when feasible, combining load from different sites should be an option for participants.” Order at 12. Not allowing customers, such as retailers, to aggregate load across multiple locations would restrict eligibility for interested customers.

Given these shortcomings, the LC-REP program is not a viable offering for Michigan customers, and the Company's application is therefore lacking a program offering that would meet the needs of C&I customers. As proposed, Consumers' application has not met the Commission's clearly stated criteria that utilities should provide offerings to satisfy different customers with different needs. However, these issues are all relatively straightforward to resolve, and do not require changes to the core program design. Section III provides additional detail regarding improvements that should be made prior to approving the LC-REP as a VGP offering.

2. The LC-REP Program Relies on Cost-Based Pricing Constructs, But Should Also Include an Open and Transparent Competitive Solicitation Process.

As noted above, the Commission set three criteria for evaluating the reasonableness of program costs, consistent with the language of Section 61 and reiterated by Ms. Trachel. First that the calculation of the cost of the VGP products must be reasonable and transparent; second the extent to which program fees are used for marketing and administration versus the VGP product offered; and third, whether the accounting for the program is clear and whether the program is based on cost-of-service principles. Order, pp. 13-14.

a. The Approach to Costs and Credits is Reasonable and Transparent, but Project Costs Should be Arrived at Through a Competitive Solicitation.

The overall pricing and credit structure of the LC-REP program is transparent and relies on market-based pricing mechanisms, consistent with both customer needs and the language of Section 61. Specifically, the renewable energy price per kWh is based on the levelized cost of the renewable energy project, with credits calculated on the basis of market energy prices (based on MISO real-time LMP) and capacity prices (based on MISO Annual Planning Resource Auction Clearing Price). Customers that elect to meet 85% of their electricity use through the program and that are Rate GPD customers also have an option to switch to a Market Index Provision, which replaces the average variable energy component of their standard rate with a real time LMP set at the CONS.CETR commercial node.

However, it is unclear whether the Company could have selected a more cost-competitive project to meet customer needs under Option A because the Company did not hold an open and competitive selection process allowing full participation by third-party entities (rather than just a competitive solicitation of engineering, procurement, and construction for a company-owned project).⁷ As Ms. Marquis notes in Direct Testimony, “Under Option A, the project was developed by Consumers, and it is unclear what steps the Company took, if any, to ensure that the project is competitive with similar projects. Customers therefore cannot be assured that the price they are paying for renewable energy per kWh is the best available price to meet the program needs.” 2 Tr 168.

Furthermore, the Company indicates that a second tranche would be more expensive than the existing program, estimating that the subscription cost would rise to \$0.046 to \$0.060 per

⁷ See Sept. 24, 2013 Order in Case No. U-15805.

kWh, as compared to the current cost of \$0.045 per kWh, “based on the projected increase in cost to locate additional wind in the state.” Exhibit EIB-1. However, as Ms. Marquis testifies, “prices for renewable energy across the country and in Michigan have fallen consistently year over year. 2 Tr 171. A 2016 report by the Commission indicates that the weighted average price for utility-owned renewable energy projects dropped by 52% from 2010 to 2015, while third-party owned projects dropped 54% during the same time period (and were consistently lower in cost).⁸ This data is inconsistent with the Company’s presumption that incremental renewable energy would come at a higher cost.

Without a competitive solicitation and project selection process allowing full participation by third parties, it is impossible to assess whether the project serving customers under Option A is providing renewable energy at a competitive price. The program otherwise offers a market-based and transparent pricing structure.

b. Consumers’ Approach to Marketing and Administration Expenses is Reasonable and Appropriate.

Our organizations support the approach taken to administrative and marketing fees under the LC-REP program, and also find the proposal to be consistent with the Commission Order, which states “the Commission has specific concerns about substantial administrative and marketing costs associated with both existing and future programs.” Order at 7. Specifically, the LC-REP program does not include administrative or marketing fees because the Company anticipates that these will be minimal.⁹ The fact that Option A has received significant interest from customers despite lacking a marketing budget validates the Company’s assumption.

⁸ *Id.*, citing Michigan Public Service Commission, *Report on the Implementation of the P.A. 295 Renewable Energy Standard and the Cost-Effectiveness of the Energy Standards* (Feb. 12, 2016), https://www.michigan.gov/documents/mpsc/PA_295_Renewable_Energy_Report_2-12-16_514511_7.pdf, at 21.

⁹ See Consumers Direct Testimony of Teri L. VanSumeren filed on October 18, 2017 in Case No. U-18351, at 11.

c. The LC-REP Program Appears to Satisfy Cost-of-Service Principles, Assuming Reasonable Renewable Energy Costs.

Given the market-based structure of the LC-REP program, discussed above, our organizations argue that Consumers has satisfied cost-of-service principles in designing this program. However, to ensure that the costs paid by customers are fair and reasonable, the underlying cost of the renewable energy sourced to serve needs under Option A must be cost-competitive, which Consumers has failed to demonstrate, as noted above.

C. The Commission's Consideration of the Consumers' Section 61 Application Should Not be Impacted or Affected by the Company's Recently Filed Integrated Resource Plan.

Our organizations are aware that Consumers has introduced an integrated resource plan ("IRP") that will result in all customers being served by a high percent of renewable energy, but we note that the VGP offerings are intended for customers who want renewable energy that is additional to that already being supplied by the utility to its bundled service customers. Indeed, many customers have targeted to match 100% of their load with renewable energy. Both LC-REP Option A and Option B are designed such that participating customers pay all the costs of the program, without adverse impact to nonparticipating ratepayers. We therefore encourage the Commission to consider the LC-REP program as separate and additional to the Company's proposed plan to add renewable energy resources to serve all customers under the IRP. However, the Commission should also ensure that the IRP accounts for the fact that the LC-REP program will be meeting a portion of customer load, such that alternative resources should not also be procured to meet that same load resulting in inefficiency and oversupply.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, the Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy hereby respectfully request that the Commission grant conditional approval of Consumers' application, with the stipulation that the Company make adjustments to the LC-REP program to ensure that Consumers' application fully complies with the requirement in Section 61, and with the criteria set forth by the Commission in its July 12 Order.

Specifically, the Commission should direct Consumers to re-file the LC-REP program in this docket within six months, with the following amendments:

1. The LC-REP Option A program should have a clear pathway for future enrollment, based on a competitive solicitation and project selection process that allows participation by third parties;
2. The LC-REP Option A program should provide opportunities for customers to sign medium-term contracts in the range of 10-15 years;
3. The LC-REP Option A program should clearly allow customers to aggregate load to meet the 1,000 kW demand requirement and for participation in the program;
4. The Company should expand the LC-REP Option B program to allow existing load customers to participate; and
5. The Company should allow non-wind renewable energy resources to compete to meet customer needs under both Option A and Option B.

These changes are necessary to ensure that all of Consumers' customers have meaningful, actionable access to renewable energy options—not just options on the books, but options that meet their needs and that fulfill the requirement of Section 61 to ensure that “the

customer is responsible for any additional costs incurred and shall accrue any additional savings realized...” by delivering cost-competitive offerings consistent with cost-of-service principles.

Respectfully submitted,

Varnum LLP
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Institute for Energy Innovation,
and Advanced Energy Economy

June 29, 2018

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STATE OF MICHIGAN

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CONSUMERS ENERGY COMPANY to comply)
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_____)

Case No. U-18351

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Deliah A. Fowler, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 29th day of June, 2018, she served a copy of the Initial Brief of the Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy upon those individuals listed on the attached Service List via email at their last known addresses.

Deliah A. Fowler

SERVICE LIST
MPSC CASE NO. U-18351

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