MACKINAC CENTER LEGAL FOUNDATION

May 25, 2022

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: Case No. U-21090 – In the Matter of the Application of Consumers Energy Company IRP

Dear Ms. Felice:

This electronic filing in the above-captioned matter is the **Initial Brief in Support of Mackinac Center for Public Policy's Objections to the Proposed Settlement Agreement**. This is a paperless filing and is only being filed via this PDF format. Also enclosed is a proof of service with attachment showing that electronic service has been made on the parties.

Thank you for your handling of this matter.

Sincerely,

/s/ Derk A. Wilcox

Derk A. Wilcox

Enc.
cc: The parties listed on the attachment to the Proof of Service

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of	)	
CONSUMERS ENERGY COMPANY	)	
for Approval of an Integrated Resource Plan	)	Case No. U-21090
under MCL 460.6t, certain accounting	)	
approvals, and for other relief.	)	
____	)	

INITIAL BRIEF IN SUPPORT OF
OBJECTIONS OF
THE MACKINAC CENTER FOR PUBLIC POLICY
TO THE PROPOSED SETTLEMENT AGREEMENT

Dated: May 25, 2022

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INTRODUCTION

Intervener, the Mackinac Center for Public Policy (the "Mackinac Center"), respectfully submits these Objections to the Proposed Settlement Agreement submitted to Administrative Law Judge Sally L. Wallace on April 20, 2022.

The Mackinac Center objects to the Proposed Settlement Agreement for the same reasons stated in its Exceptions to the Proposal For Decision which it filed on March 21, 2022. In fact, subsequent events in the energy markets, as will be explained below, have only heightened the concerns raised by the Mackinac Center in its Exceptions. In addition, Mackinac Center objects to some new terms introduced in the Proposed Settlement Agreement.

The Commission succinctly described the situation after the Proposed Settlement Agreement in its Scheduling Order issued on April 25, 2022, at page 3:

> On April 20, 2022, Consumers filed a settlement agreement, indicating that it had settled all of the issues in this matter with the following parties: the Staff, MNS, the Attorney General, the CEOs, UCC, CUB, HSC, EIBC/IEI/CGA, METC, and GLREA. MPPA and MCV did not join the settlement, but offered statements of non-objection under Mich Admin Code, R 792.10431(3) (Rule 431(3)). As of April 20, 2022, Energy Michigan, WPSC, Mackinac, RCG, the BMPs, and ABATE had not signed the settlement or indicated whether they would sign a statement of non-objection.

THE LEGAL STANDARD

This Commission must determine that the Integrated Resource Plan ("IRP") which is the subject of this proposed Settlement Agreement "represents the most reasonable and prudent means of meeting the electric utility's energy and capacity needs." MCL 460.6t(8)(a). To that end, the factors to be considered are provided by the statute: "(i) Resource adequacy and capacity to serve anticipated peak electric load, applicable planning reserve margin, and local clearing requirement. (ii) Compliance with applicable state and federal environmental regulations. (iii) Competitive pricing. (iv) Reliability. (v) Commodity price risks. (vi) Diversity of generation supply. (vii)

Whether the proposed levels of peak load reduction and energy waste reduction are reasonable and cost effective." MCL 460.6t(8)(a)(i-vii).

When a proposed settlement has been made, the Commission's Rules of Practice and Procedure, 2015 R 792.10431, controls. Rule 431(3) states as follows:

> (3) When a written settlement agreement is proposed by some of the parties, it shall be served on all parties to the proceeding. Each party shall file and serve on all parties, within 14 days after being served, its agreement, objection, or nonobjection to the settlement agreement. Failure to respond in writing within 14 days, unless a different time is set by the presiding officer for good cause, shall constitute nonobjection to the settlement agreement. A party who objects to a settlement agreement shall state those objections with particularity and shall specify how it would be adversely affected by the settlement agreement.

The parties, as here, have 14 days to provide a written communication to the Commission stating their position - whether the party agrees with, objects to, or does not object to, the settlement agreement.

When, as here, a party objects, then the party must state its objections with particularity and specify how the party would be adversely affected by the settlement. If a party objects to the settlement, then the Commission's procedural rules limit the circumstances under which the Commission may approve the settlement. Rule 431(5) states as follows:

> (5) The commission may approve a settlement agreement if all of the following conditions are met:
>
>> (a) Any party that has not agreed to the settlement has signed a statement of nonobjection or has failed to object within the 14 days provided in subrule (3) of this rule, or such other time established by the presiding officer, or the objecting party or parties under subrule (3) of this rule have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement.
>>
>> (b) The commission finds that the public interest is adequately represented by the parties who entered into the settlement agreement.
>>
>> (c) The commission finds that the settlement agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and,

> if the settlement is contested, is supported by substantial evidence on the record as a whole.

Thus, if a settlement agreement is contested, then it cannot be approved unless the Commission finds *all* of the following: (1) that the objecting parties have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement, (2) the public interest was adequately represented by the parties entering into the settlement, (3) the settlement is in the public interest, (4) it represents a fair and reasonable resolution of the proceeding, and (5) it is supported by substantial evidence on the record as a whole. Failure to satisfy any one of these conditions means that the contested settlement cannot be approved. Mackinac Center focuses on the third prong and fifth prongs – the settlement is not in the public interest, and the evidence on the record fails to show that the Proposed Settlement Agreement is the "most reasonable and prudent means of meeting the electric utility's energy and capacity needs" where it does not adequately consider potential problems with the MISO market and the fluctuating price of natural gas, among other things.

THE PROPOSED SETTLEMENT AGREEMENT IS NOT IN THE PUBLIC INTEREST

The Proposed Settlement Agreement has done little to nothing to address the concerns Mackinac Center described in its Exceptions to the PFD report. The potential for both systemwide instability and rapid price swings remains, and makes the Settlement fail the public interest criteria.

A. The proposed Settlement Agreement did not sufficiently account for the extent to which the IRP relies on MISO.

Numerous times, the Proposed Settlement Agreement, like the RFP before it, relies on the Company's plans to acquire additional power from the MISO market. In its Exceptions, the Mackinac Center referenced the extent to which the RFP relied on this ability to acquire additional power from the MISO market:

> See, for example, the reference to the testimony of Company witness Thomas P. Clark. RFP at page 16. PFD references many of the interveners and their objections to the Company's plays to rely on MISO to fill its energy needs. See the summary of the position of the Association of Businesses Advocating Tariff Equity, PFD at 41-42. "ABATE maintains that even if Consumers has sufficient capacity to serve its own customers, if Zone 7, the MISO subregion, or MISO as a whole, does not have sufficient capacity to serve demand there is still the potential for a loss of load event." *Id.*[1]

Mackinac's Exceptions at page 6.

Mackinac Center excepted to this because the potential problems noted by MISO would cause the Company's plan to fail to satisfy the requirement that the plan be the "most reasonable and prudent means of meeting the electric utility's energy and capacity needs." MCL 460.6t(8)(a). The proposed Settlement Agreement did recognize that the Karn units may be required to stay open longer than the proposed date of May 31, 2031 due to (the potential of) "extraordinary circumstances that require prolonged operation, such as a System Support Resource designation by Midcontinent Independent System Operator, Inc. ('MISO') or other emergent issues within the Company's generation portfolio which require continued operation of Karn Units 3 and 4 to maintain sufficient supply." Proposed Settlement Agreement at page 4-5. Yet the problem remains.

Mackinac Center, in its Exceptions, stated the following concerns about heavy reliance on the MISO market:

> The PFD did not find, however, that the potential misplaced reliance on the MISO markets should be enough to deny the Company's plans. Instead, the PFD found: "As several parties point out, Consumers assumptions are not consistent with how MISO operates, where all resources are used to serve all loads, and where the company is never in fact "islanded." That said, the Commission may be in a better position to undertake this analysis as part of the capacity demonstration requirements under MCL 460.6w." PFD at page 67.

[1] See also the summary of the position of Energy Michigan, RFP at 48 and the reference to the testimony of James R. Dauphinais, RFP at 64.

Mackinac Center excepts to this, because of the potential reliability problems caused within MISO Zone 7 if early plant closures were allowed to move forward without sufficient replacement capacity. These problems would ensure that the Company's plan fails to meet the criterion that the plan must be the "most reasonable and prudent means of meeting the electric utility's energy and capacity needs." MCL 460.6t(8)(a).[2]

Where reliability issues are found, MISO can order the unit(s) to continue operations until the reliability concerns are rectified. The Covert, DIG, Livingston, and Kalamazoo units being considered for purchase currently operate in the PJM regional grid. If purchased by the company, they would be transferred to MISO, Region 7 as part of the transaction. While the company contends that these would be new generation assets to MISO, which would replace lost capacity values associated with the closed Karn and Campbell plants, there would still be a net loss of capacity to the geographical region.

Furthermore, this loss of generation capacity to the region is unlikely to be substantially improved by the Company's plan to develop solar resources throughout years 5 to 20 of the PCA. As noted above, the Company has recognized that a plan that is "overly reliant on renewable/intermittent resources" will not be capable of providing sufficient or reliable electric service to the company's 1.9 million retail electric customers.[3] The direct testimony of Company witness Sara T. Walz described the findings of the Company's electric supply reliability studies, which found "that dependence on so many intermittent sources of generation results in significant periods of time for which the potential loss of load may occur."[4]

This recognition must be paired with the above-noted fact that closing the Karn and Campbell plants (even when adding four gas units to the company's generation fleet) represents a significant loss of generation capacity to the region. But the company's PCA does little to address this shortfall, given that, by the end of the planning period in 2040, it proposes to meet 63% of customer demand with variable renewable energy (VRE), 15% of demand with efficiency programs (which limit customer use of energy, rather than actually supplying customer needs), 12% of demand with energy storage, and only 10% of demand with natural gas.[5]

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[2] See also the summary of Wolverine Power Supply Cooperative, RFP at 52, which argues the company has "islanded" itself and that the early closure of "Campbell 3 could jeopardize reliability in Lower Michigan."

[3] Responses to Mackinac Center's Exceptions critiqued the argument, noting that the Consumers testimony was describing their alternate plan — not their PCA. Mackinac recognizes that the testimony refers to their alternate plan (not the PCA). But the point continues to be valid – even more so with the recognition that Consumers rejected their alternate plan for the very reason that it relied too heavily on variable renewable capacity, as the PCA plans to do in later years.

[4] Revised Direct testimony of Company witness Sara T. Walz, transcribed at 3 TR 341.

[5] See: Exhibit No. A-2 (RTB-2) Page 5 of 538, https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000NibJWAAZ .
Exhibit No. A-2 (RTB-2) admitted by the ALJ. See 3 TR 212.

> Similar challenges exist within the PFD on the need for sufficient transmission capacity. As noted in the direct testimony of Company witness Norman J. Kapala, retiring a generation unit requires approval from the Midcontinent Independent System Operator. MISO must ensure that the Company's plan "does not create transmission reliability concerns, particularly related to maintaining voltage on the transmission system."[6]
>
> These reliability concerns continue through to the text of the PFD. Specifically, the Michigan Electric Transmission Company writes that Consumers Energy "disregard[ed] METC's analysis and recommendations" of the state's transmission system. Consumers, it continues, has compounded that error by "assum[ing] that the company may use the entire 3,200 MW of CIL, despite the fact that CIL is allocated on a pro rata basis."[7] Supporting information from METC indicates the Company's expectation to have priority access to "3,200 MW of CIL" to ensure Resource Adequacy Requirements "assumes LRZ 7 as a whole has a CIL of roughly 8,000 MW," or far greater than the existing 3,749 MW.[8]

While acknowledging that the proposed Settlement Agreement addresses this somewhat by acknowledging that Karn Units 3 and 4 may be required to stay in operation if extraordinary circumstances warrant it, the Proposed Settlement Agreement does not go far enough to address this concern. The potential for both systemwide instability and rapid price swings remains. This potential shortfall has now been heightened by the confirmed final closure of the Palisades Nuclear Plant on May 20, 2022. [9]

This potential shortfall was also made abundantly clear with the April 14, 2022 results of the MISO 2022/23 Planning Resource Auction that had MISO's Zones 1 through 7 all clearing at $236.66 / MW-Day.[10] In the 2021/22 Auction, MISO Zones 8 to 10 cleared at $0.01 / MW-Day and Zones 1 through 7 cleared at $5 / MW-Day.

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[6] Direct Testimony of Consumer's Witness Norman J. Kapala at page 6, https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000Nib8YAAR.
[7] See the summary of METC's position, PFD page 117.
[8] Id. page 118.
[9] See, for example: https://www.abc57.com/news/palisades-nuclear-power-plant-shuts-down-permanently and https://www.world-nuclear-news.org/Articles/Palisades-bows-out-after-record-operation-run
[10] https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf page 1, last accessed May 3, 2022.

MISO comments on the Planning Resource Auction results highlighted the growing impacts of non-dispatchable, variable renewable energy on the system. Specifically, MISO cited, "increased load forecast, less capacity entering the auction as result of retirements, and the decreased accredited capacity of new resources." The auction results further recognized the "increased risk of needing to implement temporary controlled load sheds" and noted a need to "address the growing gap between the accredited capacity of retiring resources and that of the new resources coming online."

MISO described the forecasted system instability, and determined that it was the result of growing reliance on weather-dependent and non-dispatchable renewable sources. "Although installed capacity has increased in the last five years, accredited capacity has decreased due to thermal retirements and the increasing transition to renewables."[11] They further warned that the region requires "more capacity … that can supply reliable generation" to avoid further shortfalls "such as those highlighted in this year's auction."[12] Industry reports described the auctions results as "signaling the prospect of temporary outages and a dire need for additional generation."[13]

For the reason the Proposed Settlement Agreement does not sufficiently consider the effects of exposing Michigan's energy consumers to potentially devastating instability and reliability issues, Mackinac Center objects.

B. Recommendations to expand the use of natural gas could expose Michigan residents to unnecessary cost increases.

The Mackinac Center objects to this, as the Proposed Settlement Agreement errs by not taking into account the very recent and pronounced volatility of natural gas prices. Given the

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[11] Ibid. page 7

[12] Ibid. page 9

[13] https://www.rtoinsider.com/articles/29948-misos-22-23-capacity-auction-bare-shortfalls-midwest last accessed May 3, 2022.

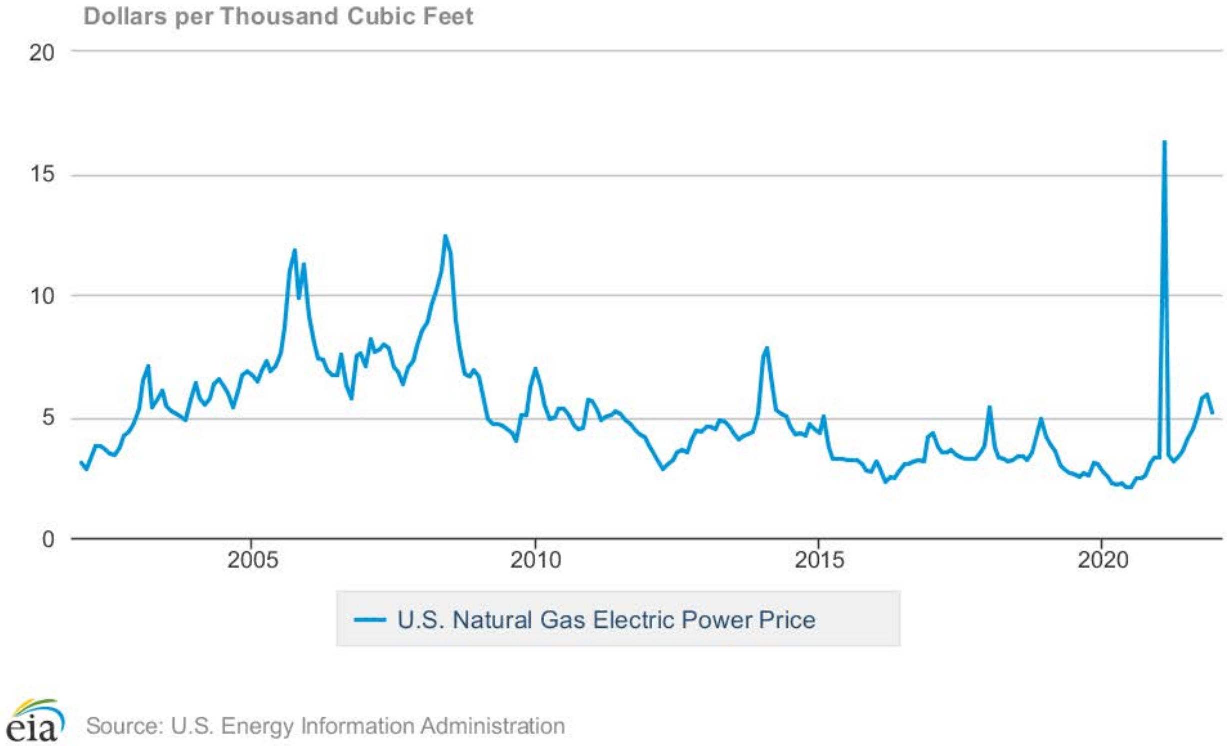
proposed Settlement Agreement's unavoidably heavy role for natural gas if the proposed closure of the Campbell plant takes place and in light of the May 20, 2022 final closure of the Palisades Nuclear Plant, as well as the Company's plan to rapidly expand solar technologies, natural gas pricing should be a central feature of this Commission's decisions.

Mackinac Center stated in its Exceptions:

> While the widespread use of fracking technologies after 2008 has been accompanied by low prices for natural gas, significant price swings have recently returned to energy markets. Demand for natural gas dropped during a relatively warm winter of 2019-2020. That decline was supercharged by rapid drops in energy demand during COVID-19 pandemic lockdowns. U.S. Energy Information data indicates that in the face of dropping demand, natural gas electric power prices — the price paid by utilities for use in electric generation — plummeted to a low of $2.08 per thousand cubic feet (Mcf) / $2.01 per million British thermal units (MMBtu) in June 2020. International Energy Agency reports described an industry "going through a strong supply and trade adjustments" as producers reacted to the low prices by cutting production to minimize losses.[14]

[14] "Gas 2020: Analyzing the impact of the Covid-19 pandemic on global natural gas markets," (International Energy Agency, June 2020), retrieved March 18, 2022, from https://www.iea.org/reports/gas-2020.

Figure 1: Energy Information Administration — U.S. Natural Gas Electric Power Price[15]

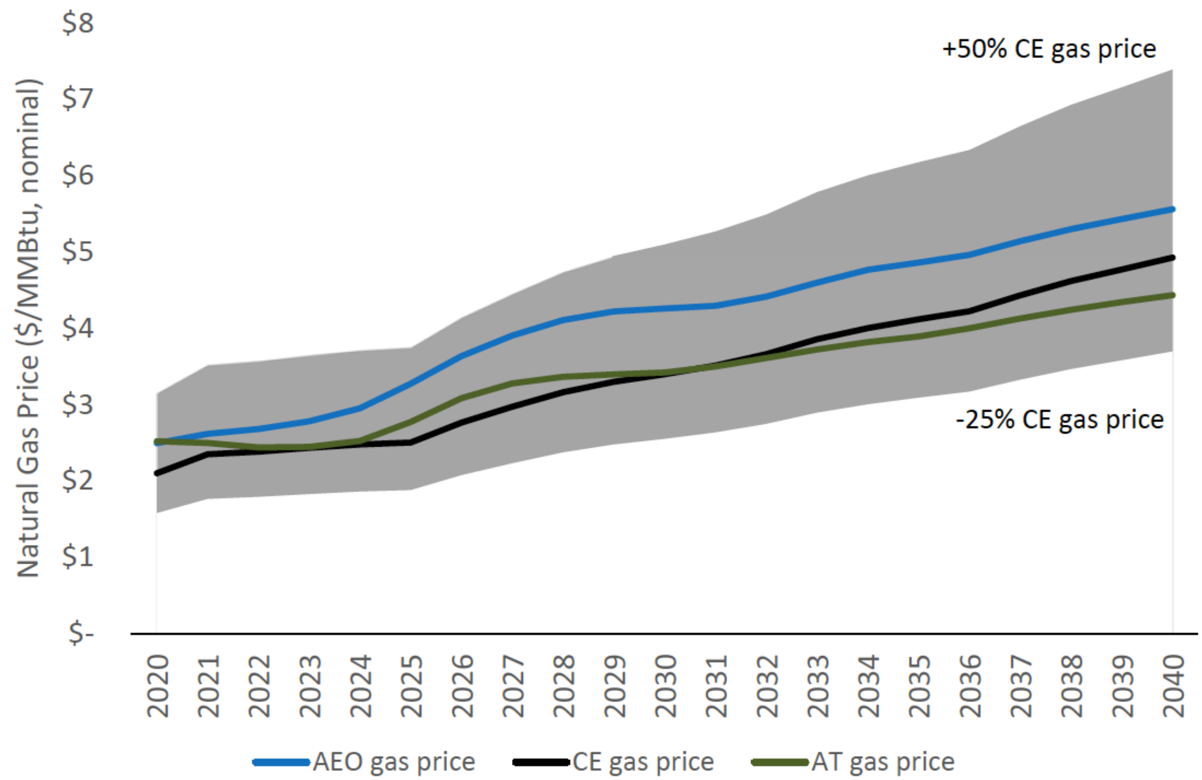


As the world began to slowly creep out of the SARS-Cov-2-caused pandemic in late-2020 with the public release of COVID-19 vaccines, people began to return to a more normal state of existence and energy demand quickly returned. But the oil and gas industry faced a new federal regulatory regime. A series of executive orders stopped the construction of the Keystone XL pipeline, paused natural gas and oil leasing on federally owned lands, and took other widely reported steps which affected fossil fuel development.[16]

[15] "U.S. Natural Gas Electric Power Price" (U.S. Energy Information Administration, February 28, 2022), https://www.eia.gov/dnav/ng/hist/n3045us3m.htm.

[16] Newburger, E. "Biden suspends oil and gas leasing in slew of executive actions on climate change" (CNBC, January 27, 2021), retrieved February 28, 2022 from https://www.cnbc.com/2021/01/27/biden-suspends-oil-and-gas-drilling-in-series-of.html.

Figure 2: Natural Gas Prices Included in the 2021 IRP — Direct Testimony of Sara T. Walz[17]



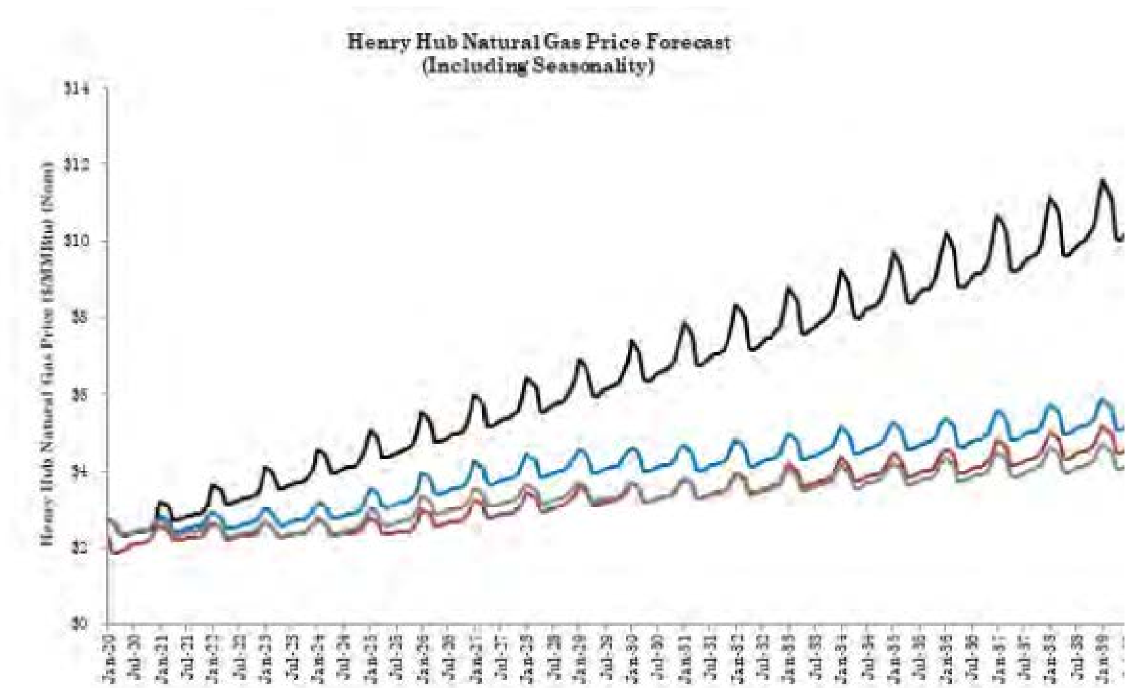
During this period of growing demand, an extreme winter storm in February 2021 heavily hit natural gas markets in Texas and Oklahoma, causing natural gas prices around the country to spike to $16.29 per Mcf / $15.71 per MMBtu for the month.[18] On February 17, 2021, high demand and low production combined to drive prices almost 1,100% above their June 2020 levels, to $24.88 per Mcf / $24 per MMBtu.[19] While this was an extremely short-term spike, natural gas prices increased from their June 2020 low to $5.89 per Mcf / $5.68 per MMBtu in November 2021, a 183% increase and a price level not seen since March 2014.[20]

[17] Reproduced from Figure 1 of Company Witness Sara Walz's Revised Direct Testimony, 3 TR 266.
[18] $ per Mcf divided by 1.037 equals $ per MMBtu, see "Frequently Asked Questions," U.S. Energy Information Agency, https://www.eia.gov/tools/faqs/faq.php?id=45&t=8.
[19] "U.S. natural gas prices spiked in February 2021, then generally increased through October" (U.S. Energy Information Administration, January 6, 2022), retrieved February 28, 2022, from https://www.eia.gov/todayinenergy/detail.php?id=50778.
[20] Average prices for 2020, when prices were low as a result of lower demand during the pandemic, were $2.50 per Mcf. In 2021, the average price jumped by 112% to $5.29 per Mcf.

The Company's modeling did not predict that prices would exceed $5 / MMBtu for another twenty years, until almost 2040, as part of the AEO gas price. (See Figures 1 and 2) In one point, however, the company does consider prices above $5 as part of its more extreme, "AEO 200% Sensitivity" modeling, with these coming as early as July 2029.

The Company's price projections, when compared with the prices listed in "Natural Gas Prices Included in the 2021 IRP Analysis," in the direct testimony of Sara T. Walz (Figure 2), or the company's "2021 Clean Energy Plan" (Figure 3), are well out of line with current market prices and must be reconsidered in light of updated information.[21] Given recent prices swings, the Company's plan to rely on this single fuel for as much as 40% of all electric supply by 2025 exposes its customers to extreme price fluctuations in the very near future.

Figure 3: Comparison of natural gas price projections — Direct testimony / exhibits of Richard T. Blumenstock [22]



[21] "Case No. U-21090" (Michigan Public Service Commission, June 30, 2021), https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000Nib8YAAR. See: Sara T. Walz Direct Testimony Figure 1, pg.14. and Exhibit A-2 (RTB-2), Figure 13.1, pg. 124.

[22] Figure 3 here is a reproduction of Figure 13:1: from the Exhibits of Richard T. Blumenstock on Behalf of Consumers Energy Company: Comparison of natural gas price projections of the company's "2021 Clean Energy Plan" at page 124 of 538 https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000NibJWAAZ.

> Fuel price estimates are critical to choosing between coal and natural gas, and the ongoing, relatively low price for coal argues strongly in favor keeping (at least) the Campbell 3 plant well past the 2025 early closure timeline recommended by the Company in initial filings and the PFD at page 85.[23] Given this recent fluctuation in gas prices, the recommendations of ABATE and WPSC to retain the Campbell 3 plant through its full life cycle [24], to 2039 are far more reasonable and prudent.[25]
>
> While coal prices have also increased over the past two years, those increases are far less than natural gas price fluctuations noted above. EIA data indicates that the "Average Cost of Coal Delivered for Electricity Generation" to Michigan electric utilities in December 2020 was $1.91 per MMBtu. In December 2021, delivered prices were $2.08 per MMBtu, a 9% increase from the previous year. In contrast, the December 2021 natural gas price of $5.15 per MMBtu represents a 156% increase over the June 2020 low gas price of $2.01 per MMBtu and 148% over the current price of delivered coal.[26]

Mackinac Exceptions at pages 10 to 15.

The Proposed Settlement Agreement's continued reliance on additional supplies of natural gas does not address Mackinac Center's concerns with rising gas prices discussed in Mackinac Center's Exceptions, which listed then current gas prices of over $5 / MMBtu. Those concerns have intensified, given the fact that May 2022 Henry Hub prices remained at near-historic levels. EIA reported the Henry Hub spot price for natural gas was $8.26 / MMBtu on May 17, a 45% increase from the worrisome $5.68 / MMBtu price noted in Mackinac Center Exceptions Report

[23] The PFD, at page 85, recommended that "Consumers should reevaluate the retirement of Campbell 3, analyzing alternative resource options, with the objective of retiring the unit in 2025, or as soon thereafter as possible."

[24] WPSC responded to Mackinac's Exceptions, noting that it did not argue the MPSC must keep the Campbell plant open until 2039. They corrected Mackinac's Exception to say that their position was that it should not be shut down by 2025 and that further study was needed to determine the best closure date for the plant. If further study demonstrated some date prior to 2039 was the most reasonable, WPSC would go along with that recommendation. Mackinac acknowledges and welcomes that clarification.

[25] PFD page 73.

[26] "Average Cost of Coal Delivered for Electricity Generation by State, December 2021 and 2020" (U.S. Energy Information Administration, undated), retrieved February 28, 2022, from https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_4_10_a. last accessed May 3, 2022

and higher than even the +50% CE Gas Price for 2040 that was listed in Company witness Sara T. Walz's testimony in the Company's original IRP filing document.[27, 28] In comparison, the most recent EIA "Electric Power Monthly" lists the February 2022 "Average Cost of Coal Delivered for Electricity Generation in Michigan" at only $2.11 per MMBtu, over 74% less.[29]

Stating this concern over rapid price swings is not meant to point out errors in the abilities of the Company's modelers. In fact, even the U.S. federal government in January of this year "forecast that the natural gas spot price at the U.S. benchmark Henry Hub will average $3.79 per million British thermal units (MMBtu) in 2022." [30] With the average Henry Hub spot price from January 3 to May 17, 2022 currently at $5.48 per MMBtu, it's clear that experts in the Energy Information Administration did not accurately predict the rise in natural gas prices. This sudden increase in natural gas prices was beyond the worst expectations of many energy experts. It is therefore, wholly reasonable to request that MPSC refuse to approve plans to move so heavily toward natural gas. While there is still an opportunity to do so, a reasonable and prudent path would be to rework the Company's modelling scenarios with more realistic natural gas prices.

Mackinac Center therefore reiterates, "Given recent price swings, the company's plan to rely on this single fuel for as much as 40% of all electric supply by 2025 exposes the company's customers to extreme price fluctuations in the very near future." This is especially true, given that natural gas prices are now approximately four times higher than the CE Gas Price in their original

[27] https://www.eia.gov/dnav/ng/NG_PRI_FUT_S1_D.htm last accessed May 21, 2022.
[28] "Case No. U-21090" (Michigan Public Service Commission, June 30, 2021), https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000Nib8YAAR. See: Sara T. Walz Direct Testimony Figure 1, pg.14.
[29] https://www.eia.gov/electricity/monthly/epm_table_grapher.php?t=epmt_4_10_a last accessed May 22, 2022.
[30] https://www.eia.gov/todayinenergy/detail.php?id=50898 last accessed May 21, 2022.

modeling. For the reason that it fails to consider the potentially damaging swings in the market price of natural gas, Mackinac center objects to the Proposed Settlement Agreement.

C. The Proposed Settlement Agreement introduced new elements that will restrict access to electric service and impose unnecessarily higher costs on ratepayers, while not accounting for several associated costs and environmental effects.

Per the Proposed Settlement Agreement, the Company will spend over $30 million ratepayer dollars establishing programs specifically designed to limit customer access to electricity services during periods of higher demand (cold or hot weather): $23,751,000 for demand response programs, and $9,736,315 for conservation voltage reduction.[31] These expenditures are deemed necessary because the Company is working from its wholly voluntary plan to reach net-zero CO2 emissions by designing a system that will be unable to meet customer demand, especially during periods of extreme weather.

The Company also notes that it intends to continue with its battery deployment program and the construction of about 8 GW of solar capacity by 2040.[32] Although the Company specifically alleges that there are supply chain benefits associated with clean energy manufacturing capabilities in Section 8(h), the Proposed Settlement Agreement ignores or chooses not to address the far greater issue of limited supply chains and significant price increases for critical or transition minerals and battery / solar and wind resources that they commit to build.[33] The International Energy Agency notes[34] that "The shift to a clean energy system is set to drive a huge increase in the requirements" for "lithium, nickel, cobalt, manganese and graphite," as well as copper, steel,

[31] Settlement Agreement at page 4.
[32] Settlement Agreement at pages 4 and 13.
[33] Settlement Agreement at page 8, Sec. 8(h).
[34] https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf, last accessed May 3, 2022.

aluminum, and other minerals and metals needed to construct the utility-scale battery systems as well as the wind and solar facilities, the Company plans to develop. [35] But rapidly growing demand for these metals and minerals, for the construction of both utility-scale batteries and electric vehicle batteries around the world is driving prices far higher. Lithium prices have risen from $25,000 per ton at the end of last year to over $40,000 per ton in mid-April. Other minerals required for batteries or solar and wind installations are seeing similar price increases. Cobalt has risen from $30,000 per ton last year, to $80,000 this year. Nickel has jumped from $20,000 to $80,000 per ton. These price increases will inevitably impact the company's plan to develop solar installations and planned battery backups. It is therefore clear that a new accounting must be undertaken to justify the choice to deploy large amounts of solar with battery backup.

Furthermore, as demonstrated by the direct testimony of Jeffery E. Battaglia in the Company's original filing, the company's planned expansion of battery technology will be insufficient to provide backup during extended periods of inclement weather. The company plans to use an industry standard "four-hour duration storage device."[36] However, EIA data indicates solar capacity factors in Michigan drop to below 10% during the months with the coldest average temperatures of December and January.[37] As the state of Michigan learned during the January 2019 Polar Vortex event, cloudy, inclement and extremely cold weather can easily outlast a four-

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[35] Settlement Agreement page 6, Sec. 6b(ii). The Settlement Agreement commits the Company to seek up to a 200 ZRC tranche of "intermittent resources and dispatchable, nonintermittent clean capacity resources (including battery storage resources)

[36] "Case No. U-21090" (Michigan Public Service Commission, June 30, 2021), https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t000000Nib8YAAR. See: Jeffrey E. Battaglia Direct Testimony pg.22.

[37] See: https://www.eia.gov/electricity/state/michigan/ Summary statistics for Michigan indicate capacity factors for solar averaged 17% for 2020, but dropped to 6.7% in January and 6.6% in December.

hour battery charge.[38] The planned levels of battery development are not sufficient to provide reliable backing for the solar facilities they plan to build, but developing sufficient levels of battery backup would be prohibitively expensive.

Prior to committing to the Proposed Settlement, the Company should also forthrightly address the growing number of reports warning of industry-wide price increases, instability, insolvencies, supply chain issues, and stalled development of projects in the solar and wind industries. The "U.S. Solar Market Insight: 2021 Year in Review" report, jointly published by the Solar Energy Industries Association and Wood Mackenzie in March 2022, recognized that more than a decade of price decreases have been reversed as, "year-over-year price increases for utility-scale solar reached 18% for fixed-tilt projects and 14.2% for single-axis tracking projects in Q4." SEIA / Wood Mackenzie report that utility-scale, fixed-tilt PV installations increased from $0.80 in Q4 2020 to $0.94 in Q4 2021 and utility-scale, tracking installations increased from $0.93 in Q4 2020 to $1.06 in Q4 2021.[39]

Another reason supply chain issues are hitting the solar industry in this manner is that, in June 2021, the Biden Administration halted the import of Chinese-made materials used in the production of solar panels. The administration cited concerns over the country's mistreatment of minority groups, and its use of "forced labor," where members of the Uyghur minority have been forced to produce solar panel components that are then sold around the world.[40] Restrictions on imports of solar panels and components have recently been increased due to concerns that Chinese

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[38] https://www.mackinac.org/26245
[39] See https://www.woodmac.com/industry/power-and-renewables/us-solar-market-insight/#gs.BLbjX=w
[40] See, for example: https://abcnews.go.com/Business/wireStory/us-blocks-solar-panel-materials-china-labor-abuses-78468889, https://ajot.com/news/us-deepens-china-solar-tariff-probe-with-scrutiny-of-8-firms , and https://www.nytimes.com/2021/06/24/business/economy/china-forced-labor-solar.html

companies were attempting to circumvent tariffs by selling them through Malaysia, Thailand, Vietnam, and Cambodia. Bloomberg reported in mid-April that "at least 65% of U.S. solar capacity set to come online in 2022 and 2023…is now at significant risk of cancellation or delay, according to results of a survey by the American Clean Power Association."[41]

Furthermore, while the Company claims a dedication to environmental stewardship by meeting their voluntary "Carbon Neutral by 2040" goal, the Proposed Settlement Agreement does not address the significant environmental costs associated with this net-zero objective.[42] Numerous industry reports in 2022 warn about a growing level of industry-wide instability, insolvencies, supply chain issues, and stalled development projects in the solar and wind industries.[43]

The Company also intends to continue with plans to transfer stranded costs, plus a 9% return on equity, for the early closures of Campbell Units 1, 2, and 3 to ratepayers: "the Commission will permit Consumers Energy to recover the unrecovered book balance of Campbell Units 1, 2, and 3 through the Company's proposed regulatory asset treatment, with a return equal to the Company's weighted average cost of capital ("WACC") premised on the return on equity approved by the Commission in rate cases prior to the retirement date of those units and a 9.0% return on equity after the retirement date of those units, as part of the Company's electric rates over the current design lives of those units."[44] As this will unnecessarily shift the stranded costs

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[41] See, for example: https://www.bloomberg.com/news/articles/2022-04-19/solar-trade-probe-risks-65-of-planned-u-s-projects-group-says

[42] See, for example: https://www.instituteforenergyresearch.org/renewable/the-environmental-impact-of-lithium-batteries/ and https://www.justice.gov/opa/pr/esi-energy-llc-wholly-owned-subsidiary-nextera-energy-resources-llc-sentenced-after-pleading

[43] See, for example: https://www.eenews.net/articles/solar-industry-were-in-most-serious-crisis-in-history/ and Mills, M.P., "Mines, Minerals, and 'Green' Energy: A Reality Check," Manhattan Institute (New York, NY, July 2020), https://media4.manhattan-institute.org/sites/default/files/mines-minerals-green-energy-reality-checkMM.pdf

[44] Settlement Agreement page 5, Sec. 5

associated with voluntary early closures of existing generation capacity to ratepayers, the Mackinac Center objects to this.

The Company will also transfer decommissioning costs for the Campbell Units to ratepayers: “the Company will be permitted to record a regulatory asset for actual decommissioning spending for Campbell Units 1, 2, and 3, with a return on the regulatory asset, with subsequent rate recovery in a rate case after a review of the reasonableness and prudence of the expenses.”[45] Again, Mackinac Center objects to this imposition of costs on ratepayers.

The Company agrees to engage in a one-time solicitation for 500 ZRC’s for “dispatchable, nonintermittent generation capable of dispatching up or down in every hour of the year in response to wholesale energy market signals.” — while this solicitation would likely be unnecessary if the company was retaining the Campbell facility and had access to generation from the now closed Palisades facility. Mackinac Center agrees that the early closure of both the Palisades and Campbell generation facilities will force the Company to seek out new, dispatchable, non-intermittent generation to address the growing level of instability being designed into their system with the closure of large, dispatchable sources and the development of significant levels of weather-dependent, non-dispatchable sources, such as their planned construction of 8GW of solar.[46]

The Company’s agreement to donate $5 million in 2022 and $2 million annually thereafter to MEAP and/or LIHEAP is a band-aid solution to the problems caused by its own decision to impose on ratepayers the cost of its wholly voluntary goal of net-zero emissions by 2040 goals, as well as the systemwide costs associated with weather-dependent and variable renewable energy

[45] ibid
[46] See, for example: https://www.bnnbloomberg.ca/vast-swath-of-us-is-at-risk-of-summer-blackouts-regulator-warns-1.1767730.amp.html

sources.[47] Mackinac Center objects to the Proposed Settlement Agreement to the extent that it requires these assistance programs due to the imposition of the costs associated with the voluntary net-zero-by-2040 goals.

Finally, by specifically working to shutter its fossil-fuel and nuclear generation capacity, the Company cannot reasonably or accurately claim to be working toward "an 'all of the above' approach" as it does in section 16 of the Proposed Settlement Agreement.[48] The Company is developing and constructing a system that precludes the use of coal and nuclear and relies solely on wind, solar, storage, and (over the upcoming two decades) slowly decreasing levels of natural gas for actual generation of electricity services for customers. Other programs such as EWR, CVR and demand response target reduced supply and use by customers of electricity services, not the actual provision of electric service to customers. Mackinac Center objects to these measures.

CONCLUSION

The Mackinac Center respectfully requests the Commission reject the Settlement Agreement. Recent events have shown how harmful increased energy costs are to the consumer and to the economy. Reliability issues and energy interruptions - such as occurred in Texas in February 2021 – are destructive and dangerous. These costs and reliability problems will affect the Mackinac Center, its supporters and employees.

Respectfully submitted,

MACKINAC CENTER FOR PUBLIC POLICY

Dated: May 25, 2022

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[47] Ibid. page 11, Sec. 13
[48] Ibid page 13, Sec. 16

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of CONSUMERS ENERGY COMPANY for Approval of an Integrated Resource Plan under MCL 460.6t, certain accounting approvals, and for other relief.	))))))	Case No. U-21090

PROOF OF SERVICE

The undersigned hereby states that he is counsel for the Mackinac Center for Public Policy and that on May 25, 2022 he served an electronic copy of **Initial Brief in Support of Mackinac Center for Public Policy's Objections to the Proposed Settlement Agreement** on the persons listed in the following attached pages, at their email addresses listed therein.

Dated: May 25, 2022

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