

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
MACKINAW POWER, L.L.C., and NORTH)	
AMERICAN WIND ENERGY, L.L.C., to amend)	Case No. U-13843
and make permanent the Consumers Energy)	
Company green power pilot program.)	
_____)	

At the January 25, 2005 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

OPINION AND ORDER APPROVING RENEWABLE RESOURCE PROGRAM

History of Proceedings

On May 18, 2004, the Commission issued an order in this proceeding outlining the development of a new renewable resource program (RRP) for Consumers Energy Company (Consumers). The Commission also established a funding mechanism for the RRP. In so doing, the Commission stated:

The Commission is persuaded that the new green power program should be structured to encourage financial institutions to finance new facilities. Toward that end, the Commission approves the use of long-term contracts between Consumers and its suppliers. Specifically, the Commission finds that contract terms of up to 20 years would be appropriate. Consumers should provide its ratepayers with a variety of service offerings and terms to meet individual needs. The Staff's proposals shall form the basis for the Consumers' next generation renewables program. Consumers shall file an application in this docket by June 30, 2004 to implement the new renewable resource program, which it shall serve on all parties to this proceeding and Case No. U-12915. Interested persons shall have until July 30,

2004 to file written comments. Thereafter, the Commission will approve the terms and conditions for the new program.

May 18 order, Case No. U-13843, pp. 17-18.

The Commission explicitly endorsed the Commission Staff's (Staff) proposed "coordinated approach" for soliciting new green power supplies through a competitive bidding process and for marketing green power to customers, so that "Consumers would consciously match customer subscriptions to new green power purchases." May 18 order, p. 18. However, the Commission recognized that the applicants in this proceeding, Mackinaw Power, L.L.C. (Mackinaw), and North American Wind Energy, L.L.C. (NAWE), should be granted "exclusive right to develop new wind generation projects up to the limits set forth in their existing contracts during the remainder of 2004." May 18 order, p. 18.

In addition, the Commission authorized Consumers to collect 5¢ per meter per month and place those revenues into a RRP fund. May 18 order, p. 20. The Commission described the purpose of the fund¹ as follows:

Revenues collected from the monthly five-cent charge will be placed into a renewable resource program fund. The fund will be used to compensate Consumers for costs that are not recovered from customers who voluntarily choose the green power program or are not recovered through the PSCR process. Renewable energy contracts entered into by Consumers will be included in its PSCR factor at the average PSCR cost so that inclusion of these contracts will have no effect on the PSCR factor. The difference between the contract price and the average PSCR cost will be recovered through the fund, except for those costs that are being recovered from customers who voluntarily choose the green power program. Consumers should enter into renewable contracts commensurate with the anticipated amount of the fund. The Commission intends to review on a periodic basis the need to continue the fund.

May 18 order, pp. 20-21, footnote omitted.

¹The Commission explicitly found that the approved funding mechanism would operate in a competitively neutral manner with respect to any customer's decision to take bundled service or to participate in the choice program.

The May 18 order directed Consumers to file an application in this docket by June 30, 2004 to implement its new renewable resources program and funding mechanism (the June 30 filing) as provided in the order. The Commission also directed Consumers to serve a copy of the June 30 filing on all parties to this proceeding and Case No. U-12915. Interested persons were given until July 30, 2004 to submit written comments on the June 30 filing.

On June 30, 2004, Consumers filed its application for the implementation of the RRP. In that application, Consumers included a proposal for the RRP and an implementation timeline. Consumers also indicated that it would file a plan for making a transition from Consumers' existing Green Power Pilot Program (GPPP)² to the new RRP by August 31, 2004.

On August 31, 2004, Consumers submitted its plan for addressing the transition of customers and suppliers from the GPPP to the new RRP. In so doing, Consumers suggested that the Commission might wish to entertain and consider responses to this proposed transition plan.

On October 4, 2004, the Commission issued an order in this proceeding finding "that additional comments on Consumers' proposal are warranted and should be solicited from all interested persons." October 4 order, p. 7. The Commission directed the Staff to electronically serve a copy of this order on all parties and other interested persons previously involved in either Case No. U-12915 or Case No. U-13843, place a summary of the order on the Commission's website in a conspicuous location, and to use all other reasonable means to publicize the contents of this order to the general public. Interested persons were invited to file comments on Consumers' RRP by October 25, 2004.

On October 25, 2004, comments were received from the American Bird Conservancy (ABC), Attorney General Michael A. Cox (Attorney General), Consumers, Crystal Flash Energy (CFE),

²By order dated July 25, 2001, the Commission approved Consumers' application in Case No. U-13029 to establish the GPPP.

Energy Options and Solutions (EOS), Mackinaw, the Michigan Independent Power Producers Association (MIPPA), NAWE, Northwest Energy, Inc. (Northwest), RES North America, LLC and RES America Construction, Inc. (collectively, RES), and Waste Management of Michigan, Inc. (WMI).

On November 8, 2004, Mackinaw and NAWE submitted supplemental comments in response to Consumers' October 25 filing.

Positions of the Parties

ABC is a non-profit organization working to conserve wild birds and their habitats throughout the Americas. ABC submitted guidelines for the siting of wind turbines intended to minimize harm to birds, bats, and other wildlife.³

The Attorney General maintained that the Commission is required to conduct a contested case hearing before it can approve Consumers' RRP tariff. Regarding Consumers' proposal to transfer GPPP customers to (or place them on a waiting list for) the RRP, the Attorney General stated that customers should be allowed to take such actions voluntarily. According to the Attorney General, the Commission may not force customers to switch or remain on the new tariff for 12-months. The Attorney General also contended that the Commission does not have statutory authority to amend Consumers' power purchase agreements. The Attorney General did not object to Consumers' recovery of implementation and administrative costs so long as customers are not forced to pay higher total costs. Indeed, citing Consumers Power Co v Public Service Comm, 189

³The Commission notes the guidelines and recommends that developers consider them. The Staff has referred ABC's proposed guidelines to the Michigan Renewable Energy Program (MREP) collaborative for its consideration. *The Commission notes that power plant siting authority in Michigan is a matter of local government jurisdiction*, and recommends that ABC work with the state Energy Office, which is currently developing proposed wind energy siting guidelines through the Michigan Wind Working Group (WWG). The WWG is a committee of the MREP.

Mich App 151; 472 NW2d 477 (1991), the Attorney General argued that the Commission can regulate a utility's recovery of costs incurred under purchase power contracts, but lacks power to dictate the terms and conditions for such contracts. Finally, the Attorney General requested that the Commission transfer Consumers' June 30 and August 31 filings and resulting comments, along with the Commission's October 4 order, into a new docket to address the RRP.

In separate filings, CFE and Mackinaw recommended that the RRP should be designed to achieve 50 Megawatts (MW) of new supply in 2005 from what it characterizes as "transition projects" that would achieve commercial operation by December 31, 2005,⁴ with an additional 275-300 MW in 2006-2010. They argued that Consumers' delays prevented construction of the 50 MW initially allocated to the GPPP. Specifically, CFE and Mackinaw stated that "[t]he RRP Transition Phase Supply should come from the suppliers who hold signed energy purchase agreements (EPAs) for the first 50 MW of new projects: Phase II of the Mackinaw City Project⁵ and the Projects now developed 2001-2004 by Mackinaw Power and NAWE." CFE comments, p. 8. Further, they recounted many steps they contend must be completed before new wind energy projects can become commercially operational and state that Bay Windpower I, Mackinaw, and NAWE have completed many of them.

In addition, CFE and Mackinaw proposed that new RRP supplies be integrated with the Michigan state implementation plan (SIP) for meeting Clean Air Act compliance. Further, CFE and Mackinaw recommended that Consumers be afforded full cost recovery for its RRP and that

⁴December 31, 2005 is the presently established deadline for projects to be eligible for the federal renewable energy production tax credit.

⁵According to comments submitted by the MIPPA, CFE is the current owner of the Bay Windpower project in Mackinaw City and is a member of MIPPA.

customers be offered green pricing tariff choices to purchase renewable energy to meet either 50 or 100 percent of their needs or under a long-term fixed price contract.

CFE also recommended that developers be authorized to market green power and subsequently increase their energy supplies to meet the demand spurred by their marketing. In so doing, CFE stated that renewable energy supplies could be better matched to customer RRP tariff subscriptions, and the incentives for all parties should be properly aligned.

Finally, CFE requests that RRP tariffs include requirements for energy purchase agreements, including 20-year terms, a long-term firm price of \$58 per Megawatt-hour (MWh) with a 1 percent per year escalator, no “regulatory out” clause, and affordable interconnections.

EOS stated that with few exceptions Consumers “has structured a very good proposal” based on principles that “provide a sound basis for development of a successful program.” EOS comments, p. 2. EOS recommended approval of an RRP designed to allow all customers to share in the benefits and participation through purchases of increasing amounts of renewable energy. Specifically, EOS would expand the program to include Consumers’ retail open access customers, who EOS says should also benefit from increased renewable energy purchases. EOS also claimed that including some mandatory participation might help alleviate concerns regarding the phase-in of purchases to match voluntary customer participation rates. Toward that end, EOS proposed a Commission-imposed requirement, like a renewable portfolio standard, for Consumers to purchase 50 MW of renewable resources in 2007, ramping up to 200 MW by 2010, in addition to requiring that “a significant portion of any new utility generation requirements created by load growth, to be provided by renewable resources.” EOS comments, p. 4.

EOS proposed an RRP that includes proper economic mechanisms in both pricing structures and the bidding process to promote on-site generation using renewable resources. Likewise, EOS

supported establishment of an incentive for Consumers to ensure the utility's support for the program. EOS also suggested allowing Consumers to develop up to 10% of the total amount of renewable power requested in any RFP.

EOS recommended that the Commission approve Consumers' RFP and resulting purchase power contracts. EOS maintained that the contracts should include scheduled milestones to be met by developers and should contain an automatic termination provision to prevent bidders from tying up development rights.

In its initial comments, Mackinaw stated that the PJM Interconnection, L.L.C. (PJM) regional transmission operator has now developed procedures for allocating capacity credits to wind generators, and asks the Commission to "reevaluate its assertion in the May 18 order that wind power does not generate capacity." Mackinaw comments, p. 5. Mackinaw and NAWE repeat this assertion in their November 8, 2004 supplemental comments, adding that new evidence clearly shows that wind power does provide capacity to an electricity system. Mackinaw and NAWE indicated that in addition to PJM, the New York Independent System Operator, ISO New England Inc., the Mid-Continent Area Power Pool, and the states of California and Texas now are developing or already have developed mechanisms to provide capacity payments to wind generators through energy payments intended to reward generators for their "as delivered" capacity. Accordingly, Mackinaw and NAWE requested that the Commission use its 1987 PA 81 (Act 81) authority to approve power purchase agreements that include a capacity payment for wind power projects.

Mackinaw argued that Consumers' RFP should bring into commercial operation an estimated 325 MW of new renewable power by 2010; 50 MW to be online by 2006; another 150 MW bid in 2005 to be completed by 2006-2008; and 125 MW more to be bid in 2007 and brought online

2009-2010. Like CFE, Mackinaw asserts that the RRP tariffs should include requirements for energy purchase agreements, including 20-year terms, a long-term firm price of \$58 per MWh with a 1% per year escalator, no “regulatory out” clause, and affordable interconnections.

Mackinaw recommended that developers be authorized to market green power and subsequently increase their energy supplies to meet the demand spurred by their marketing. Mackinaw urged the Commission to earmark funds from Consumers’ RRP for marketing purposes. Finally, in a lengthy discussion, Mackinaw insisted that the Commission should engineer Consumers’ transition from the GPPP to RRP so that Bay Windpower, Mackinaw, and NAWE will not lose contractual rights in their existing EPAs with Consumers.

It is the MIPPA’s position that “renewable energy resources are underutilized in Michigan... [and] could support 300 to 600 MW of additional renewable electric generation if effective policies and programs...are put in place now.” The MIPPA’s comments, p. 2. According to the MIPPA, the most fundamental tasks facing the Commission at this juncture with respect to renewable energy are to ensure “that all legitimate candidates for development be presented with contractual opportunities that reflect cost realities and can serve as the revenue stream security required for project financing... [and] sustaining an environment that will allow all such facilities an opportunity to perform under economically fair and consistent rules.” The MIPPA’s comments, pp. 2-3. The MIPPA also contended that the new RRP program Consumers proposes still appears to contain many of the same problems that plagued Consumers’ GPPP. The MIPPA urged that Mackinaw and NAWE, by virtue of the considerable risk and expense they have assumed, be afforded “a fair opportunity to be included under the emerging program.” The MIPPA’s comments, pp. 4-5. MIPPA further maintained that:

Prior program facilities should receive priority and proposed facilities with existing contractual agreements that did not go forward because of legitimate

problems such as the suspension of Production Tax Credits should be given a fair and reasonable opportunity to fulfill their contractual obligations and enjoy their contractual rights.

The MIPPA's comments, pp. 11-12.

The MIPPA did not believe that Consumers' payment obligations should be limited under renewable energy purchase agreements, thereby necessitating "regulatory out" provisions. The MIPPA suggested that the Commission consider establishing an incentive mechanism, through which Consumers would both bear some risk, but also be rewarded for successfully marketing renewable energy at a value that exceeds cost. The MIPPA claimed that such an approach would be consistent with a traditional utility wholesale/retail market structure. In addition, the MIPPA stated that it does not support a program pursuant to which Consumers pays renewable energy producers only the company's top incremental cost for energy, while expecting to hold the long-term rights to renewable energy credits (RECs) associated with that generation. Instead, the MIPPA argued that purchasers that do not pay a green price premium should not receive associated RECs. The MIPPA further noted that no "avoided cost" has been determined for Consumers' purchases. The MIPPA encouraged the Commission to provide for full cost recovery for Consumers of all legitimate costs incurred. However, the MIPPA saw no reason why Consumers should receive greater protection for its costs than that afforded to its suppliers.

Regarding customer tariff options, the MIPPA proposed two options. First, the MIPPA contended that green price premiums could be tied to a specific renewable resource project or portfolio of projects, such that the price premium does not change over time. Second, the MIPPA stated that all green rate premium payments could be treated as part of one portfolio that will be averaged, with the prices to participants changed from time to time. The MIPPA proposed

that green rate customers not be exposed to generation-based rate increases resulting from sources outside their own portfolio.

Finally, in reply to the Attorney General's claim⁶ that the Commission should hold another contested case hearing prior to approving Consumers' RRP, the MIPPA stated that "[T]here have been too many hearings and not enough development of renewable resources already." The MIPPA's comments, p. 12.

In its comments, NAWA criticized Consumers' RRP for failing to address "the twin bugaboos of cost recovery and inability to finance" and predicted that the new program, if implemented as proposed, would suffer from the same problems as Consumers' GPPP. NAWA comments, p. 4. NAWA was particularly concerned about Consumers' insistence on including "regulatory out" clauses in its supply contracts. Like Mackinaw, NAWA argued that variable-output renewable energy resources should be afforded appropriate capacity value, which it said could offset Consumers' regulatory out provisions, to help make new developments financeable.

NAWA agrees with CFE, Mackinaw, and the MIPPA that Consumers' RRP should incorporate the contracts and facilities from the Consumers' GPPP. NAWA requested that Consumers provide NAWA and Mackinaw "a first priority" for participation in the new RRP, without having to bid for rights. NAWA further requested contractual modifications that would provide a reasonable opportunity to finance projects being developed pursuant to existing energy purchase agreements. Another alternative proposed by NAWA, if the Commission approves Consumers' application in Case No. U-14031, is for Consumers' GPPP to RRP transition plan to be guided by the "Term Sheet" filed in Case No. U-14031 and attached to NAWA's comments.

⁶See, the Attorney General's July 30, 2004 comments in Case No. U-13843, pp. 8-9, and his October 25, 2004 comments in Case No. U-13843, pp. 3-4.

NAWE also suggested that Consumers' proposed phase-in of renewable resource purchases be tempered by considerations for renewable energy technology economies of scale, such as wind resources that NAWE indicated require 30 MW projects to be economically feasible. In addition, NAWE questioned whether a phase-in approach is warranted when landfill gas is being flared in Michigan.

Regarding Consumers' proposal to hire a third-party marketer, NAWE reported that the expected cost to market renewable energy to customers will be significant and stated that a voluntary system would create administrative problems. Instead, NAWE recommended use of a customer-based fee to either expand the renewable mix or reduce costs.

Finally, NAWE did not support a bidding process for determining renewable resource supplies. Instead, NAWE favored a European-style "feed-in tariff."⁷ However, if bidding were to be used, NAWE agreed with EOS that the process should take into account factors that would influence the timing and cost to bringing the renewable resource facility to market.

Northwest supported a renewable energy program that incorporates net metering, cogeneration, and geothermal energy.

RES, a developer of utility-scale wind energy projects, stated that it is prepared to enter the renewable energy industry in Michigan, but is reluctant to do so under the RRP as it is presently proposed by Consumers. Specifically, RES faulted Consumers' insistence on regulatory out provisions in its renewable energy supply contracts. RES proposed that the Commission either withhold approval of any purchase power agreements with regulatory out clauses, or recognize that payments to wind generators should include capacity payments that may be protected by

⁷A "feed-in tariff" basically sets a contract price for the purchase of a particular renewable resource, and then awards that price to all comers that are able to achieve commercial operation by a specific time. This approach has reportedly been used in some European Union countries.

Act 81. RES also proposed that the Commission state in its order “that all requests for Act 81 by wind generators awarded power purchase agreements approval will be favorably received and expeditiously handled.” RES comments, p. 5. RES noted that Consumers was well-situated to rely on wind power due to the Ludington Pumped Storage facility, which could be used to “smooth the intermittent production inherent in wind-generated power.” RES comments, p. 5.

WMI stated that the Commission “needs to find a better way to reconcile the competing public policy issues...of the absolute lowest short term energy costs...versus the promotion, on a long term basis, of a viable renewable energy program in Michigan... .” WMI comments, p. 2. (Emphasis in original.) WMI proposed that the Commission focus its attention on establishing Consumers’ avoided cost to be paid to renewable power developers.

In its October 25, 2004 comments, Consumers reported on research it had recently conducted on utility green power pricing programs. Based on that research, Consumers concluded that (1) participation rates in voluntary green pricing programs remain relatively low, even after significant effort and time, (2) the average rate of participation in utility green pricing programs across the United States is about 1% of customers, and for programs that have been in operation for three or more years the average participation rate is about 2%, (3) customer education, marketing, and promotion for green pricing programs are costly, (4) customers prefer to have the costs of renewable energy spread to all customers, and (5) green pricing programs alone may not be the best option for incorporating renewable energy into a utility’s supply mix.

Consumers estimated that filling its proposed 500,000 MWh RRP with sales to residential customers would necessitate about 100,000 subscriptions at a cost of about \$65 per customer, or \$6.5 million in marketing expenses. Consumers also expected that it would take years to fully subscribe the proposed block of renewable energy.

Based on those findings, Consumers proposed to modify its RRP plan in terms of supply, pricing, cost recovery, program administration, and tariffs. Consumers also proposed modifying its RRP based on the Commission's determinations regarding the company's proposed resource conservation plan (RCP), which is the subject of Case No. U-14031.

Regarding RRP supply, Consumers proposed issuing an RFP within 45 days of a Commission order approving its revised RRP approach for up to 20 MW of wind generation or 15 MW of landfill gas capacity. The RFP would invite bids for generation from all of the renewable energy technologies identified in 2000 PA 141. Consumers stated that these amounts of renewable energy constitute a reasonable projection of the maximum amount of renewable capacity that could be fully compensated from the RRP fund. If Consumers' application for its proposed RCP were to be approved by the Commission in Case No. U-14031, then Consumers estimated that the entire renewable resource fund could support approximately five times as much capacity, or approximately 100 MW of wind power projects.⁸ Because of continuing uncertainty about the RRP funding mechanism collecting 5¢ per meter per month, Consumers indicated it "intends to rely on standard regulatory out clauses in any power purchase agreement (PPA) entered into as the result of the RFP process."⁹ Consumers' comments, p. 10. Consumers also indicated that when the initially procured supply of renewable energy is fully subscribed by voluntary participants, Consumers "would consider issuing a subsequent RFP for additional renewable energy resources

⁸In an order issued today in Case No. U-14031, the Commission approved Consumers' RCP application, with modifications.

⁹The Commission's May 18, 2004 Order in Case No. U-13843 directed Consumers to collect 5¢ per meter per month, and accrue the revenue in a renewable energy fund. See, <http://efile.mpsc.cis.state.mi.us/cgi-bin/efile/viewcase.pl?casenum=13843>. The Attorney General appealed, claiming the 5¢ monthly charge is a "subsidy" and the Commission does not have the legal authority to require customers to make any non-voluntary contributions to a utility's renewable energy program. This case is pending in the Michigan Court of Appeals, Docket No. 256180. See, <http://courtofappeals.mijud.net/resources/asp/viewdocket.asp?casenumber=256180>.

based on availability of funding from the RRP fund and the likelihood of customers participating in an expanded voluntary green pricing program.” Consumers’ comments, p. 13.

Consumers proposed to begin marketing the RRP to its customers as soon as supply contracts have been secured and green pricing tariffs have been approved by the Commission. Consumers would reserve the option to hire third-party marketers in the future, but would begin with reliance on internal marketing and communication expertise and seeking input from the Staff.

Consumers also proposed to hold the price in its RRP green pricing tariffs to about 50% of the difference between the company’s average power supply cost recovery charge and the actual cost of energy procured through its RFP. Consumers estimated that this approach would mean a green price premium of about 2¢ per kWh or less. Consumers notes:

The actual amount of the RRP premium, however, would be based on the actual costs of the renewable energy sources contracted for by Consumers and the availability of any funding in the RRP Fund. These pricing matters would be embodied in a tariff that would be approved by the Commission.

Consumers’ comments, p. 11.

The only change noted between Consumers’ July 30 and October 25 proposals for the transition of its existing GPPP customers to its RRP transition is that the GPPP customers will be notified, if RRP offerings are not similar to the GPPP, and offered a choice of RRP selections if they choose to participate.

Regarding RRP cost recovery, Consumers repeated its insistence that the company must be guaranteed recovery of all costs incurred in the establishment of the RRP including the costs of acquiring renewable energy, the costs of developing and implementing the RRP, and any unknown ancillary costs. Consumers maintained that it is critical for the Commission to provide certainty for recovery of all costs associated with the RRP. Consumers also requested that the Commission approve its recovery of \$311,028 associated with the modification of Consumers’ billing system

for the GPPP together with future operational costs. Consumers proposed recovering this amount, plus interest at the company's last authorized pretax rate of return of 10.63% over a five-year period beginning in 2006. Consumers also indicated that it expects the operational costs for the RRP will be significantly higher than the operational costs of the GPPP. Regarding the RRP tariffs, Consumers proposed offering only one renewable energy product, a blend of all the renewable supplies selected in its RFP process, which represented a change from the company's previous proposal to offer both a "zero emissions" option and an "all renewables" option. Consumers indicated that it may allow customers to purchase renewable energy in 100 kWh blocks for a fixed price per block per month. Consumers stated that it is presently engaged in studies of its customer preferences that will be completed by February 2005. Consumers anticipated filing its final green pricing tariff for Commission approval in the first quarter of 2005.

Consumers proposed filing annual reconciliation reports within 90 days after the last billing cycle each year, to review progress of its RRP, status of the RRP fund, program expenses, and to form the basis for Consumers' request for cost recovery. Consumers' comments, p. 13.

In summary, Consumers stated its revised RRP proposal provides important advantages, including (a) long-term power supply contracts at financeable terms, (b) the potential to immediately secure a large enough block of power to allow better economies of scale and to deliver immediate economic and environmental benefits, and (c) reduced investment in program marketing and promotion. Consumers also maintained that its revised approach provided "a reasonable time period for customers to adopt green pricing options without unnecessarily delaying the procurement and construction of new Michigan-based renewable energy generation." Consumers' comments, pp. 16-17.

In reply to Consumers' October 25 revised RRP proposal, Mackinaw and NAWE filed supplemental comments indicating that Consumers' revised RRP would be inconsistent with Consumers' own research findings. Mackinaw and NAWE preferred an RRP that does not rely on voluntary customer contributions, but includes support from all customer classes. Mackinaw and NAWE also criticized Consumers' RRP marketing proposal as expensive and having an unknown potential for success. Finally, Mackinaw and NAWE repeated their argument that Consumers ought to honor their existing contracts for development of new wind projects.

Discussion

1. Legal authority and notice of rate change

Questions regarding the adequacy of the notice in Case No. U-13843 were addressed by the Commission in the May 18, 2004 order. The Commission found the notice sufficient and rejected arguments by various parties. Thus, the Commission finds there is no need to hold another hearing as claimed by the Attorney General in his comments.

Furthermore, the Commission finds there is no need for yet another round of comments. The Commission appreciates input from interested parties on the design and operation of Consumers' RRP and encourages continued dialogue amongst interested parties. Ultimately, however, where uncertainties remain about the best means of implementing Consumers' new RRP, the Commission expects that experience will prove most instructive. The Commission finds that the time has come for Consumers to take action to implement its new RRP. The Commission is concerned about the delays that have already occurred in completing action on Consumers' new RRP.

Though the delays may not be solely because of Consumers' actions or inactions, the Commission is well aware that over eight months have passed since the Commission issued its May 18, 2004 order in Case No. U-13843, which provided Consumers with the Commission's directions on how

to proceed to establish the company's new RRP. Today's order does not significantly alter any of the Commission's directives from that order. To the contrary, it affirms them. The Commission indicated in the May 18 order that the new RRP would be an extension of Consumers' existing GPPP, which was slated to expire on December 31, 2004. By extending provisions of the GPPP through the date of this order,¹⁰ the Commission intended to provide GPPP customers and suppliers with the smoothest possible transition to the new RRP.

As indicated in the May 18 order, the Commission did not then anticipate any need to intercede in contract negotiations between Consumers and the potential developers who had fully executed energy purchase agreements with Consumers that were initially established with the intent of producing renewable energy to serve customers in the GPPP program. However, at the time of the May 18 order, it was expected that this order would be issued prior to the expiration date of those contracts. When it became clear that the Commission would be unable to issue this order before the end of 2004, the Commission interceded to preserve the status quo in order to avoid harming any of the GPPP customers or participants and to avoid confusing potential RRP customers and participants. Therefore, the Commission directed Consumers to extend all provisions of the GPPP tariffs and supplier contracts for 30 days beyond December 31, 2004, or until January 30, 2005. In addition, the Commission extended the exclusive opportunity to develop new green power program projects provided to Mackinaw and NAWE by ordering paragraph "D" of the May 18 order for an additional 30 days, or until January 30, 2005.

2. Managing GPPP Participants and Transition to RRP Tariffs

Consumers indicates it will notify GPPP customers of the new RRP offerings, and offer them their choice of RRP selections. The Commission agrees this is a reasonable approach. As pointed

¹⁰See, the December 22, 2004 order in Cases Nos. U-13029 and U-13843.

out by the Attorney General, no customer should be forced to switch from the GPPP to the RRP against his or her wishes. But, as Consumers explains, the price premium for the new RRP is likely to be less than the GPPP, so customers will probably prefer to switch to one of the new RRP offerings when the opportunity is presented. If not, customers who subscribed to the GPPP may be allowed to cease participation in the program.

3. Managing RRP Participants and RRP Tariffs

In its October 25 comments, Consumers stated it was presently engaged in customer preference studies, to be completed by February 2005, with the intent of providing guidance in its design of the RRP tariffs. Consumers also indicated it would file its tariff for Commission approval in the first quarter of 2005. The Commission directs Consumers to file an application seeking approval of its proposed RRP tariffs by March 31, 2005. The application shall include consideration of longer term customer contracts.

4. Obtaining Supply for the New RRP

With respect to obtaining renewable energy supplies for its new RRP, Consumers has indicated its preference to procure in-state resources. Consumers stated in its October 25 comments that within 45 days of receiving a Commission order approving its RRP approach, the company would issue a RFP inviting bids for renewable energy supplies. The Commission agrees that an RFP should be issued soon, with the intent to be able to begin obtaining new renewable resources before the end of calendar year 2005. One reason for some urgency, as indicated by comments from wind energy developers, is that federal production incentives are presently extended only through December 31, 2005. Thus, the Commission directs Consumers to prepare and issue a RFP not later than March 31, 2005, with the intent of achieving commercial operation of the first resources in response to the RFP before the end of 2005.

The Commission will not require Consumers to obtain Commission approval prior to issuing its RFP. Consumers should keep the Staff informed of its plans for the RFP, however. The Commission expects that consultation with Staff will help to ensure the smoothest possible implementation of the RFP that is designed to elicit the best, most competitive responses from many potential renewable energy producers. The Commission notes that the RFP should incorporate provisions for selecting supplies on the basis of considerations other than price alone. For example, the RFP should incorporate scoring criteria to address the concerns raised by EOS, regarding the ability of bidders to complete their proposed projects on schedule. The Commission would also support scoring criteria that reward existing Michigan-based developers who have been active participants in Commission proceedings concerning the establishment of renewable resource projects. It would also be appropriate to provide additional consideration to developers that have taken significant steps to secure local sites for their facilities.

Regarding the quantity of renewable energy to be purchased, the Commission recognizes there is some potential for tension between the goals of purchasing in large enough quantities for developers to achieve economies of scale in their projects versus small enough quantities to limit Consumers' exposure to long-term contracts that may turn out to entail costs that are higher than market prices available for nonrenewable energy. According to estimates provided by Consumers, the combined funding sources presently identified for the RRP fund, including \$5 million resulting from approval of the RCP, are expected to be ample to fully support approximately 100 MW of wind energy or 75 MW of landfill gas production, even without having additional customers subscribe to green pricing tariffs. The Commission expects these quantities are sufficient to provide developers with reasonable opportunities to achieve practical economies of scale. The Commission will not prescribe a specific quantity to be purchased at this time, or a specific time

schedule for Consumers to obtaining a specific quantity. The Commission recognizes the multifaceted relationships between renewable resource availability and price, customer interest in procuring additional renewable resources and price, and marketing and customer information. Thus, the Commission will be interested to review results from Consumers' RFP and marketing efforts for the new RRP, and will withhold judgment on the appropriate quantities of renewable resource purchases until more information is available. The Commission does note, however, that the Staff's testimony included descriptions of low-cost marketing techniques that have been used in other utility service territories, with at least some success. The Commission further notes evidence presented by the Staff and corroborated by Consumers' own research as reported in the company's October 25 comments, which indicates that utility green pricing programs in other states have achieved penetration rates averaging slightly more than 1% of all residential customers, and programs in operation for three or more years average 2%. The Commission finds that these penetration levels for customer participation can be used as a benchmark by Consumers, at least for the time being.

In comments, some parties raised concerns about calculating appropriate capacity values and avoided cost credits to be assigned to renewable resources procured by Consumers. In addition, NAWA proposes that Consumers develop a feed-in tariff for renewable resources, and other parties propose adoption of a renewable portfolio standard or similar mechanism to require that all of the state's electricity suppliers purchase additional quantities of renewable energy on a similar time schedule. The Commission finds that these issues including the Commission's authority to resolve them under existing law should be referred to the MREP Collaborative established in Case No. U-12915 and the Capacity Need Forum established in Case No. U-14231. The Commission directs the parties to raise these concerns and attempt to achieve consensus through the MREP

Collaborative and Capacity Need Forum. If a consensus cannot be achieved, then the Commission directs the Staff to put forward a proposal for Commission consideration by the deadline set for delivery of the final report on the Capacity Need Forum, which is January 1, 2006.

In order to try to accommodate the requirements of developers that might achieve commercial operation of renewable energy systems before December 31, 2005, Consumers will have to establish a rapid schedule for its RFP and subsequent procurement process. The Commission directs Consumers to act with due diligence to expedite its RFP and procurement process. The Commission recommends that Consumers establish a schedule that calls for responses to the RFP to be received no later than 30 days following the issuance of its RFP, winning bidders to be identified no later than 30 days subsequent to the response date, and Consumers to submit the completed purchase agreements to the Commission for its approval no later than 30 days after the winning bidders have been identified.

5. Recovery of GPPP and RRP Administrative and Implementation Costs

Consumers seeks recovery of \$311,028 of GPPP administrative costs, with interest, and proposes to recover this amount from the renewable resource fund from 2006 through 2010. Consumers also indicates it believes that operational costs for the new RRP will be significantly higher, and seeks assurance of cost recovery. The Commission will approve recovery of all prudently incurred costs associated with Consumers' GPPP and the new RRP. Consumers should continue to account for these costs separately. For the \$311,028 requested, the Commission directs the Staff to complete an audit review, of these expenses and upon completion of that review make a recommendation to the Commission for recovery. This review should include Staff's recommendations about which costs benefit all customers and which benefit only GPPP or

RRP customers. The Commission will later determine which specific amounts shall be recovered through the renewable resource fund or another appropriate mechanism.

Commenters raised a few additional concerns. These included EOS and the MIPPA recommending that the Commission establish an appropriate incentive for Consumers, to help focus the company's managers on the task of developing a highly successful RRP. The Commission welcomes detailed proposals for doing so. This is another issue that can be referred to the MREP Collaborative for analysis and recommendation. If a consensus on an appropriate incentive mechanism can be achieved, then it can be presented to the Commission for its consideration. If no consensus is reached, then the Commission directs the Staff to include a proposal in the 2005 MREP report, which will be due in November 2005.

CFE provided comments regarding the integration of renewable resources within Michigan's implementation plan for meeting Clean Air Act compliance. The Commission notes that this issue has already been referred to the MREP Collaborative for consideration.

Northwest indicated its support for a renewable energy program that incorporates net metering, co-generation, and geo-thermal energy. The Commission notes that a net metering program is presently under consideration in Case No. U-14346, and public comments have been invited to be submitted by February 1, 2005. Co-generation and geo-thermal energy may be considered by the MREP Collaborative and through the Commission's Capacity Need Forum. The Commission invites Northwest, and any other interested parties, to contact the Staff representatives to learn about how they can effectively participate in these ongoing forums.

As stated in the May 18, 2004 order in this case, the Commission supports the use of long-term contracts with suppliers to encourage financing of new renewable energy facilities. In light of Commission approval of all prudently incurred costs associated with the RRP, and considering

the renewable energy fund established today in Case No. U-14031, Consumers should now have the certainty necessary to enter into long-term contracts with renewable suppliers. Further, as stated in Case No. U-14031, Consumers is expected to provided full “cooperation, support, and assistance in achieving a vibrant, successful, and sustainable renewable resource program.” Order, p. 31.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; and the Commission’s Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Consumers should be directed to file an application in a new docket seeking approval of new RRP tariffs consistent with the findings set forth in this order by March 31, 2005.

c. Consumers should be directed to prepare and issue an RFP by March 31, 2005, with the intent of achieving commercial operation of the first resources in response to the RFP before the end of 2005.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company shall file in a new docket an application seeking approval of new renewable resource program tariffs consistent with the findings set forth in this order by not later than March 31, 2005.

B. Consumers Energy Company shall prepare and issue a request for proposals by March 31, 2005, with the intent of achieving commercial operation of the first resources in response to the request for proposals before the end of 2005.

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.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark

Chair

(S E A L)

/s/ Robert B. Nelson

Commissioner

/s/ Laura Chappelle

Commissioner

By its action of January 25, 2005.

/s/ Mary Jo Kunkle

Its Executive Secretary

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.

MICHIGAN PUBLIC SERVICE COMMISSION

Chair

Commissioner

Commissioner

By its action of January 25, 2005.

Its Executive Secretary