



A CMS Energy Company

General Offices:
One Energy Plaza Tel: (517) 788-0550
Jackson, MI 49201 Fax: (517) 768-3644

*Washington Office:
1730 Rhode Island Ave. N.W. Tel: (202) 778-3340
Suite 1007 Fax: (202) 778-3355
Washington, DC 20036

Writer's Direct Dial Number: (517) 788-0698
Writer's E-mail Address: jon.robinson@cmsenergy.com

LEGAL DEPARTMENT
CATHERINE M REYNOLDS
Senior Vice President
and General Counsel

JAMES E BRUNNER
Senior Vice President
and Chief Legal Counsel

JON R ROBINSON
Vice President and
Deputy General Counsel
Utility Law and Regulation

MELISSA M GLEESPEN
Vice President and
Corporate Secretary

Eric V. Luoma
Shelley J Ruckman
Kimberly C Wilson
Assistant General
Counsel

David E Barth
Robert W Beach
H Richard Chambers
Neil R Fellows
Kelly M Hall
Gary L Kelterborn
Chantez P Knowles
Raymond E McQuillan
Jason M Milstone
Rhonda M Morris
Deborah A Moss*
Mirce Michael Nestor
Jeffrey D Pinter
James D W Roush
John C Shea
Scott J Sinkwitz
Adam C Smith
Bret A Totoraitis
Mary Jo Weindorf
Attorney

October 17, 2013

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
4300 West Saginaw
Lansing, MI 48917

Re: Case No. U-17496 – In the Matter of the Application of CONSUMERS ENERGY COMPANY for approval of long-term power purchase auction procedures

Dear Ms. Kunkle:

Enclosed for electronic filing is Consumers Energy Company's "**Application**" in the above-captioned case. Also included is a Proof of Service showing service upon the parties in Case No. U-17429. This is a paperless filing and is therefore being filed only in a PDF format.

Sincerely,

Jon R. Robinson

cc: Parties per Attachment 1 to 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 long-term power purchase)
auction procedures)
_____)

Case No. U-17496

APPLICATION

Consumers Energy Company (“Consumers Energy” or the “Company”) requests the Michigan Public Service Commission (“MPSC” or “the Commission”) to grant prior approval, pursuant to MCL 460.6j(13)(b) and other applicable law, of the long-term power purchase auction (“PPA”) procedures described more fully in this Application. In support of this request, Consumers Energy states as follows:

1. Consumers Energy is a public utility engaged in, among other things, the generation, purchase, distribution and sale of electricity to retail customers in the State of Michigan. Consumers Energy is subject to the jurisdiction of the Commission pursuant to 1909 PA 106, as amended, MCL 4.551 *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, 1992 AACS, R 460.17101 *et seq*.

2. Consumers Energy periodically conducts competitive solicitations for the purpose of obtaining offers for capacity for seasonal, annual and multi-year periods to meet its capacity reserve requirements as established by Midcontinent Independent System Operator, Inc. (“MISO”). Consumers Energy intends to conduct such a solicitation in the form of an auction to

acquire capacity to (i) meet its reserve requirements for MISO Planning Year 2016 (a MISO Planning Year runs from June 1 through May 31 of the following year), and (ii) determine if certain capacity acquisitions can achieve a net reduction in PPA, fuel and labor costs for MISO Planning Years 2014 and 2015. Because the Company seeks to have the auction to be open to all interested parties, including both affiliates and non-affiliates, it also filed an Application with the Federal Energy Regulatory Commission (“FERC”), a copy of which is attached to this Application as Attachment 1, and an amendment to the FERC Application, a copy of which is attached to this Application as Attachment 2. The FERC issued an Order granting the requested relief, with conditions, on June 18, 2013, a copy of which is attached to this Application as Attachment 3. Consumers Energy files this Application with the MPSC for the purpose of obtaining “prior approval” pursuant to MCL 460.6j(13)(b) for “capacity charges associated with power purchased for periods in excess of 6 months.”

3. Consumers Energy is a Market Participant and Load Serving Entity (“LSE”) in the Midwest Energy Market operated by MISO, and is subject to the resource adequacy provisions of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (“MISO Tariff”). In accordance with the MISO Tariff, Consumers Energy must demonstrate that it has acquired sufficient “Zonal Resource Credits” (“ZRCs”) to meet demand and planning reserve requirements. A ZRC represents the amount of capacity from a Planning Resource for a specific Planning Year available to be used in a MISO Resource Planning Zone to supply one megawatt (“MW”) of coincident peak demand after discounting the capacity for its historical equivalent forced outage rate on demand (“EFORd”), determined pursuant to the requirements set forth in Module E of the MISO Tariff. Based upon projected demand, MISO

planning reserve requirements and available resources, Consumers Energy currently believes it is short of needed ZRCs for MISO Planning Year 2016 in the amount of approximately 850 ZRCs. To address a portion of the shortfall, the Company currently intends to conduct an auction to obtain up to 500 ZRCs for Planning Year 2016.

4. The Company has identified potential fuel and labor savings that can be expected to occur if it is able to remove Karn Units 3 and 4 from service in MISO Planning Years 2014 and 2015. Such savings would be offset by the cost to acquire replacement capacity needed to maintain compliance with the requirements of the MISO Tariff. Based on projected short-term capacity prices the Company believes it may be possible to acquire replacement capacity at a low enough cost so as to achieve a net reduction in overall costs. The Company proposes to conduct an auction to purchase approximately 1100 ZRCs for 2014 at a cost no greater than \$5.9 million and approximately 1100 ZRCs for 2015 at a cost no greater than \$7.8 million. To the extent capacity can be acquired at costs at or below these levels, a net reduction in overall cost of service can be realized for 2014 and 2015. Consumers Energy notes that its ability to remove Karn Units 3 and 4 from service in 2014 and 2015 is subject to the review and approval of MISO. As of the date of this Application, MISO has indicated that there would be reliability concerns associated with the removal from service of these units during 2014 and 2015. The nature and extent of MISO's reliability concerns, however, is not yet clear. Further, it is not clear when MISO will more fully identify its concerns. Thus, in order to have the option of proceeding with the cost savings efforts described in this paragraph, Consumers Energy has included in this Application the request for approval of the auction procedures for 2014 and 2015.

5. As outlined in Attachment 1, the auction will be conducted by an independent Auction Administrator unaffiliated with Consumers Energy. The identity of the Auction Administrator is World Energy, an energy management firm that runs an internet-based auction platform for the purchase or sale of energy-related products. The independent Auction Administrator will conduct the auction through a website (the “Auction Website”) in accordance with the terms of a Request for Proposals (“RFP”) that is included in Attachment 1. Prior to the auction, all auction participants will be required to complete and execute EEI Master Agreement documents, which are included as part of the RFP. The RFP also includes a draft transaction confirmation which, when executed and delivered together with the EEI Master Agreement, will form a single, integrated agreement between each winning auction participant(s) and Consumers Energy. Offers in response to the RFP may only be submitted through the independent Auction Administrator’s Auction Website. The independent Auction Administrator will transmit the received offers to Consumers Energy on an anonymous basis. Consumers Energy will not know the identity of the auction participants, and will not know which auction participants made offers, or at what price and volume. After the auction closes, Consumers Energy will review its capacity needs and the overall response of the market to the RFP, and will adjust the amount of capacity it will accept based on its needs and whether the bid prices generally match expected price levels for the product requested.

6. Attachments 1 and 2 contain the details of the auction procedure, including all relevant agreements. As explained in more detail in Attachment 1:

- No party will have an informational or other advantage in any part of the RFP process. Information concerning the RFP will be widely publicized, and all

interested parties will have access to this information. The RFP describes the auction participant application process, which will be completed in advance of the auction. Because all product requirements and offer qualifications will be defined and handled in advance of the submission of bids in accordance with the clear requirements set forth in the RFP, the offer evaluation phase will be a simple and impartial process of selecting anonymous winning offers based solely on price and volume.

- The RFP will define the product being sought in all relevant respects. As described in Attachments 1 and 2, the product for which offers are being solicited are a single tranche of 500 ZRCs for MISO Planning Year 2016, a single tranche of 1100 ZRCs for MISO Planning Year 2014, and a single tranche of 1100 ZRCs for MISO Planning Year 2015. Offers will specify the volume of ZRCs being offered in each tranche, and the price of ZRCs offered in each tranche, stated in units of \$/ZRC.
- The auction will, from Consumers Energy’s perspective, be “blind.” The only information the Company will receive about each auction participant will be the price and volume offered. In order to select the winning auction participant(s), Consumers Energy will determine the mix of bids that will meet its needs at the lowest cost. Once that determination of anonymous bids is made, the Company will notify the independent Auction Administrator. Only at that time will the independent Auction Administrator reveal the identity of the winning bidder(s) to the Company. Consumers Energy will

notify each winning auction participant that its offer has been selected immediately thereafter; there will be no post-auction negotiation with auction participants.

- The auction process will be conducted by the independent Auction Administrator, an entity that has no financial interest in any potential bidder or in the outcome of the process. The independent Auction Administrator will serve as a gatekeeper to the information about auction participants that Consumers Energy has during the evaluation process—it will only provide the Company the prices and volumes bid on an anonymous basis.

7. Consumers Energy has established weighted average ceiling prices (net of World Energy fees which are paid by the sellers) for purposes of this auction of \$5,475/ZRC for the tranche of ZRCs applicable to the MISO Planning Year 2014, \$7,238/ZRC for the tranche of ZRCs applicable to the MISO Planning Year 2015, and \$107,357/ZRC for the tranche of ZRCs applicable to the MISO Planning Year 2016; i.e., it will accept no combinations of offers that result in weighted average prices (net of World Energy fees) in excess of the stated ceiling prices. Additionally, the Company does not intend to accept any offers for Planning Year 2014 unless it is able to purchase virtually all 1100 ZRCs at a weighted average price less than the 2014 ceiling price and the Company does not intend to accept any offers for Planning Year 2015 unless it is able to purchase virtually all 1100 ZRCs at a weighted average price less than the 2015 ceiling price.

8. Consumers Energy believes that it would be prudent to conduct the solicitation for up to 500 ZRCs for Planning Year 2016 on or about February 1, 2014. Current market prices for capacity are at depressed levels. A significant amount of electric generating capacity in the MISO geographical area is expected to be retired in the next several years, which is expected to result in an increase in capacity prices. Thus, conducting an auction on or about February 1, 2014 will allow acquisition of at least a portion of the needed capacity at lower price levels than may be available in the future.

9. Consumers Energy believes that it would be prudent to conduct the solicitation for 1100 ZRCs for MISO Planning Years 2014 and 2015 on or about February 1, 2014 to determine if replacement capacity for Karn Units 3 and 4 can be acquired at a cost that is less than the estimated savings in fuel and labor costs associated with the suspension of operations at Karn Units 3 and 4.

10. MCL 460.6j(13)(b) requires the Commission to disallow recovery of “any capacity charges associated with power purchased for periods in excess of 6 months unless the utility has obtained the prior approval of the commission.” The ZRCs for which Consumers Energy wishes to conduct the auction will, in order to meet MISO requirements, be for the MISO Planning Years of 2014, 2015, and 2016. While the language of the statute is subject to interpretation regarding when, in relationship to the execution of the contract, the “prior approval” of the Commission must be obtained, one possible interpretation is that the prior approval must be granted before the utility may obtain recovery of the costs of acquiring the capacity. Consumers Energy contemplated first conducting the auction and submitting executed agreements to the Commission for its approval pursuant to MCL 460.6j(13)(b), but the Company

believes that making such agreements contingent upon regulatory approval will tend to make the terms of the agreement less favorable than they would otherwise be if the contracts were binding upon execution. Similarly, executing such agreements without explicitly addressing the requirements of MCL 460.6j(13)(b) would create substantial uncertainty about future regulatory actions, and create a risk of future cost recovery disallowance.

11. Because Consumers Energy believes conducting the auction on or about February 1, 2014 is likely to produce more favorable commercial terms than waiting to do so in the future, and in order to address the “prior approval” requirements of MCL 460.6j(13)(b), the Company requests that the Commission grant the requested approval on an *ex parte* basis. Such approval would not increase any currently effective rates since the costs incurred pursuant to any contracts executed pursuant to the auction described herein will not increase rates until 2014, if at all. Rather, the approval requested by this Application is for Commission approval of the auction procedure described in this Application. Consumers Energy believes that the Commission may lawfully grant such approval on an *ex parte* basis, since the approval requested in this Application is solely the “prior approval” required by MCL 460.6j(13)(b). See *Attorney General v. Public Service Commission*, 220 Mich App 561, 560 NW2d 348 (1996). Prior to recovery of the costs associated with any contracts executed pursuant to the auction described in this Application, such costs would be subject to review in the appropriate power supply cost recovery (“PSCR”) plan and reconciliation proceedings. Such proceedings would provide an opportunity to review whether the contracts and associated costs were consistent with the terms of the auction described in this Application.

12. Upon issuance of a Commission order granting the requested approval, and the subsequent completion of the auction, Consumers Energy will submit to the Commission the contracts executed pursuant to the auction within 30 days of their execution. Submission of the contracts would, however, require recognition of the confidential commercial nature of certain information. Consumers Energy seeks Commission approval of a filing procedure that would redact the names of the sellers and the pricing terms from the publicly filed contracts. The names of the sellers, a summary of all bids submitted in response to the RFP, and the details of the bid rankings will be supplied to the Commission and to its Staff pursuant to procedures designed to maintain the confidential nature of the information. Consumers Energy believes that public disclosure of this type of proprietary business information would impair its ability to conduct successful capacity solicitations in what has become a highly competitive wholesale power market and to negotiate the most attractive power supply arrangements.

13. As noted above, granting the approvals sought in this Application will not increase rates for any customer. Thus, the approvals sought herein can lawfully be granted without the time and expense of notice and public hearing.

WHEREFORE, Consumers Energy Company respectfully requests the Commission to grant the following relief:

(A) Grant prior approval pursuant to MCL 460.6j(13)(b) of the auction procedure and the associated contract terms described in this Application, finding that the auction procedure and associated contract terms represent a reasonable and prudent means of acquiring capacity;

(B) Find that confidential treatment of certain business information described in this Application is appropriate and should be granted to the extent requested in this Application;

(C) Find that the requested relief can be granted without the time and expense of public hearing; and

(D) Grant such other and further relief as may be lawful and appropriate.

Respectfully submitted,

CONSUMERS ENERGY COMPANY

Dated: October 17, 2013

By: _____
Timothy J. Sparks, Vice President
Energy Supply Operations

Jon R. Robinson (P27953)
Kelly M. Hall (P48083)
Robert W. Beach (P73112)
John C. Shea (P36854)
Attorneys for Consumers Energy Company
One Energy Plaza
Jackson, Michigan 49201
(517) 788-2112

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
CONSUMERS ENERGY COMPANY)
for approval of long-term power purchase)
auction procedures)
_____)

Case No. U-17496

VERIFICATION

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Timothy J. Sparks, being first duly sworn, deposes and says that he is Vice President, Energy Supply Operations of Consumers Energy Company; that he has executed the foregoing Application for and on behalf of Consumers Energy Company; that he has read the foregoing Application and is familiar with the contents thereof; that the facts contained therein are true, to the best of his knowledge and belief; and that he is duly authorized to execute such Application on behalf of Consumers Energy Company.

Timothy J. Sparks, Vice President
Energy Supply Operations

Subscribed and sworn to before me this 17th day of October, 2013.

Dorothy H. Wright, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 08/17/19
Acting in the County of Jackson

Attachment 1



A CMS Energy Company

March 1, 2013

BY E-FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St, NE
Washington, DC 20426

General Offices:
One Energy Plaza
Jackson, MI 49201
Tel: (517) 788-0550
Fax: (202) 778-3355

*Washington Office:
1730 Rhode Island Ave. N.W.
Suite 1007
Washington, DC 20036
Tel: (202) 778-3340
Fax: (202) 778-3355

Writer's Direct Dial Number: (202) 778-3343
Writer's E-mail Address: deborah.moss@cmsenergy.com

LEGAL DEPARTMENT
JAMES E BRUNNER
Senior Vice President
and General Counsel

JON R ROBINSON
Vice President and
Deputy General Counsel
Utility Law and
Regulation

CATHERINE M REYNOLDS
Vice President, Deputy
General Counsel
& Corporate Secretary

Shelley J Ruckman
Kimberly C Wilson
Michael G Wilson
Assistant General
Counsel

David E Barth
H Richard Chambers
Neil R Fellows
Gary L Kelterborn
Chantez P Knowles
Eric V Luoma
Raymond E McQuillan
Rhonda M Morris
Deborah A Moss*
Mirce Michael Nestor
Robert M Neustifter
Jeffrey D Pintar
James D W Roush
John C Shea
Scott J Sinkwitz
Adam C Smith
Bret A Totoraitis
Charlotte A Walls
Mary Jo Weindorf
Attorney

Re: Docket Nos. ER98-4421-_____ and ER96-2350-_____
*Application of the Consumers Energy Company and CMS Energy
Resource Management Company for Waiver of Affiliate Restrictions
Related to Consumers Energy Company's 2016 Planning Year Auction for
Capacity*

Dear Secretary Bose:

Consumers Energy Company (“Consumers Energy”) and CMS Energy Resource Management Company (“CMS ERM,” and collectively, “Applicants”) hereby request that the Commission grant a waiver of the Applicants’ affiliate restrictions with respect to power sales between Applicants under their respective market-based rate tariffs. In support of the Affiliate Waiver Request, the Applicants propose to maintain existing protections against affiliate abuse and also propose to adopt additional pricing protections during relevant time periods. Applicants request that the Commission grant a waiver of the Applicants’ affiliate restrictions with respect to power sales between Applicants to ensure that CMS ERM would be able to participate in Consumers Energy’s auction for electric generation capacity purchases for MISO 2016 Planning Year (i.e., June 1, 2016 through May 31, 2017) on an equal footing with other auction participants.

Applicants hereby request Commission authorization (i) for CMS ERM to make sales of energy to Consumers Energy at a price not to exceed the prevailing price of electricity at the MISO Indiana Hub; (ii) for Consumers Energy to make sales of energy to CMS ERM at (or above) the prevailing price of electricity at the MISO Indiana Hub; and (iii) for CMS ERM to make sales to Consumers Energy of electric generation capacity in the event that CMS ERM is a successful auction participant in a Consumers Energy competitive solicitation for capacity to meet reserve requirements for the MISO 2016 Planning Year, held in a manner consistent with the description herein, at the clearing price of such competitive solicitation. To the extent necessary, Applicants request waiver of the restrictions on sharing of market information

between, and functional separation of, employees of the Applicants who are involved in sales, purchases, and brokering as necessary to effectuate inter-affiliate transactions between Consumers Energy and CMS ERM, subject to the limitations described below.¹

I. DESCRIPTION OF APPLICANTS

Consumers Energy is a public utility that services approximately 1.8 million electric customers and 1.7 million gas customers in Michigan's Lower Peninsula. Consumers Energy is wholly owned by and is one of the two principal subsidiaries of CMS Energy Corporation ("CMS Energy"). The other principal subsidiary of CMS Energy is CMS Enterprises Company. Consumers Energy was initially granted authority to sell electric energy and capacity at market-based rates by the Commission order issued October 28, 1998 in Docket No. ER98-4421-000.²

CMS ERM is a Michigan corporation that is engaged in the business of wholesale power and energy sales as a marketer. CMS ERM does not own or operate generating facilities. CMS ERM was formerly known as CMS Marketing, Services and Trading Company ("CMS MST"), which was formerly known as CMS Electric Marketing Company. CMS ERM is an indirect wholly owned subsidiary of CMS Energy Corporation. CMS Electric Marketing Company was granted market-based rate authority in the Commission's September 6, 1996 order in Docket No. ER96-2350-000.³

II. BACKGROUND

On September 28, 2000, the Commission approved the request of CMS MST to allow market-based rate sales of electricity from CMS MST to Consumers Energy.⁴ The Commission found that the use of the "Into Cinergy" index price as a cap on the price paid by Consumers Energy to CMS MST, along with Consumers then frozen retail rates, the Michigan retail choice program, and the commitment to exclude from any rate calculations all purchases from CMS MST for the life of the contracts for its wholesale requirements customers and customers served under special contracts that are not fixed rate contracts provided adequate protection to these customers and adequate protection against affiliate abuse.

On February 22, 2001, the Commission approved the request of Consumers Energy and CMS MST to allow market-based rate sales of electricity from Consumers Energy to CMS MST and to allow the sharing of market information as necessary to effectuate such sales.⁵ The Commission found that Consumers Energy's commitment to exclude from any rate calculations for its wholesale requirements customers and customers served under special contracts all purchases from or sales to CMS MST for the life of the contracts, and with amendments to Consumers Energy's wholesale requirements contracts to provide for the crediting of the cost of

¹ To the extent that any market information must be shared, it is the Applicants' expectation that such information would be limited to pricing information necessary to undertake a transaction subject to the pricing restrictions proposed herein.

² *Consumers Energy Company*, 85 FERC ¶ 61,121 (1998).

³ *CMS Electric Marketing Company*, 76 FERC ¶ 61,236 (1996).

⁴ *CMS Marketing, Services and Trading Company*, 92 FERC ¶ 61,262

⁵ *Consumers Energy Company and CMS Marketing, Services and Trading Company*, 95 FERC ¶ 61,180 (2001).

fuel recovered at the hourly system incremental cost for sales to CMS MST, there were adequate safeguards in place to protect against affiliate abuse. The Commission also approved the request of Consumers Energy and CMS MST to allow the sharing of market information as necessary to effectuate inter-affiliate sales transactions under their respective market-based rate tariffs.

In 2008, the Michigan legislature passed legislation, effective October 6, 2008, that adopted certain changes to the Michigan retail electric choice program. H.B. No. 5524, Section 10(a), provides in pertinent part that the Michigan Public Service Commission (“MPSC”) “shall issue orders establishing the rates, terms, and conditions of service that allow all retail customers of an electric utility or provider to choose an alternative electric supplier. The orders shall do all of the following: (a) Provided that no more than 10% of an electric utility’s average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time . . .” The amount of Consumers Energy load served by alternative electric suppliers reached the ten percent cap in 2009. However, Consumers Energy and CMS ERM have not made any inter-affiliate sales since the ten percent retail cap was met. In fact, the last sale from CMS ERM to Consumers Energy was made in 2002 and the last sale from Consumers Energy to CMS ERM was made in 2005.

H.B. 5524 does not change the circumstances that the Commission relied upon when granting CMS ERM authority to make sales to Consumers Energy when the ten percent retail cap has not been reached. When the ten percent retail cap has not been reached, any retail customer may choose an alternative electric supplier; as was the case prior to the passage of H.B. 5524. However, consistent with continued authorization for affiliate sales granted to The Detroit Edison Company and DTE Energy Trading, Inc. following the adoption of the ten percent retail cap,⁶ Consumers Energy and CMS ERM submit, herein, their justification for continued waiver of the affiliate restrictions with respect to sales of energy from CMS ERM to Consumers Energy when the ten percent retail cap is met.

III. COMMUNICATIONS

The names and addresses of the persons to whom communications concerning this matter should be addressed on behalf of Applicants are:

Deborah A. Moss
Principal Attorney
Consumers Energy Company
1730 Rhode Island Ave. N.W.
Suite 1007
Washington, DC 20036
Phone: (202) 778-3343
Fax: (202) 778-3355
damoss@cmsenergy.com

David F. Ronk, Jr.
Director of Electric Transactions and
Wholesale Settlements
Consumers Energy Company
1945 West Parnall Road
P13-413A
Jackson, MI 49201
Phone: (517) 788-1388
Fax: (517) 788-5882
dfronk@cmsenergy.com

⁶ See *The Detroit Edison Co.*, Delegated Letter Order, Docket Nos. ER97-324-020, et al., issued March 2, 2011.

IV. REQUEST FOR WAIVER OF AFFILIATE SALES RESTRICTIONS

Applicants hereby request Commission authorization (i) for CMS ERM to make sales of energy to Consumers Energy at a price not to exceed the prevailing price of electricity at the MISO Indiana Hub; (ii) for Consumers Energy to make sales of energy to CMS ERM at (or above) the prevailing price of electricity at the MISO Indiana Hub; and (iii) for CMS ERM to make sales to Consumers Energy of capacity in the event that CMS ERM is a successful auction participant in a Consumers Energy competitive solicitation for capacity to meet reserve requirements for the MISO 2016 Planning Year, held in a manner consistent with the description herein, at the clearing price of such competitive solicitation.⁷ As described herein, the MISO Indiana Hub is “an established, relevant market price” that “mitigates any affiliate abuse concerns,”⁸ and the Consumers Energy competitive solicitation satisfies the requirements established by the Commission for affiliate power sales in *Edgar*⁹ and *Allegheny*.¹⁰ Applicants therefore request that the Commission grant authorization for inter-affiliate transactions with these additional protections in place.

A. The MISO Indiana Hub Is An Established, Relevant Market Price

Applicants propose to cap the price of energy sold by CMS ERM to Consumers Energy outside the competitive solicitation process described below at a price not to exceed the prevailing price of electricity at the MISO Indiana Hub and seek authorization for Consumers Energy to make sales of energy to CMS ERM at (or above) the MISO Indiana Hub price.¹¹ Limiting the sales price by reference to the MISO Indiana Hub price will provide adequate protection against affiliate abuse. Specifically, the Commission has previously waived its affiliate sales restrictions where the price of an affiliate transaction is “limit[ed] ... to an established, relevant market price or index ... because of the absence of any room for price

⁷ Applicants also request that they be permitted to engage in affiliate transactions without the additional pricing restrictions to the extent retail load served by alternative electric suppliers is below the legislative cap. In that regard, Applicants commit to advising the Commission by informational filing at such time as the retail load served by alternative electric suppliers falls below the legislative cap to the extent Applicants seek to engage in affiliate transactions without the additional pricing restrictions proposed herein.

⁸ *Brownsville Power I, L.L.C.*, 111 FERC ¶ 61,398 at P 10 (citations omitted) (2005) (“*Brownsville*”).

⁹ *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382, 62,168 (1991) (“*Edgar*”).

¹⁰ *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082 at P 22 (2004) (“*Allegheny*”).

¹¹ The MISO Indiana Hub provides both real-time and forward pricing points. Applicants will ensure that the Indiana Hub price used for a particular transaction is the pertinent market index price for that transaction (*e.g.*, for a forward monthly transaction, the Applicants would benchmark price to the forward monthly Indiana Hub price). MISO has four trading hubs: Illinois, Indiana, Michigan and MINN (Minnesota). Applicants propose to use the MISO Indiana Hub price as the reference price for affiliate sales because it is the MISO trading hub that is the closest hub, geographically, to Consumers Energy’s service area, whose prices are not significantly influenced by Consumers Energy’s resources. Although the MISO Michigan Hub reflects market prices closer to Consumers Energy’s service area, it would be inappropriate to use the MISO Michigan Hub price as a reference price for affiliate transactions because Consumers Energy’s resources have a significant influence on this price.

manipulation.”¹² The Commission has also found that “tying the price of an affiliate transaction to an established, relevant market price or index such as in an [Regional Transmission Operator (“RTO”)] or [Independent System Operator (“ISO”)] is acceptable benchmark evidence and mitigates affiliate abuse concerns so long as that benchmark price or index reflects the market price where the affiliate transaction occurs.”¹³ The Commission has previously determined that MISO pricing points are appropriate benchmark prices for affiliate transactions with purchasers located in MISO.¹⁴

The MISO Indiana Hub is one of several financial trading hubs established by the MISO to provide market participants with price indices that move consistently with prices in the region. The MISO Indiana Hub price is therefore a “relevant ... index”¹⁵ for transactions between CMS ERM and Consumers Energy, and will mitigate any potential for affiliate abuse resulting from such sales. Limiting sales by Consumers Energy to CMS ERM to a price at (or above) the MISO Indiana Hub price will also mitigate any potential for inappropriate cross-subsidization by ensuring that CMS ERM does not pay less than market price for power from Consumers Energy.¹⁶ Applicants therefore respectfully request that the Commission grant authorization (i) for CMS ERM to make sales of energy to Consumers Energy at a price not to exceed the prevailing price at the MISO Indiana Hub; and (ii) for Consumers Energy to make sales of energy to CMS ERM at (or above) the prevailing price at the MISO Indiana Hub.

B. The Consumers Energy Competitive Solicitation Will Satisfy the *Allegheny* Principles

CMS ERM would like to participate in the Consumers Energy competitive solicitation for capacity described below. Because the Consumers Energy competitive solicitation for capacity will meet the Commission requirements set forth in *Allegheny* as explained below, Applicants respectfully request that the Commission’s waiver of the affiliate restrictions between CMS ERM and Consumers Energy to also permit CMS ERM to sell capacity to Consumers Energy at the clearing price of Consumers Energy’s competitive solicitation for capacity to meet the

¹² *W. Res., Inc.*, 94 FERC ¶ 61,050 at 61,247 (2001); *see also DPL Energy, Inc.*, 90 FERC ¶ 61,200 at 61,643 (2000) (“*DPL*”) (approving proposal to cap the price of sales of energy and capacity between affiliates at a regional index price in order to protect against affiliate abuse); *FirstEnergy Trading Servs., Inc.*, 88 FERC ¶ 61,067 at 61,156 (1999).

¹³ Order No. 697 at P 533; *see also id.* At P 542 (same). The Commission has further stated that “the added protections in structured markets with central commitment and dispatch and market monitoring and mitigation (such as RTOs/ISOs) generally result in a market where prices are transparent.” *Id.*

¹⁴ *See e.g., Brownsville* at P 10 (finding the MISO Cinergy Hub to be a relevant index, and finding that “[t]ying the price of an affiliate transaction to an established, relevant market price adequately mitigates any affiliate abuse concerns”); *Union Light, Heat & Power Co.*, 110 FERC ¶ 61,212 (2005) (“*Union*”) (stating a MISO-based market price to be a relevant index which satisfies the conditions in *Edgar*).

¹⁵ Order No. 697 at P 542.

¹⁶ *See, e.g.,* Order No. 697 at P 597 (finding that a price restriction of the higher of cost or market, in the non-power goods and services context, mitigates cross-subsidization concerns for sales by a utility with captive customers to its market-regulated power sales affiliate).

reserve requirements for the MISO 2016 Planning Year, held in a manner consistent with the description below, if CMS ERM is a winning auction participant.

1. Overview of Consumers Energy's Competitive Solicitation Process

Consumers Energy conducts competitive auctions, from time to time, for the purpose of soliciting bids for capacity for seasonal, annual, and multi-year periods when it typically needs additional capacity to meet its MISO reserve requirements. For the MISO 2016 Planning Year competitive solicitation, Consumers Energy will work with an independent administrator which will conduct the auction through its auction website on Consumers Energy's behalf, in accordance with the terms of a Request for Proposals ("RFP").¹⁷ Initially, Consumers Energy will publish an advertisement in *Platts* publications, post notification on the Consumers Energy website and cause a press release to be issued by World Energy notifying interested parties of an upcoming auction and directing interested parties to contact the independent Auction Administrator. The Auction Administrator will maintain a website ("Auction Website") to conduct the auction, to disseminate information – including the RFP schedule – to all interested parties, and to provide a platform for communications about the auction process. All communications related to the RFP and the auction prices, such as clarifying questions, must be submitted through the Auction Website.¹⁸ All bidders will have equal access to the Auction Website and the data contained therein,¹⁹ and therefore no party will have an informational advantage.

Prior to the auction, Consumers Energy will hold a conference call during which parties can submit questions about the upcoming auction. The call will be recorded, and all questions and answers addressed during the call will be posted on the Auction Website. The RFP contains a proposed form of power purchase and sale agreement, which consists of the EEI Master Power Purchase and Sale Agreement ("EEI Master Agreement"), a Cover Sheet to the Master Agreement, and Paragraph 10 to the Collateral Annex ("Paragraph 10") of the Master Agreement drafted by Consumers Energy.²⁰ Prior to the auction, Consumers Energy will require that

¹⁷ Consumers Energy will use World Energy Solutions, Inc. ("World Energy" or "Auction Administrator") to administer its website-based auction. World Energy is not owned by or affiliated with Consumers Energy or CMS ERM. A further description of World Energy can be found at <http://www.worldenergy.com/>. The auction process proposed herein is part of World Energy's standard offerings and was not developed specifically for Consumers Energy's use. Additionally, it is Applicants' understanding that this auction process is, in all material respects, the same as the auction process that has been approved by the Commission for use by The Detroit Edison Company when its market-based affiliate participates in a competitive solicitation for capacity during periods when the ten percent retail cap is met. *See Detroit Edison Company*, Docket Nos. ER97-324-024 and ER97-3834-031 (February 16, 2012) (delegated letter order).

¹⁸ Attachment 1, The Consumers Energy Company's Request for Proposal for MISO ZRCs, at § 1.1. In order to access and use the Auction Website, an auction participant must agree to pay the Auction Administrator its stated fee if any sale is awarded to the auction participant as a result of the RFP. *Id.* At § 2.7. The stated fee is made known to all auction participants through the Auction Website before offers are due, and all offers submitted in the auction are expected to take into account this stated fee. *Id.*

¹⁹ *Id.* at § 2.6 (noting that information posted to the Auction Website is available to all interested parties).

²⁰ *Id.* at § 2.1.

auction participants complete and execute Consumers Energy's EEI Master Agreement Cover Sheet and Paragraph 10 by a date specified in the RFP schedule on the Auction Website, which includes establishing compliance with Consumers Energy's credit criteria.²¹ The RFP also includes a draft transaction confirmation which, when executed and delivered together with the EEI Master Agreement, forms a single integrated agreement between a winning auction participant and Consumers Energy.²² Consumers Energy will permit only limited negotiations of its Cover Sheet, Paragraph 10, and the accompanying transaction confirmation.²³ Limited negotiations relate to functionally equivalent proposed modifications to provisions which may be unique to a bidder and shall not include quantity or price, which shall be determined solely through the auction.

The RFP and Auction Website will establish a single mode and form to be followed in order to facilitate a uniform and impartial evaluation of pricing.²⁴ To that end, the RFP sets minimum standards which must be met in order for an auction participant's proposal to be eligible to continue beyond the initial qualifications state of the evaluation process. The threshold requirements are clearly set forth in the RFP.²⁵ For example, the RFP specifies that responses to the RFP will only be accepted through the Auction Website.²⁶ The RFP also clearly and objectively defines the products which Consumers Energy seeks through the auction process. As noted above, bidders will be required to meet credit requirements as specified by Consumers Energy.²⁷ Thus, at the time Consumers Energy determines winning offers, offers will be differentiated only on the basis of price and volume offered in each tranche.

During the auction, as noted above, offers may only be submitted through the Auction Website. The process is entirely blind in that Consumers Energy will not know which auction participant made offers in each tranche, or at what price and volume.²⁸ The blind auction will be managed by the Auction Administrator, which will transmit the offers in each tranche to Consumers Energy on an anonymous basis (*e.g.*, Supplier A, Supplier B, etc.).²⁹ After the auction closes in accordance with the schedule that will be posted on the Auction Website, Consumers Energy will review its capacity needs and the overall response of the market to the RFP, and adjust the amount of capacity it will accept based on its needs and whether the prices

²¹ *Id.* at §§ 2.1, 3.2.

²² *Id.* at § 2.1.

²³ *Id.*

²⁴ *Id.* at § 2.4.

²⁵ *Id.* at § 3.2.

²⁶ *Id.* at § 3.2(a).

²⁷ *Id.* at §3.2(d).

²⁸ *See* Attachment 2, Affidavit of David F. Ronk, Jr., at 1-2.

²⁹ *Id.* at 2.

bid into the auction generally match expected price levels for the product requested.³⁰ For example, if the anonymous bids reflect prices that are substantially higher than what Consumers Energy anticipated, Consumers Energy may take less of the capacity than the maximum amount it sought in the RFP.³¹ Once Consumers Energy determines the volume of capacity it will accept, it will determine the optimal mix of offers in the various tranches that will meet Consumers Energy's needs at the lowest possible cost.³² Once the optimal combination of bids to meet Consumers Energy's needs is determined, Consumers Energy will notify the Auction Administrator which offer(s), on a purely price and volume basis, would produce the best outcome for Consumers Energy.³³ Consumers Energy expects that this evaluation process will be completed within the same day that the auction is held. Only after Consumers Energy notifies the Auction Administrator of which offer(s) would produce the best outcome for Consumers Energy will the Auction Administrator reveal the winning auction participant(s)'s identity to Consumers Energy.³⁴ Consumers Energy will notify the winning auction participant(s) that its offer has been selected immediately thereafter; there will be no "shortlist" of offers and thus no after-auction negotiation with any auction participants.³⁵

2. Consumers Energy's Auction Will Satisfy the *Edgar/Allegheny* Criteria

As the previous description of Consumers Energy's auction and the following discussion demonstrate, Consumers Energy's auction will fully comply with the *Edgar/Allegheny* requirements. In *Edgar*, the Commission explained that a utility could demonstrate a lack of affiliate abuse by, among other things, offering "evidence of direct head-to-head competition between [the affiliate and competing unaffiliated suppliers either in a formal solicitation or in an informal negotiation process]."³⁶ In analyzing such evidence, the Commission stated that it seeks assurance that "(1) the solicitation or negotiation was designed and implemented without undue preference for the affiliate, (2) the analysis of the bids or responses did not favor the affiliate, particularly with respect to non-price factors, and (3) the affiliate was selected based on some reasonable combination of price and non-price factors."³⁷

The Commission provided guidance as to the factors it will consider in determining whether a competitive solicitation process meets the *Edgar* criteria in *Allegheny*.³⁸ Specifically,

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Edgar* at 62,168.

³⁷ *Id.*

³⁸ *Allegheny* at P 22.

the Commission set forth the following four guidelines to assist in its determination of whether a competitive solicitation satisfies its affiliate concerns:

- Transparency: the competitive solicitation process should be open and fair;
- Definition: the product or products sought through the competitive solicitation should be precisely defined;
- Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and
- Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.³⁹

Because the Consumers Energy solicitation meets these requirements, Applicants request that the Commission grant the waiver of its affiliate restrictions to permit CMS ERM to sell capacity to Consumers Energy at prices CMS ERM offers into a Consumers Energy competitive solicitation for capacity to meet reserve requirements for the MISO 2016 Planning Year, conducted consistent with the process described herein, should CMS ERM be a winning auction participant.

Transparency. In *Allegheny*, the Commission explained that, in order for an auction process to be considered transparent, “[n]o party, particularly the affiliate, should have an informational advantage in any part of the solicitation process.”⁴⁰ As explained above, Consumers Energy will invite all interested parties to bid on its RFP. Information about the RFP will be widely publicized. Consumers Energy will advertise the RFP in *Platts* prior to the auction and post information about an upcoming RFP on the Auction Website. All interested parties will have access to this information.⁴¹ The RFP documentation will be released solely through the Auction Website and will be released to all bidders at the same time.⁴² The RFP provides for and describes the auction participant application process, which will be completed in advance of the auction. All questions will be submitted to the Auction Administrator during the auction process and answers thereto will be posted on the Auction Website. The conference call preceding an auction will be recorded and answers to any questions raised during the call will also be posted on the Auction Website. Bidders will be provided easy access to critical information such as auction participant requirements and auction rules. Because all product requirements and offer qualifications will be handled in accordance with the clear qualification requirements set forth in the RFP⁴³ before Consumers Energy undergoes the process of selecting winning anonymous offers, the offer evaluation phase will be a simple and impartial process of selecting winning offers based solely on price and volume. Further, there will be no individual negotiation with a

³⁹ *Id.*

⁴⁰ *Id.* at P 23.

⁴¹ Attachment 1 at § 2.6.

⁴² *Id.* at §§ 2.3, 2.6.

⁴³ *Id.* at §§ 3.1, 3.2.

“shortlist” of selected auction participants after the auction is complete. Thus, the design, administration and offer evaluation phases of the auction are transparent, and, accordingly, the RFP meets *Allegheny’s* transparency criteria.

Definition. In *Allegheny*, the Commission stated, “[the product or products sought through the RFP should be defined in a manner that is clear and nondiscriminatory. The RFP should state all relevant aspects of the product or products sought.”⁴⁴ The products sought through Consumers Energy’s competitive solicitation are defined clearly in a non-discriminatory manner. In the RFP for the MISO 2016 Planning Year, for example, Consumers Energy will provide a table clearly setting forth a single tranche, the volume of Zonal Resource Credits (“ZRC”) to be offered into the tranche, the length of the tranche term, and the start and close time of the auction for the tranche.⁴⁵ ZRCs are defined in the RFP with reference to the MISO capacity requirements under MISO’s Open Access Transmission Tariff; thus, the product definition does not “exclude products that can appropriately fill the issuing company’s objectives.”⁴⁶ The products requested in each RFP are thus clearly defined and do not favor any potential bidder, much less CMS ERM. Accordingly, the RFP meets *Allegheny’s* definition criteria.

Evaluation. The Commission explained in *Allegheny* that, in order to satisfy the evaluation criteria, “RFPs should clearly specify the price and non-price criteria under which the bids are evaluated.”⁴⁷ The Consumers Energy competitive solicitation process satisfies the evaluation principle. Importantly, as explained above, the process is a “blind” auction – the only information that Consumers Energy will receive about each auction participant in each tranche is the price and volume offered. In order to select the winning auction participant(s) at the close of the auction, Consumers Energy will determine the mix of bids in the various tranches that will meet its needs at the lowest possible cost. Once the optimal combination of bids to meet Consumers Energy’s needs are determined, Consumers Energy will notify the Auction Administrator which offers, on a purely price and volume basis, would produce the best outcome for Consumers Energy. Consumers Energy will not know the identity of the winning auction participant(s) until after it notifies the Auction Administrator which anonymous offer(s) it selected. As noted above, Consumers Energy’s evaluation process will be completed quickly, within the same day as the auction. Only after Consumers Energy notifies the Auction Administrator of which offer(s) it has selected will the Auction Administrator reveal the winning auction participant(s’) identity to Consumers Energy. Consumers Energy in turn will notify the auction participant that its offer has been selected immediately thereafter; there will be no “shortlist” of auction participants and thus no after-auction negotiation with shortlisted auction participants.

Furthermore, auction participants will be pre-qualified well in advance of the auction. The RFP sets forth a finite list of threshold requirements for Consumers Energy’s RFP with which the

⁴⁴ *Allegheny* at P 27.

⁴⁵ *See* Attachment 1 at § 1.4.

⁴⁶ *Allegheny* at P 28.

⁴⁷ *Allegheny* at P 29.

bidder must comply.⁴⁸ As discussed above, the RFP contains a proposed form of power purchase and sale agreement which must be completed and executed before auction participant may participate in the auction.⁴⁹ Consumers Energy will permit only limited negotiations of the proposed *pro forma* agreement prior to the auction.⁵⁰ The pre-qualification of auction participants and form agreement allow offer evaluation and selection to be based on price and volume alone which ensures that “affiliates [are not given preferential treatment during the selection phase of the process.”⁵¹ Accordingly, the RFP meets the evaluation criteria set forth in *Allegheny*.

Oversight. In *Allegheny*, the Commission explained that “[e]ffective oversight of competitive solicitations can be accomplished by using an independent third party in the design, administration, and evaluation stages of the competitive solicitation process.”⁵² As explained above, the auction process was designed and will be conducted by the Auction Administrator, an independent entity which has “no financial interest in any of the potential bidders, including [CMS ERM], or in the outcome of the process.”⁵³ While the Auction Administrator will be paid a fee by each winning auction participant, that fee is clearly set forth on the Auction Website for all auction participants to see, such that auction participants can incorporate the fee into their offers. The Auction Administrator will be the sole conduit for information between Consumers Energy and all auction participants, including CMS ERM, which ensures that the RFP design does not favor any particular auction participant.⁵⁴ Furthermore the auction participants have no role in selecting the Auction Administrator.⁵⁵ While the Auction Administrator does not oversee the evaluation process Consumers Energy undertakes to determine winning offers, the Auction Administrator serves as gatekeeper to the information Consumers Energy has about auction participants during that evaluation process – it will only provide Consumers Energy the price and volume bid on an anonymous basis. Because all non-price criteria will be standardized and/or determined before bidding in an auction begins, and because the Auction Administrator withholds auction participant identities from Consumers Energy during the evaluation process, Consumers Energy’s evaluation of offers will turn solely on the price and volumes offered. The Auction Administrator will only reveal the identity of winning auction participants after Consumers Energy has made its selection based on price and volume alone. Consumers Energy will determine the mix of offers in the various tranches that will meet Consumers Energy’s needs

⁴⁸ See Attachment 1 at § 3.2.

⁴⁹ *Id.* at § 2.1.

⁵⁰ *Id.* No negotiations will be permitted after the auction.

⁵¹ *Allegheny* at P 20. See also *Pub. Serv. Elec. & Gas Co.*, 111 FERC ¶ 61,152 at P 12 (2005) (finding that an auction complied with the evaluation principle because “[p]otential bidders were pre-qualified before the auction began, eliminating the need to evaluate bids based on non-price factors”).

⁵² *Allegheny* at P 32.

⁵³ *Id.* at P 33.

⁵⁴ See *id.* at P 34.

⁵⁵ See *id.*

at the lowest possible cost. Thus, Consumers Energy's RFP process purposefully removes from Consumers Energy's offer evaluation process the variety of non-price criteria and considerations found in other auctions that otherwise could be used during the evaluation phase to unfairly favor an affiliate.⁵⁶ For all of these reasons, the RFP meets the oversight principle set forth in *Allegheny*.⁵⁷

As demonstrated above, Consumers Energy's RFP process will be a head-to-head competition between CMS ERM and non-affiliates in a competitive solicitation and therefore satisfies the Commission's guidelines set forth in *Edgar* and *Allegheny* for sales undertaken pursuant to such a competitive procurement process. Consumers Energy will be blind to the identity of auction participants until after winners have been chosen, and the RFP is designed in such a way as to remove from Consumers Energy's consideration during offer evaluation any characteristics except for price and volume within each tranche. Because the Consumers Energy RFP is structured to preclude undue preference for an affiliate, Applicants therefore respectfully request that the Commission permit CMS ERM to make sales of capacity to Consumers Energy in the event that CMS ERM is a winning auction participant in Consumers Energy's competitive solicitation process for capacity to meet reserve requirements for the MISO 2016 Planning Year, held consistent with the description above.

V. EFFECTIVE DATE AND FUTURE FILINGS

Applicants respectfully request that the Commission issue an order granting waiver of the affiliate restrictions during the periods when the ten percent retail cap is met as soon as possible but no later than May 1, 2013 as Consumers Energy's competitive solicitation for capacity to meet reserve requirements for the MISO 2016 Planning Year is scheduled to commence on June 4, 2013. Applicants recognize that, upon Commission acceptance of this application, they will make a compliance filing amending their market-based rate tariffs to note the waiver of its affiliate restrictions with respect to transactions between CMS ERM and Consumers Energy. Inter-affiliate energy sales made pursuant to the pricing restrictions proposed herein will be reported in Applicants' Electronic Quarterly Reports ("EQRs") for any quarters in which such energy sales take place. Applicants also commit to notify the Commission should CMS ERM be selected as a winning bidder to supply Zonal Resource Credits ("ZRCs") to Consumers Energy in the competitive solicitation process proposed herein.⁵⁸ Applicants therefore request that the Commission accept their amended market-based rate tariffs effective May 1, 2013, 60 days from the date of this filing.

⁵⁶ See, e.g., *id.* at P 35 (discussing evaluation of non-price factors, such as consideration of generation asset bids and power purchase agreements, or transmission characteristics that could limit viability of bids).

⁵⁷ While the Consumers Energy competitive solicitation is not overseen or approved by the MPSC, such state commission oversight or approval is not required by the *Allegheny* principles. As explained herein, numerous protections against any affiliate preference are built into the Consumers Energy competitive solicitation process.

⁵⁸ As noted above, Applicants also request that they be permitted to continue to engage in affiliate transactions without the additional pricing restrictions to the extent retail load served by alternative electric suppliers is below the legislative cap. In that regard, Applicants commit to advising the Commission by informational filing at such time as the retail load served by alternative electric suppliers falls below the legislative cap to the extent Applicants seek to engage in affiliate transactions without the additional pricing restrictions proposed herein.

VI. DOCUMENTS SUBMITTED WITH THIS FILING

This filing consists of this transmittal letter and the following documents:

- A copy of The Consumers Energy Company's Request for Proposal for MISO ZRCs, World Energy On-Line Wholesale Procurement, dated June 4, 2013, included at Attachment 1 hereto; and
- The Affidavit of David F. Ronk, Jr, included at Attachment 2 hereto.

VII. CONCLUSION

For the reasons set forth above, Applicants hereby request that the Commission grant waiver of its affiliate restrictions with respect to transactions between CMS ERM and Consumers Energy under Applicants' respective market-based rate tariffs during periods when the ten percent retail cap is met in light of the additional pricing protections described herein. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully Submitted,

/s/ Deborah A. Moss

Deborah A. Moss

Principal Attorney

Consumers Energy Company

Counsel for Consumers Energy Company

ATTACHMENT 1

CONSUMERS ENERGY COMPANY'S

REQUEST FOR PROPOSALS

For

MISO ZRCs

**World Energy On-Line Wholesale Procurement
June 4, 2013**

2016 MISO Planning Year ZRC Solicitation

**CONSUMERS ENERGY COMPANY'S
REQUEST FOR PROPOSALS
For MISO ZRCS**

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**ATTACHMENT C –EEI MASTER POWER PURCHASE AND SALE AGREEMENT
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1.0 **GENERAL RFP GUIDELINES**

1.1 **Amount and Term of MISO ZRCs Solicited**

Consumers Energy Company ("**Consumers Energy**") is seeking competitive bids in response to this Request for Proposals ("**RFP**") from participants in the MISO Energy Market. World Energy Solutions, Inc. ("**World Energy**") will administer an auction ("Auction") through its auction website ("**Auction Website**") on Consumers Energy's behalf in accordance with this RFP. **Responses to this RFP will be accepted only through the web-based World Energy Auction.**

Consumers Energy is soliciting Zonal Resource Credits (the "**Product**" or "**ZRC(s)**", as defined below) for the MISO 2016 Planning Year ("**PY**") (i.e., June 1, 2016 through May 31, 2017). Consumers Energy intends to procure approximately 500 ZRCs for PY 2016. Consumers Energy may award contracts for more or less ZRCs than the amount specified above. Consumers Energy intends to evaluate all offers meeting the threshold requirements ("**Threshold Requirements**") set forth in this RFP.

Please submit any questions regarding this RFP using the link on the Auction Website, or you may contact Sean Perry at World Energy at 1-800-578-0718. All questions and answers shall be posted on the Auction Website. All interested parties may view a public version of the Auction Website by pasting the link below into an Internet browser:

[Link inserted here]

1.2 **Definitions**

Unless otherwise defined, capitalized terms used herein will have the meanings ascribed in the Edison Electric Institute ("**EEI**") Master Power Purchase and Sales Agreement negotiated between each bidder ("**Bidder**") and Consumers Energy prior to the Auction (the "**EEI Master Agreement**"), or under (i) the Midwest Independent Transmission System Operator, Inc. ("**MISO**") Open Access Transmission, Energy, and Operating Reserve Markets Tariff, as may be amended from time to time ("**MISO Tariff**"); and (ii) the MISO Resource Adequacy Business Practices Manual, as may be amended from time to time ("**RA BPM**", or together with the MISO Tariff, the "**MISO Rules**").

In the event of a conflict between terms: (i) included in the relevant, binding Transaction Confirmation; (ii) defined in MISO Rules; (iii) defined in this RFP; or (iv) defined in the EEI Master Agreement, the terms shall govern in the priority listed in this sentence.

"Zonal Resource Credit" ("ZRC(s)) - A ZRC represents one megawatt ("MW") of Planning Resource which has been converted from one MW of qualified Unforced Capacity to a credit in the MECT for a particular Planning Year.

"Module E Capacity Tracking Tool" ("MECT") - The electronic tool used by MISO and Market Participants to track and analyze compliance with Resource Adequacy Requirement obligations, including, but not limited to: the transfer and designation of ZRCs.

"Planning Resource" - A Capacity Resource, Energy Efficiency Resource, or Load Modifying Resource that can be used to satisfy Planning Reserve Margin Requirements.

"Quantity" means the amount of ZRCs set forth in the Transaction.

"Zonal Deliverability Charge" - A charge per ZRC that may be assessed to an LSE based upon the congestion contribution to the constraints between LRZs of any ZRCs that are located outside of the LRZ where the LSE has Load.

"Local Resource Zone" - A geographic area within MISO that is prescribed by MISO, based upon the criteria in Section 68A.3 of the MISO Tariff, to address congestion that limits Planning Resource deliverability.

1.3 **Bid Requirements**

- a) Consumers Energy shall only consider ZRCs for which Consumers Energy will not have to pay Zonal Deliverability Charges in this RFP.
- b) The minimum volume of ZRCs that will be considered in this RFP is 25.
- c) There is no maximum volume of ZRCs (other than the entire amount of this RFP) that one Bidder may offer pursuant to this RFP; in other words, all ZRCs Consumers Energy accepts may be supplied by a single Bidder.
- d) Bids must meet all of the requirements for ZRCs as defined in the MISO Rules. Below is a list of some of those requirements:
 - **Deliverability** - The Planning Resource associated with ZRCs must be deemed deliverable by MISO in accordance with Module E of the MISO Tariff, as

evidenced by the results of the most recent deliverability test conducted by MISO for which the results thereof are available on MISO's website at the following location: Document > Planning Information> Generator Interconnection Planning > Generator > Generation Deliverability Tests > Test Results > Deliverability Test Results.

- **Must-Offer Requirement** - As a condition of converting a Capacity Resource into ZRCs, the asset owner must agree to comply with all requirements for Planning Resources in the MISO Tariff including, but not limited to, the Must Offer Requirement. The Must-Offer Requirement applies to installed capacity ("**ICAP**") of Capacity Resources, and not the unforced capacity ("**UCAP**") rating. "**ICAP**" refers to the amount of ZRC divided by 1-XEFORd (the equivalent forced outage rate demand). The asset owner of the Capacity Resource that converts Capacity Resource into ZRCs must submit the fully operable capacity of the Capacity Resource; however, it may not be less than the ICAP value of that converted to ZRCs for each hour of each day included in an Offer in MISO's Day-Ahead Energy Market and Operating Reserves Market (see the Energy Markets BPM) and the Post Day-Ahead Reliability Assessment Commitment ("**RAC**"), except if and to the extent that the Capacity Resource is unavailable due to a full or partial forced or scheduled outage, and the outage is reported in the MISO Outage Scheduler.

1.4 **Product Description**

Consumers Energy intends to procure up to 500 ZRCs for Planning Year 2016. Consumers Energy is requesting pricing for the following Product in connection with the relevant Tranche Term:

Tranche	Amount	Product Type	Length Of Tranche Term	Auction Start Time (EPT)	Auction End Time (EPT)
1) PY 2016	500	MISO ZRCs	1 Planning Year	TBD	TBD

1.5 **Contract Price / Bid Price**

The Contract Price for ZRCs shall be in units of dollars per ZRC. Prices submitted in the Auction shall also be in units of \$/ZRC.

1.6 Delivery of ZRCs; Payment for ZRCs

Seller shall accomplish delivery of the Quantity by submitting the appropriate transaction(s) in MISO's Module E capacity tracking system or any successor system thereto (collectively, "**MECT**") to electronically assign the Quantity to Buyer. Buyer shall accomplish receipt of the Quantity by confirming the appropriate transaction(s) submitted by Seller in the MECT. Seller and Buyer shall accomplish delivery and receipt of the Quantity by submitting and confirming the appropriate transaction(s) in the MECT no later than (20) Business Days prior to the Fixed Resource Adequacy plan deadline, as such term is defined in the MISO Tariff, for the Planning Year encompassed by this Transaction ("Transfer Deadline"). Submitting and confirming the appropriate transaction(s) in the MECT shall be conducted by the Parties in accordance with MISO Rules.

Within five (5) Business Days after the full execution of this Transaction Confirmation, Seller shall provide Buyer with an invoice for ten percent (10%) of the Purchase Price. Within five (5) Business Days after the electronic transfer of the Quantity into the MECT is completed, Seller shall provide Buyer with an invoice for fifty percent (50%) of the total amount due for the Quantity transferred by Seller to Buyer. The foregoing invoices shall be due and payable by Buyer on or before the fifth (5th) Business Day after Buyer's receipt of such invoice. Seller shall provide Buyer with an invoice for forty percent (40%) of the total amount due for the Quantity for such Planning Year transferred by Seller to Buyer at any time during the remainder of the applicable calendar year. Such invoice shall be due and payable by Buyer on or before the tenth (10th) Business Day in January of the following year. The Parties acknowledge and agree that the payment terms described herein shall supersede and replace Section 6.1 and the first sentence of Section 6.2 of the EEI Master Agreement with respect to this Transaction only.

1.7 Seller's Failure to Deliver; Remedies

See draft Transaction Confirmation [Attachment B].

2.0 RFP OVERVIEW

2.1 EEI Master Power Purchase and Sale Agreement; Draft Transaction Confirmation

This RFP contains a proposed form of power purchase and sale agreement, which consists of an EEI Master Agreement, including a Cover Sheet and Paragraph 10 to the Collateral Annex drafted by Consumers Energy and to be completed and signed by Bidder, if Bidder has not already executed an EEI Master Agreement (with a Collateral Annex) with Consumers Energy. A draft Transaction Confirmation is also attached. When all of the above documents is executed and delivered, when taken together, they shall form a single integrated agreement between the parties.

Only very limited negotiations of Consumers Energy's EEI Master Agreement Cover Sheet, Paragraph 10 to the Collateral Annex and accompanying draft Transaction Confirmation shall be permitted. Acceptance of any Bidder modifications shall be in Consumers Energy's sole discretion. Two completed and executed originals of Consumers' EEI Master Agreement Cover Sheet and Paragraph 10 to the Collateral Annex (if Bidder does not already have in place an EEI Master Agreement, with a Collateral Annex, with Consumers Energy) must be submitted by Bidder to Consumers Energy no later than the date specified on the Auction Website. Documents may be sent by email in pdf format to mark.devereaux@cmsenergy.com. Questions regarding either the EEI Master Agreement, Collateral Annex or draft Transaction Confirmation with Consumers Energy or the Notice of Intent ("NOI") should be directed to Mark Devereaux at (517) 788-1196.

2.2 Reservation of Rights

Consumers Energy reserves the right, without qualification, to reject any or all pricing, to waive any irregularity in submitted information, and to negotiate with any or all Bidders responding to this RFP. There is no guarantee, expressed or implied, that any EEI Master Agreement or Transaction Confirmation shall be executed pursuant to this RFP. Consumers Energy also reserves the right to evaluate, in its sole discretion, the merit of any prices received in any manner Consumers Energy elects to employ.

Once Bidders have been approved with regard to risk, credit and contractual issues, bidding for this blind Auction is managed by World Energy. Successful Bidders will be picked based on Product and price combination most favorable to Consumers

Energy. Nonetheless, this RFP shall not, by itself, give right to a party for any claim against Consumers Energy. By submitting pricing, Bidder acknowledges that Consumers Energy assumes no liability in any manner with respect to this RFP or any matters related thereto. Moreover, by submitting pricing, each Bidder, along with its assignees and successors (if any), agrees to be solely responsible for all claims, demands, accounts, damages, costs, losses and expenses of whatsoever kind in law or equity, known or unknown, foreseen or unforeseeable, arising from or out of this RFP.

2.3 Consumers Energy's Representative

Any communications related to this RFP or the Auction process must be submitted through the links provided through World Energy's Consumers Energy Announcement site ("Auction Website"). The Auction Website can be viewed by all registered users of the World Energy Exchange (the "Exchange") following the instructions below.

1. Go to www.worldenergy.com;
2. Click "Login" and select "World Energy Exchange";
3. Enter your username and password. (If you have forgotten your username and password please use the [Forgot your Password?](#) link also found on this page);
4. Click on the [Announcements](#) tab; and
5. Select the Consumers Energy Announcement

If you are not a registered user of the Exchange, or if you cannot see the Announcement when you log onto the Exchange, please contact Sean Perry at 1-800-578-0718, to gain access to the Announcement. All interested parties may view a public version of the Auction Website by pasting the link below into an Internet browser.

[Insert link here]

2.4 Clarity

The purpose of the instructions set forth in this RFP is to establish a single mode and form to be followed which shall facilitate a uniform and impartial evaluation of pricing.

2.5 Disclosure

Consumers Energy reserves the right to use all Auction submissions to demonstrate to the Michigan Public Service Commission and its staff, or as otherwise required by regulations, about market conditions prevailing as of the Auction Deadline. Consumers Energy shall, to the extent practicable, use reasonable efforts to prevent or limit any disclosure that identifies any Bidder with a specific proposal. In the event the terms required to be disclosed can reasonably be used to identify a successful Bidder, Consumers Energy shall use its best efforts to advise Bidder prior to making such disclosure.

2.6 RFP Timetable

This RFP Timetable (the "Schedule") is available electronically to all interested parties through the Auction Website at:

[Insert link here]

Items posted on the Auction Website are only available to those Bidders who have an executed a supplier's agreement ("**Supplier's Agreement**") in place with World Energy; however, information posted on the Auction Website is available to all interested parties.

2.7 The Auction Process

Bids shall only be accepted via the web-based Auction to be held per the Schedule posted on the Auction Website. The Auction for Consumers Energy shall be held at www.wesplatform.com. All approved Bidders shall be provided a password to access the Auction Website. Bidders who fail to timely satisfy all the Pre-Bid Requirements will be denied access to the Auction Website, and such Bidders will not be able to participate in the Auction. Bidders must be registered and have a Supplier's Agreement in place with World Energy in order to participate in this Auction. A copy of the Supplier's Agreement with World Energy can be found on the Auction Website.

If you are interested in participating in this Auction, please submit an NOI to Mark Devereaux at mark.devereaux@cmsenergy.com (with a cc: to World Energy at wholesale@worldenergy.com) by the deadline posted on the Auction Website. The NOI form can also be found on the Auction Website. In order to access and use the Auction Website, Bidders will be contacted by World Energy, the proprietor of the

Auction Website ("WES") and must agree to pay WES its stated fee if any business is awarded to Bidder by Consumers Energy as a result of this RFP. All bids submitted must be inclusive of this stated fee. Fee addendums will be posted on the Auction Website.

This RFP, additional documentation related to this RFP, and additional information regarding the Auction including, but not limited to, the structure, format, and timing of the Auction, shall be posted on the Auction Website. Consumers Energy and/or World Energy shall not be liable to a Bidder for any consequences arising out of or relating to a Bidder's use of outdated information. Bidders are encouraged to check the Auction Website frequently to ensure that they have the latest documentation and information.

2.8 Pre-bid Conference/Platform Demonstration

A teleconference call to discuss the terms of Consumers Energy's RFP, speak with Consumers Energy representatives, and ask questions about the Auction process will be held per the Schedule posted on the Auction Website. Please RSVP for the Pre-bid call using the link on the Auction Website in accordance with the scheduled deadline also posted on the Auction Website. Bidders will only be able to ask questions during the open floor portion of the call or by submitting a question prior to the call via e-mail. For purposes of this teleconference, a Bidder is not required to identify herself/himself or the company s/he represents when asking questions. All relevant questions and answers will be recorded and posted on the Auction Website.

Bidding instructions and demonstration materials will be posted on the Auction Website. There will be a demonstration of the Exchange held per the Schedule posted on the Auction Website. This demonstration will be mandatory of all new users on the Exchange and is optional for all other participants.

3.0 BIDDER AND PROPOSAL THRESHOLD REQUIREMENTS

3.1 Threshold Requirements Generally

Threshold Requirements are minimum standards set by Consumers Energy which must be met in order for a Bidder's proposal to be eligible to continue beyond the initial qualifications stage of the evaluation process. Proposals which, in the sole

determination of Consumers Energy, do not meet all of these conditions will be rejected.

3.2 List of Threshold Requirements

Below is the list of Threshold Requirements for Consumers Energy's RFP that the Bidder must comply with, or provide as a part of its proposal, unless otherwise specified below:

(a) Bid Submissions

Responses to this RFP will only be accepted through World Energy (www.wesplatform.com). Consumers Energy's Auction for this RFP will open and close according to the Schedule listed on the Auction Website. No bids will be accepted on a Tranche or Product after the Auction for that Tranche or Product has expired.

(b) Proposal Amount

The Bidder may propose to fulfill up to the entire amount of this RFP; however, in no event shall any proposal be for less than 25 ZRCs.

(c) Tranche Term/Delivery Period

The specific Tranche Term/Delivery Period must be in accordance with the relevant Tranche as set forth in Section 1.4.

(d) Credit Requirements and Credit Documents

Bidders shall be evaluated to ensure compliance with Consumers Energy's credit criteria. All credit decisions shall be made in the sole discretion of Consumers Energy. In some cases, posting margin or collateral may be required of a successful Bidder based on Consumers Energy's internal mark-to-market calculations. Each Bidder that is not a publicly-traded entity must submit its past two (2) years of audited fiscal, consolidated financial statements, along with its NOI no later than the date specified in the Schedule on the Auction Website.

(e) Notice of Intent (NOI)

Notice of Intent to participate in the Auction, and the maximum volume of ZRCs a Bidder intends to bid, must be provided to Mark Devereaux, mark.devereaux@cmsenergy.com (cc World Energy at wholesale@worldenergy.com) no later than the date specified in the Schedule on the Auction Website.

4.0 CONTRACT INFORMATION

Consumers Energy shall supply a copy of the EEI Master Agreement, along with Consumers Energy's current EEI Cover Sheet and Paragraph 10 to the Collateral Annex, governing this RFP [see Attachments A and B]. A draft Transaction Confirmation is also attached to this RFP and is posted on the Auction Website [see Attachment C]. The EEI Master Agreement may be reviewed on the Auction Website. The draft Transaction Confirmation may be marked up and submitted for review by Consumers Energy's contact, Mark Devereaux, prior to the Auction.

Two completed and executed originals of Consumers Energy's EEI Master Agreement Cover Sheet and Paragraph 10 to the Collateral Annex (if Bidder does not already have in place an EEI Master Agreement, with a Collateral Annex, with Consumers Energy) must be submitted by Bidder to Consumers Energy no later than the date specified in the Schedule on the Auction Website. Documents may be sent by email in pdf format to mark.devereaux@cmsenergy.com.

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

- \$20,000,000 (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party A shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

<u>Party A</u>	<u>Credit Rating</u>
<u>Collateral Threshold</u>	
\$ _____	_____ (or above)
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	Below _____

- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party A Collateral Threshold” opposite the Credit Rating for [Party A][Party A’s Guarantor] on the relevant date of determination, and if [Party A’s][Party A’s Guarantor’s] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party A][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Party A		
<u>Collateral Threshold</u>	<u>Credit Rating</u>	<u>Credit Rating</u>
\$ _____	_____ (or above)	_____ (or above)
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	_____	_____
\$ _____	Below _____	Below _____

- The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party A’s Collateral Threshold be greater than \$_____.
- Other – see attached threshold terms

B. Party B Collateral Threshold.

- \$_____ (the “Threshold Amount”); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.
- (a) The amount (the “Threshold Amount”) set forth below under the heading “Party B Collateral Threshold” opposite the Credit Rating for [Party B][Party B’s Guarantor] on the relevant date of determination, or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B
Collateral Threshold **Credit Rating**

\$ _____ (or above)
\$ _____
\$ _____
\$ _____
\$ _____ Below _____

- (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for [Party B][Party B's Guarantor] on the relevant date of determination, and if [Party B's][Party B's Guarantor's] Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination [Party B][its Guarantor] does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B
Collateral Threshold **Credit Rating** **Credit Rating**

_____ (or above) _____ (or above)
\$ _____ _____
\$ _____ _____
\$ _____ _____
\$ _____ Below _____ Below _____

- The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than \$_____.
- Other – see attached threshold terms

II. Eligible Collateral and Valuation Percentage.

The following items will qualify as "Eligible Collateral" for the Party specified:

		<u>Party A</u>	<u>Party B</u>	<u>Valuation Percentage</u>
(A)	Cash	[X]	[X]	100%
(B)	Letters of Credit	[X]	[X]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) thirty (30) or fewer calendar days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Other	[]	[]	_____%

III. Independent Amount.

A. Party A Independent Amount.

- Party A shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Fixed IA Performance Assurance”). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A’s Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.
- Party A shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A’s Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party A shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Partial Floating IA Performance Assurance”) if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party’s Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.
- Party A shall not have an Independent Amount.

B. Party B Independent Amount.

- Party B shall have a Fixed Independent Amount of \$_____. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the “Fixed IA Performance Assurance”). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B’s Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

- Party B shall have a Full Floating Independent Amount of \$_____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.
- Party B shall have a Partial Floating Independent Amount of \$_____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.
- Party B shall not have an Independent Amount.

IV. Minimum Transfer Amount.

- A. **Party A Minimum Transfer Amount:** \$100,000.00
- B. **Party B Minimum Transfer Amount:** \$100,000.00

V. Rounding Amount.

- A. **Party A Rounding Amount:** \$100,000
- B. **Party B Rounding Amount:** \$100,000

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

- Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.
- Party A shall be entitled to hold Performance Assurance in the form of Cash provided that it is not a Defaulting Party. Cash shall be held only in any jurisdiction with the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- Other - _____

B. Party B Eligibility to Hold Cash.

- Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.
- Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2), [Party B] [Party B's Guarantor] has a Credit Rating from _____ and the lowest Credit Rating for [Party B] [Party B's Guarantor] is _____ or higher from _____; (3) Cash shall be held only in any jurisdiction within the United States; and (4) [other, if any]. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

- Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- Other - _____

VII. Notification Time.

- Other – 12:00 noon New York, New York time

VIII. General.

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

Other Changes:

Below are modifications to certain provisions of the Edison Electric Institute Collateral Annex (“the Collateral Annex”). To the extent these modifications conflict with any terms and conditions contained in the Collateral Annex, said modifications shall prevail.

- (1) Page 1 (first paragraph): The Parties agree to amend the first introductory paragraph of this Collateral Annex, in its entirety, as follows:

“This Collateral Annex, together with the Paragraph 10 Cover Sheet, (the “Collateral Annex”) supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement (“Master Agreement”), dated _____, including the Cover Sheet and any other annexes thereto between Consumers Energy Company (“Party A”) and _____ (“Party B”). Party A and Party B are also herein collectively referred to as Parties. Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Master Agreement.”

Furthermore, replace all references in this Collateral Annex and Paragraph 10, from “Agreement” to “Master Agreement.”

- (2) In the second introductory paragraph, (a) in the first sentence delete the word “exclusive” immediately before the phrase “conditions under which a Party will be required to Transfer Performance Assurance” and immediately before the phrase “conditions under which a Party will release such Performance Assurance” and (b) in line 14, add the word “may” immediately following the word “provisions”.

- (3) Paragraph 1. Definitions.

In the definition of “Collateral Threshold” change “for a Party.” to “for such Party.”

The definition of “Credit Rating” in the Collateral Annex is hereby deleted in its entirety and replaced as follows:

“‘Credit Rating’ means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity’s outstanding unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or agencies or if such entity does not have any outstanding unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its ‘issuer credit rating’ by S&P or ‘issuer rating’ by Moody’s.”

Within the definition of “Credit Rating Event”, change “Paragraph 6(a)(iii)” to “Paragraph 6(a)(ii)”.

Within the definition of “Downgraded Party”, change “Paragraph 6(a)(i)” to “Paragraph 6(a)(ii)”.

Amend the definition of “Interest Period” in its entirety, to read: “means each calendar month during which any Cash is held.”

Within the definition of “Letter of Credit”, amend the last three lines to read “or Moody’s but not both, in a form to be negotiated and acceptable to both parties and consistent with the provisions of this Collateral Annex.”

Within the definition of “Letter of Credit Default” delete “or” in the third line and replace it with “and”.

Within the definition of “Performance Assurance” change, in the second sentence: “Paragraph 6(a)(iv)” to “Paragraph 6(a)(iii)”.

Within the definition of “Qualified Institution”, delete “and” immediately before “surplus” in the last line of text.

Within the definition of “Secured Party”, change “Paragraph 3(b)” to Paragraph 3(a)”.

For purposes of the Collateral Annex, “setoff”, “set off” and “offset” shall have the same meaning.

(4) Paragraph 2. Encumbrance; Grant of Security Interest.

Amend the phrase “in order to perfect the other Party’s continuing security” to read, “in order to enable perfection of the other Party’s continuing security”.

(5) Paragraph 3. Calculations of Collateral Requirement.

Paragraph (b)(3) is separated and amended as follows:

“(3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party.

Notwithstanding the foregoing, the Collateral Requirement of a Party will be deemed to be zero (0) whenever the calculation of such Party’s Collateral Requirement yields a number less than zero (0).”

(6) Paragraph 5. Reduction and Substitution of Performance Assurance.

In Paragraph (a): (1) In line 16, insert after “Secured Party”, “and excluding bank fees, such as wire transfer fees, ACH transfer fees, and check related fees”; and (2) delete “before the Notification Time on a Business Day” and replace it with “before the Notification Time on a Local Business Day”.

In Paragraph (b)(i): Amend the phrase “have been perfect as required by applicable law and shall constitute a first priority perfected security interest” to “have been perfectible as a first priority security interest”.

(7) Paragraph 6. Administration of Performance Assurance.

In Paragraph (a)(i), second sentence, insert the phrase “(other than Paragraph 6(a)(ii)(B))” after the phrase “then the provisions of Paragraph 6(a)(ii)”.

In Paragraph (a)(ii)(A) insert the phrase “(other than subparagraph (B) below)” between “Paragraph 6(a)(ii)” and “will not apply”.

In Paragraph (a)(ii)(B), in the 12th line, the words "to perfect the security interest of the Non-Downgraded Party" are deleted and replaced with the words "to perfect the security interest of the Downgraded Party".

In Paragraph (b)(iv), in the 4th line, insert after the word “may” the phrase “, with notice to the Pledging Party to follow promptly thereafter.”.

(8) Paragraph 7. Exercise of Rights Against Performance Assurance.

In Paragraph (c) add “The” immediately before “Secured Party” in the first line.

(9) Paragraph 8: Disputed Calculations

Delete Paragraphs (a) and (b) in their entirety and insert:

“(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then

the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than 5:00 p.m. New York time on the same date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4 (provided that such demand was made prior to the Notification Time and otherwise by 5:00 p.m. New York Time on the following Business Day), and (ii) provide Performance Assurance to or for the benefit of the Secured Party, in an amount equal to the Pledging Party's own estimate of its Collateral Requirement, in accordance with Paragraph 4, made in good faith and in a commercially reasonable manner. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the end of the second Local Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall provide written notice to the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day following the Pledging Party's receipt of such notice in accordance with the results of such recalculation.

“(b) If the Secured Party disputes the amount of Performance Assurance reduction requested by the Pledging Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than 5:00 p.m. New York time on the same date (provided that such demand was made prior to the Notification Time and otherwise by 5:00 p.m. New York Time on the following Business Day), that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate of its Collateral Requirement, in accordance with Paragraph 5(a), made in good faith and in a commercially reasonable manner. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the end of the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall provide written notice to the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day following such notice, in accordance with the results of such recalculation.”

(10) Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

In Paragraph (d) add “Party” immediately after “incurred by the other” in the last sentence.

In Paragraph (e) insert at the end of the sentence, “except as provided otherwise in Section 6.3, or 10.9 of the Master Agreement.”

IN WITNESS WHEREOF, the parties have executed this Collateral Annex by their duly authorized officers as of the date hereof.

CONSUMERS ENERGY COMPANY

PARTY B

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (“*Master Agreement*”) is made as of the following date: _____ (“*Effective Date*”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

Party A: **CONSUMERS ENERGY COMPANY**

All Notices:

Street:

City: Zip:

Attn:

Phone:

Facsimile:

Duns:

Tax ID:

Invoices:

Attn:

Phone:

Facsimile:

Scheduling/Confirmations:

Attn:

Phone:

Facsimile:

Payments:

Attn:

Phone:

Facsimile:

Electronic Funds Transfer:

Bank:

ABA:

Account:

BNF:

Credit and Collections:

Attn: 1

Phone:

Facsimile:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn:

Phone:

Facsimile:

Party B:

All Notices:

Street:

City: Zip:

Attn:

Phone:

Facsimile:

Duns:

Tax ID:

Invoices:

Attn:

Phone:

Facsimile:

Scheduling:

Attn:

Phone:

Facsimile:

Payments:

Attn:

Phone:

Facsimile:

Electronic Funds Transfer:

Bank:

ABA:

Account:

Credit and Collections:

Attn:

Phone:

Facsimile:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn:

Phone:

Facsimile:

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff FERC Electric Tariff No. 9 Dated 06/01/00 Docket Number ER00-2299-000
Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ 50,000,000
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
 - Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
 - Option C (No Setoff)
-

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:
 - Option A
 - Option B Specify: _____
 - Option C Specify: _____
- (b) Credit Assurances:
 - Not Applicable
 - Applicable
- (c) Collateral Threshold:
 - Not Applicable
 - Applicable
 - The provisions of Section 8.1 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.
- (d) Downgrade Event:
 - Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if Party B's or Party B's Guarantor Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's.

Other: It shall be a downgrade event for Party B if Party B's or its guarantor's creditworthiness deteriorates significantly from the date of this Master Agreement in the reasonable judgment of Party A, or if Party A has reasonable grounds for insecurity that Party B will be able to perform its obligations under this Master Agreement.

Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

The provisions of Section 8.2 (c) of the Agreement shall be replaced by the provisions of the Collateral Annex attached hereto.

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A's Corporate Issuer Credit Rating falls below BB from S&P or Ba2 from Moody's or if Party A is not rated by S&P and Moody's.

Other:

Specify: _____

(e) Guarantor for Party A: None

Guarantee Amount: _____

Article Ten

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes:

1. Section 1.1 is amended by adding at the end thereof: "For the purposes of this Agreement, Party A shall be deemed to have no affiliates or Affiliates."
2. Section 1.11 is amended by replacing the words "either in terminating any arrangement pursuant to which it has hedged its obligations or" with the words "as a result of."
3. Section 1.12 is amended by changing "issues" to "issuer" in the fourth line.
4. Section 1.50 is amended by changing the phrase "Section 2.4" to "Section 2.5."
5. Section 1.51 is amended to (i) add the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line and (ii) delete the phrase "at Buyer's option" from the fifth line and replace it with the following: "absent a purchase."
6. Section 1.52 is deleted and replaced with the following: "1.52 "S&P" means Standard & Poor's Financial Services LLC or its successor."
7. Section 1.53 is amended to (i) delete the phrase "at the Delivery Point" from the second line and (ii) delete the phrase "at Seller's option" from the fifth line and replace it with the following: "absent a sale."
8. Section 2.4 is amended by deleting from line 7, after the words "unless agreed to", the words "either orally or".
9. Section 2.5 is amended by inserting the phrase "related to Transactions under this Master Agreement" after the phrase "of all telephone conversations between the Parties to this Master Agreement".
10. Section 5.2 is amended by changing the phrase "(i) to designate" to "to (i) designate" in the third line.
11. Section 5.7 is amended by (i) changing "early" to "Early" in the sixth line and (ii) deleting the "(a)" in line two, and (iii) deleting the phrase "or (b) a Potential Event of Default" in line two.
12. Section 8.1(d) is amended to add the following phrase after the phrase "or other credit assurance acceptable to Party A within two (2) Business Days of receipt of notice": "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".
13. Section 8.2(d) is amended to add the following phrase after the phrase "or other credit assurance acceptable to Party B within two (2) Business Days of receipt of notice": "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".
14. Section 8.4 is added as follows:

"8.4 **Interest on Cash Performance Assurance.** Each Party shall earn interest on the cash Performance Assurance it provides from and including the date of deposit to but excluding the date such cash Performance Assurance is returned at a rate per annum equal to the Federal Funds Rate. "Federal Funds Rate" means, for any day, the interest rate per annum equal to the rate published as the Federal Funds Effective Rate by the Federal Reserve Bank in its release H.15 (519) (or, if such day is not a Business Day, for the preceding Business Day). Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days. The net amount of interest due to either Party shall be remitted to an account designated by that Party on the third Business

Day following the end of each calendar month so long as no Event of Default with respect to that Party has occurred. On and after the occurrence of an Event of Default where the Pledging Party is the Defaulting Party, Secured Party shall retain any such payments until all obligations of the Pledging Party under the Master Agreement or under any Transactions have been satisfied.

Each Party shall have free and unrestricted use of all cash Performance Assurance provided to it. Each Party may apply Performance Assurance on deposit with it pursuant to this Master Agreement to satisfy the obligations of the other Party as part of a close-out and termination in accordance with the provisions of this Master Agreement.

Each Party may withdraw or substitute any Performance Assurance supplied by it at any time so long as, immediately preceding such withdrawal or substitution, the other Party determines that the sum of the fair market value of the Performance Assurance to be held by it after such withdrawal or substitution will not be less than the sum of the amount required to be on deposit pursuant to this Master Agreement.”

15. Section 10.2 is amended by replacing clauses (vi), (x), (xi) and (xii) in their entirety with the following:

“(vi) there is not pending or, to its knowledge, threatened against it, any legal proceedings, which if adversely determined, would reasonably be expected to materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3), except for those legal proceedings that have been disclosed by a Party in any of its filings with the Securities and Exchange Commission.”

“(x) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act;”

“(xi) each Transaction that is not executed or traded on a “trading facility”, as defined in Section 1(a)(33) of the Commodity Exchange Act, is subject to individual negotiation by the Parties;”

“(xii) the other Party is not acting as a fiduciary for or an adviser to it in respect of any Transaction; and”

16. Section 10.2 is amended by adding an additional clause “(xiii)” as follows:

“(xiii) it understands and acknowledges that the other Party may, either in connection with entering into a Transaction or from time to time thereafter, engage in open market transactions that are designed to hedge or reduce the risks incurred by it in connection with such Transaction and that the effect of such open market transactions may be to affect or reduce the value of such Transaction.”

17. Section 10.4 is amended by adding the following as the last sentence of this Section: “Notwithstanding this Section 10.4, no obligation of indemnification shall arise with respect to any claim to the extent caused by the gross negligence or willful misconduct of the indemnified Party.”

18. Section 10.5 is amended in clause (ii) thereof by replacing the words "affiliate" and "affiliate's" with, respectively, "Affiliate" and "Affiliate's", and in clause (iii) thereof immediately after the words "substantially all of the assets" by inserting the words "of such Party and".

19. Section 10.7 is amended by replacing “addresses” in the last sentence thereof with “information on the Cover Sheet with regard to Notices, Invoices, Scheduling, Payments, Electronic Funds Transfer, Credit and Collections, and Additional Notices of an Event of Default or Potential Event of Default”.

20. Section 10.11 is deleted and replaced with the following: “10.11 Confidentiality If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction or any non-public financial statements disclosed by a Party under this Master Agreement or the completed Cover Sheet to this Master Agreement to a third party (other than the Party’s or the Party’s Affiliates, employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory

proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding anything herein to the contrary, Party B may disclose the terms and conditions of this Master Agreement and any Transaction to its Affiliates, operators, energy managers, maintenance providers, sources of financing, partners, consultants, potential purchasers and other agents. With respect to information provided in connection with a Transaction, this obligation shall survive for a period of one (1) year following the expiration or termination of such Transaction. Notwithstanding further anything herein to the contrary, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to an Affiliate unless such disclosure is necessary for the purposes of administering and performing the functions required under this Master Agreement.”

21. The following sections are added:

“10.12 Imaged Agreement - The Parties acknowledge and agree that either Party may maintain this executed Agreement and any executed Confirmations as "imaged agreements" in an electronic format, and that, so long as the imaged agreement bears the signature of the Party against whom enforcement is sought if there is a space or line for such signature on the agreement, and in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, neither Party will object to the introduction and acceptance of such imaged agreements as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such imaged agreements are not original agreements or do not comply with the best evidence rule.

10.13 Arbitration – Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, for which an express remedy has not already been provided for in this Agreement, shall first be referred in writing to a senior representative of each Party for resolution. If the senior representatives are unable to resolve the dispute within thirty (30) days after the date of the written notice of referral, the Parties shall submit to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (in doing so the Parties are not agreeing to pay any fees to the American Arbitration Association).

The Parties shall endeavor to agree upon and appoint one person to act as sole arbitrator. Such person shall have professional experience in energy related transactions, shall not be, or have previously been, employed by either Party nor have a direct or indirect interest in either Party or the subject matter of the arbitration.

Such arbitration shall be held in alternating locations of the home offices of the Parties, commencing with the location of the home office of the Party who did not invoke this provision, or in any other mutually agreed upon location. With respect to any dispute involving payment amounts under any provision of this Agreement, the arbitrator shall consider any evidence which the arbitrator deems necessary and shall then accept written resolutions of the subject dispute from each Party. The written submissions shall be in a form and subject to any limitations as may be prescribed by the arbitrator. The arbitrator shall then choose only one of the proposed solutions, (without modification) as the fairest solution to the dispute within ten (10) Business Days following the date prescribed by the arbitrator for submissions of both Parties. The award of the arbitration shall be final and binding on the Parties, the Parties shall abide by the award and perform in accordance with the terms and conditions thereof, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

10.14 Mitigation. Each Party has a duty to mitigate damages under this Master Agreement and the Transactions hereunder and will use commercially reasonable efforts to minimize any damages it may incur resulting from the other Party’s failure to perform under Section 4.1 or 4.2 and/or an Event of Default under 5.1.

10.15 FERC Standard of Review; Certain Covenants and Waivers

“(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal

Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. ___ (2008) (the “Mobile-Sierra” doctrine).

- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

CONSUMERS ENERGY COMPANY

COUNTERPARTY

By: _____

By: _____

Name: _____

By: _____

Title: _____

Title: _____

MASTER POWER PURCHASE AND SALE AGREEMENT TRANSACTION CONFIRMATION

This confirmation letter shall confirm the Transaction agreed to on _____, ____ (“Transaction Confirmation”) between Consumers Energy Company (“Buyer”) and _____ (“Seller”) regarding the sale/purchase of the Product under the terms and conditions set forth below.

Capitalized terms used but not defined herein or in the EEI Master Agreement (defined below) shall have the meaning ascribed to such terms in the MISO Rules (defined below). If there is a conflict between terms (i) in this binding Transaction Confirmation, (ii) defined MISO Rules, (iii) set forth in the RFP, or (iv) defined in the EEI Master Agreement, the terms shall govern in the priority listed in this sentence:

Seller: _____

Buyer: Consumers Energy Company

Product: “Zonal Resource Credits” (“ZRCs”), or any successor capacity product, for the Local Resource Zone in which Buyer is located, as such ZRCs are defined in (i) the Midwest Independent Transmission System Operator, Inc. (“MISO”) Open Access Transmission, Energy and Operating Reserve Markets Tariff as may be amended from time to time (“MISO Tariff”); and (ii) the MISO Resource Adequacy Business Practices Manual as may be amended from time to time (“RA BPM”, or together with the MISO Tariff referred to as the “MISO Rules”).

For clarification purposes, the Parties acknowledge and understand that (1) in accordance with the MISO Rules, one ZRC represents one megawatt (“MW”) of Unforced Capacity that qualifies to satisfy the resource adequacy requirements of Module E of the MISO Tariff, and (2) the Seller is responsible for all Zonal Deliverability Charges and any other charges or costs so that Buyer’s use thereof is not conditioned upon any further costs or action by Buyer to use such ZRCs in meeting Buyer’s Resource Adequacy Requirements.

Contract Quantity and Contract Price:

The Quantity of ZRCs for each Planning Year encompassed by this Transaction and the Contract Price(s) associated therewith shall be as follows (for clarity and example, if “2016” appears in the table below it refers to the Planning Year of June 1, 2016 through May 31, 2017):

Planning Year	Quantity (# of ZRCs)	Contract Price (\$ per ZRC)	Purchase Price (\$)
2016			
Total			

Special Conditions:

1. Delivery and Receipt.

Seller shall accomplish delivery of the Quantity by submitting the appropriate transaction(s) in MISO’s Module E capacity tracking system, or any successor system (“MECT”) to electronically assign the Quantity to Buyer. Buyer shall accomplish receipt of the Quantity by confirming the appropriate transaction(s) submitted by Seller in the MECT. Seller and Buyer shall accomplish delivery and receipt of the Quantity by submitting and confirming the appropriate transaction(s) in the MECT no later than twenty (20) Business Days prior to the deadline for submittal of Fixed Resource Adequacy Plans (“FRAP”) to MISO for each applicable Planning Year encompassed by this Transaction. The submitting and confirming of the appropriate transaction(s) in the MECT shall be conducted by the Parties in accordance with the requirements of the MISO Rules and other applicable rules adopted by the MISO regarding the MECT.

2. Payment Terms.

Within five (5) Business Days after the full execution of this Transaction Confirmation, Seller shall provide Buyer with an invoice for ten percent (10%) of the Purchase Price. Within five (5) Business Days after each applicable electronic transfer of the Quantity for a Planning Year in the MECT is completed, Seller shall provide Buyer with an invoice for fifty percent (50%) of the total amount due for the Quantity transferred by Seller to Buyer. The foregoing invoices shall be due and payable by Buyer on or before the fifth (5th) Business Day after Buyer’s receipt of such invoice. Seller shall provide Buyer with an invoice for forty percent (40%) of the total amount due for the Quantity for such Planning Year transferred by Seller to Buyer at any time during the remainder of the applicable calendar year. Such invoice shall be due and payable by Buyer on or before the tenth (10th) Business Day in January of the following year. This same invoicing schedule will apply to each Planning Year. The Parties acknowledge and agree that the payment terms described herein shall supersede and replace Subsection 6.1 and the first sentence of Subsection 6.2 of the EEI Master Agreement with respect to this Transaction only.

3. Failures to Deliver and/or Receive.

(a) Seller's Failure to Deliver. In the event that Seller fails to deliver all or part of the Product by 12:00 noon (Eastern prevailing time) on the Business Day before the day that FRAPs are due to MISO (such date and time herein referred to as the "Transfer Deadline") in any year during the term of this Transaction, and such failure is not excused by Buyer's failure to perform; then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, (1) the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price (defined below) and multiplying such positive difference, if any, by the portion of the Quantity which Seller failed to deliver ("Undelivered Quantity"), plus (2) any additional costs incurred by Buyer that Buyer would not have incurred had Buyer been able to include the Product in Buyer's FRAP.

In any case of a failure by Seller to deliver all or part of the Product by the Transfer Deadline pursuant to this Section 3(a), Buyer shall use commercially reasonable efforts to purchase replacement Product for the Undelivered Quantity. Such commercially reasonable efforts shall include purchasing replacement Product from the Planning Resource Auction. The price which Buyer pays to replace Undelivered Quantity is the "Replacement Price."

The invoice from Buyer to Seller for any amount owed by Seller to Buyer pursuant to this Section 3(a) shall include a written statement explaining in reasonable detail the calculation of such amount. The Parties acknowledge and agree that with respect to this Transaction only, Subsection 1.51 of the EEI Master Agreement shall be amended to delete all references to "at the Delivery Point" and "to the Delivery Point" contained in such Subsection 1.51.

(b) Buyer's Failure to Receive. In the event that Buyer fails to receive all or part of the Product by the Transfer Deadline in any year during the term of this Transaction, and such failure is not excused by Seller's failure to perform; then Buyer shall pay Seller, within five (5) Business Days of invoice receipt, the positive difference, if any, obtained by subtracting the Resale Price (defined below) from the Contract Price and multiplying such positive difference, if any, by the portion of the Quantity which Buyer failed to receive ("Unreceived Quantity").

In any case of a failure by Seller to deliver all or part of the Product by the Transfer Deadline pursuant to this Section 3(b), Seller shall use commercially reasonable efforts (including selling the Product in the Planning Resource Auction) to resell the Unreceived Quantity. The price which Seller receives from reselling the Unreceived Quantity is the "Resale Price." For that portion of Unreceived Quantity that Seller is unable to resell, the Resale Price shall be deemed to be equal to zero (0).

The invoice from Seller to Buyer for any amount owed by Buyer to Seller pursuant to this Section 3(b) shall include a written statement explaining in reasonable detail the

calculation of such amount. The Parties acknowledge and agree that with respect to this Transaction only, Subsection 1.53 of the EEI Master Agreement shall be amended to delete all references to “at the Delivery Point” contained in such Subsection 1.53.

(c) Limitation of Remedies. The Parties acknowledge and agree that the remedies set forth herein regarding failures to deliver/receive shall supersede and replace Subsections 4.1 and 4.2 of the EEI Master Agreement with respect to this Transaction only.

4. Changes Concerning MISO.

In the event that MISO ceases operations and/or modifies its operations such that such modifications have a material effect on this Transaction Confirmation, then Seller and Buyer shall amend this Transaction Confirmation in order to give effect to the original intention of Seller and Buyer.

[Additional provisions may be required if source of ZRCs is external to MISO]

This Transaction Confirmation is being provided pursuant to and in accordance with the EEI Master Power Purchase and Sale Agreement dated _____ (the “EEI Master Agreement”) between Consumers Energy Company and _____ and constitutes part of and is subject to the terms and provisions of such EEI Master Agreement.

AGREED AND ACCEPTED:

CONSUMERS ENERGY COMPANY _____

By: _____

Title: _____

Phone No: _____

Fax: _____

By: _____

Title: _____

Phone No: _____

Fax: _____

ATTACHMENT 2

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Consumers Energy Company)	Docket ER98-4421-_____
)	
CMS Energy Resource Management Company)	Docket ER96-2350-_____

**AFFIDAVIT OF DAVID F. RONK, JR.
ON BEHALF OF CONSUMERS ENERGY COMPANY AND
CMS ENERGY RESOURCE MANAGEMENT COMPANY**

I. INTRODUCTION AND PURPOSE

My name is David F. Ronk, Jr. I am the Director of Transactions and Wholesale Settlements for Consumers Energy Company (“Consumers Energy” or the “Company”). Among other things, I am responsible for the supervision of Consumers Energy’s electric generation capacity acquisition processes, including competitive auctions, which are held periodically for the purpose of soliciting bids for electric generation capacity for seasonal, annual, and multi-year periods. The purpose of my affidavit is to describe the process Consumers Energy will undertake to solicit offers, evaluate offers and select winning offers after bids have been submitted in the competitive solicitation process employed when the Company elects to invite affiliates to participate.

II. SUMMARY OF THE PROCESS CONSUMERS ENERGY WILL UNDERTAKE TO SOLICIT OFFERS, EVALUATE OFFERS AND SELECT WINNING OFFERS IN ITS COMPETITIVE SOLICITATION WHEN IT ELECTS TO INVITE AFFILIATES TO PARTICIPATE.

Consumers Energy is working with an independent administrator which will, on those occasions when the Company elects to invite affiliates to participate, conduct a competitive solicitation through its auction website on Consumers Energy’s behalf, in accordance with the terms of a Request for Proposals (“RFP”). Consumers Energy will also use an independent “Auction Administrator” to administer its website-based auction. During the auction, offers may

only be submitted through the website maintained by the Auction Administrator (“Auction Website”). From Consumers Energy’s perspective, the process will be entirely blind, in that Consumers Energy will not know which offers were made in each tranche of the RFP or at what price and volume. At the conclusion of an auction, the Auction Administrator will transmit the offers received to Consumers Energy on an anonymous basis.

After the auction closes, in accordance with the schedule that is posted on the Auction Website, Consumers Energy will review its capacity needs and the overall response of the market to the RFP, and adjust the amount of capacity it will accept based on its needs and whether the prices offered in the auction generally match expected price levels for the product requested. For example, if the anonymous offers reflect prices that are substantially higher than what Consumers Energy anticipated, Consumers Energy may take less of the capacity than the maximum amount it sought in the RFP.

Once Consumers Energy determines the volume of capacity it will accept, it will determine the optimal mix of bids in the various tranches that will meet Consumers Energy’s needs at the lowest possible cost. Once the optimal combination of bids to meet Consumers Energy’s needs is determined, Consumers Energy will notify the Auction Administrator which offers, on a purely price and volume basis, would produce the lowest-cost outcome for Consumers Energy. Only after Consumers Energy notifies the Auction Administrator of which offer(s) would produce the lowest-cost outcome for Consumers Energy will the Auction Administrator reveal the winning auction participant(s)’s identity to Consumers Energy. Consumers Energy will notify the winning auction participant(s) that its offer has been selected immediately thereafter. Thus, there will be no “shortlist” of offers and no after-auction negotiation with any auction participant.

III. CONCLUSION

The foregoing describes the process Consumers Energy will use to solicit offers, evaluate offers and select the winning offer(s) of its competitive auction on those occasions where the Company elects to invite affiliates to participate in its electric generation capacity acquisition process.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Consumers Energy Company)
)
CMS Energy Resource Management Company) Docket ER98-4421-_____
) Docket ER96-2350-_____

AFFIDAVIT

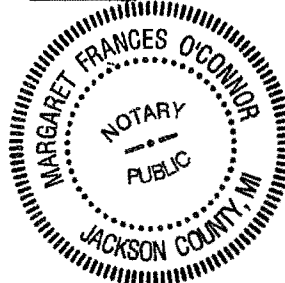
DAVID F. RONK, JR., being duly sworn, deposes and states: that he prepared or supervised the preparation of the foregoing Affidavit of David F. Ronk, Jr., and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

David F. Ronk, Jr.

David F. Ronk, Jr.

Subscribed and sworn before me this 1st day of March, 2013:

Margaret Frances O'Connor
Notary Public



Printed Name: MARGARET FRANCES O'CONNOR

My commission expires: 12/12/13

MARGARET FRANCES O'CONNOR
Notary Public, State of Michigan
County of Jackson
My Commission Expires Dec. 12, 2013
Acting in the County of Jackson

CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of March 2013, caused a copy of the foregoing document to be served upon all those listed in the official service list in this proceeding.

/s/ Deborah A. Moss

Deborah A. Moss
Principal Attorney
Consumers Energy Company
1730 Rhode Island Ave NW, Suite 1007
Washington, DC 20036
Phone: (202) 778-3343
Fax: (202) 778-3356
Email: damos@cmsenergy.com

Counsel for CMS Energy Corporation

Attachment 2



A CMS Energy Company

May 14, 2013

BY E-FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First St, NE
Washington, DC 20426

General Offices:
One Energy Plaza
Jackson, MI 49201

Tel: (517) 788-0550
Fax: (202) 778-3355

*Washington Office:
1730 Rhode Island Ave. N.W.
Suite 1007

Tel: (202) 778-3340

Washington, DC 20036

Fax: (202) 778-3355

Writer's Direct Dial Number: (202) 778-3343
Writer's E-mail Address: deborah.moss@cmsenergy.com

LEGAL DEPARTMENT
JAMES E BRUNNER
Senior Vice President
and General Counsel

JON R ROBINSON
Vice President and
Deputy General Counsel
Utility Law and
Regulation

CATHERINE M REYNOLDS
Vice President, Deputy
General Counsel
& Corporate Secretary

Shelley J Ruckman
Kimberly C Wilson
Michael G Wilson
Assistant General
Counsel

David E Barth
H Richard Chambers
Neil R Fellows
Gary L Kelterborn
Chantez P Knowles
Eric V Luoma
Raymond E McQuillan
Rhonda M Morris
Deborah A Moss*
Mirce Michael Nestor
Robert M Neustifter
Jeffrey D Pintar
James D W Roush
John C Shea
Scott J Sinkwitz
Adam C Smith
Bret A Totoraitis
Charlotte A Walls
Mary Jo Weindorf
Attorney

Re: Docket No. ER13-1017-_____

Amendment to Application of the Consumers Energy Company and CMS Energy Resource Management Company for Waiver of Affiliate Restrictions Related to Consumers Energy Company's 2016 Planning Year Auction for Capacity

Dear Secretary Bose:

On March 1, 2013, Consumers Energy Company ("Consumers Energy") and CMS Energy Resource Management Company ("CMS ERM," and collectively, "Applicants") filed an application ("March 1 Application") requesting that the Commission grant a waiver of the Applicants' affiliate restrictions with respect to power sales between Applicants under their respective market-based rate tariffs. In support of this request, the Applicants proposed to maintain existing protections against affiliate abuse and also proposed to adopt additional pricing protections during relevant time periods. Applicants requested that the Commission grant a waiver of the Applicants' affiliate restrictions with respect to power sales between Applicants to ensure that CMS ERM would be able to participate in Consumers Energy's auction for electric generation capacity purchases for MISO 2016 Planning Year (i.e., June 1, 2016 through May 31, 2017) on an equal footing with other auction participants.

In the March 1 Application, Applicants requested, to the extent necessary, waiver of the restrictions on sharing of market information between, and functional separation of, employees of the Applicants who are involved in sales, purchases, and brokering as necessary to effectuate inter-affiliate transactions between Consumers Energy and CMS ERM, subject to the limitation to the extent that any market information must be shared, it is the Applicants' expectation that

such information would be limited to pricing information necessary to undertake a transaction subject to the pricing restrictions proposed therein.

Following discussions with FERC Staff regarding the need for waiver of the restrictions on sharing of market information between, and functional separation of, employees of Applicants, Applicants hereby withdraw their request for such waiver. Further, Applicants clarify that, to the extent that any market information is shared between Consumers Energy and CMS ERM, such market information will be simultaneously disclosed to the public.¹ Additionally, Applicants clarify that, to the extent that they share any employees, such employees will be limited to employees with job classifications of the types described for permissibly shared employees allowed under the affiliate restrictions (e.g., legal, accounting, human resources, travel and information technology).² Finally, Applicants clarify that any permissibly shared employees will not act as a conduit to provide market information to non-shared employees of Consumers Energy or CMS ERM.³

Also, because of some uncertainty regarding the need for additional capacity to meet Consumers Energy's reserve requirements for the MISO 2014 Planning Year and the MISO 2015 Planning Year, Applicants wish to amend the March 1 Application to state that the auction for electric generation capacity purchases described therein, for which authorization for participation by CMS ERM is sought, may also include tranches for the MISO 2014 Planning year and the MISO 2015 Planning Year. Including these additional tranches will not result in any changes to the processes and procedures for this auction described in the March 1 Application, and the auction will continue to satisfy the *Edgar*⁴ and *Allegheny*⁵ requirements, as also described in the March 1 Application.

I. DESCRIPTION OF APPLICANTS

Consumers Energy is a public utility that services approximately 1.8 million electric customers and 1.7 million gas customers in Michigan's Lower Peninsula. Consumers Energy is wholly owned by and is one of the two principal subsidiaries of CMS Energy Corporation ("CMS Energy"). The other principal subsidiary of CMS Energy is CMS Enterprises Company. Consumers Energy was initially granted authority to sell electric energy and capacity at market-based rates by the Commission order issued October 28, 1998 in Docket No. ER98-4421-000.⁶

CMS ERM is a Michigan corporation that is engaged in the business of wholesale power and energy sales as a marketer. CMS ERM does not own or operate generating facilities. CMS ERM was formerly known as CMS Marketing, Services and Trading Company ("CMS MST"), which was formerly known as CMS Electric Marketing Company. CMS ERM is an indirect wholly owned subsidiary of CMS Energy Corporation. CMS Electric Marketing Company was

¹ See Order No. 697 at P 594.

² See, e.g., Order No. 697 at PP 564, 565.

³ See Order No. 697 at P 561.

⁴ *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382, 62,168 (1991) ("*Edgar*").

⁵ *Allegheny Energy Supply Co.*, 108 FERC ¶ 61,082 at P 22 (2004) ("*Allegheny*").

⁶ *Consumers Energy Company*, 85 FERC ¶ 61,121 (1998).

granted market-based rate authority in the Commission's September 6, 1996 order in Docket No. ER96-2350-000.⁷

II. COMMUNICATIONS

The names and addresses of the persons to whom communications concerning this matter should be addressed on behalf of Applicants are:

Deborah A. Moss
Principal Attorney
Consumers Energy Company
1730 Rhode Island Ave. N.W.
Suite 1007
Washington, DC 20036
Phone: (202) 778-3343
Fax: (202) 778-3355
damoss@cmsenergy.com

David F. Ronk, Jr.
Director of Electric Transactions and
Wholesale Settlements
Consumers Energy Company
1945 West Parnall Road
P13-413A
Jackson, MI 49201
Phone: (517) 788-1388
Fax: (517) 788-5882
dfronk@cmsenergy.com

III. REQUEST FOR EXPEDITED ACTION

The March 1 Application requested Commission acceptance thereof by May 1, 2013, to allow CMS ERM to participate in Consumers Energy's competitive solicitation for capacity to meet reserve requirements for the MISO 2016 Planning Year, which was scheduled to commence on June 4, 2013. Although Consumers Energy's competitive solicitation for capacity to meet reserve requirements, which is now proposed to include tranches for the MISO 2014, 2015 and/or 2016 Planning Years, will likely need to be delayed from the June 4, 2013 date noted in the March 1 Application, Applicants require time following the issuance of an order approving the March 1 Application to prepare for such capacity solicitation. Accordingly, Applicants request that the Commission grant expedited action by setting a shortened 14-day comment period for this amendment to the March 1 Application and issuing an order on or before May 31, 2013.

IV. DOCUMENTS SUBMITTED WITH THIS FILING

This filing consists of this transmittal letter.

⁷ *CMS Electric Marketing Company*, 76 FERC ¶ 61,236 (1996).

V. CONCLUSION

For the reasons set forth above, Applicants hereby request that the Commission grant waiver of its affiliate restrictions with respect to transactions between CMS ERM and Consumers Energy under Applicants' respective market-based rate tariffs during periods when the ten percent retail cap is met in light of the additional pricing protections described herein. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully Submitted,

/s/ Deborah A. Moss

Deborah A. Moss

Principal Attorney

Consumers Energy Company

Counsel for Consumers Energy Company

CERTIFICATE OF SERVICE

I hereby certify that I have on this 14th day of May 2013, caused a copy of the foregoing document to be served upon all those listed in the official service list in this proceeding.

/s/ Deborah A. Moss

Deborah A. Moss

Principal Attorney

Consumers Energy Company

1730 Rhode Island Avenue, NW

Suite 1007

Washington, DC 20036

(202) 778-3343

Attachment 3

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

In Reply Refer To:
Consumers Energy Company
CMS Energy Resource Management Company
Docket No. ER13-1017-000

June 18, 2013

Ms. Deborah A. Moss
Attorney for the Consumers Energy Company
Consumers Energy Company
1730 Rhode Island Avenue, N.W.
Suite 1007
Washington, DC 20036

Reference: Authorization for Affiliate Sales

Dear Ms. Moss:

On March 1, 2013, as amended on May 14, 2013, you filed a request for continued waiver of the Commission's affiliate restrictions with respect to transactions at market-based rates between the Consumers Energy Company (Consumers Energy) and CMS Energy Resource Management Company (CMS Energy) (collectively, the Applicants).

You state that that the Michigan legislature has enacted legislation providing that no more than ten percent of an electric utility's average weather-adjusted retail sales customers for the preceding calendar year may take service from an alternative supplier at any time (ten percent retail cap). While you maintain that the Michigan legislation does not change the circumstances that the Commission relied on when granting the Applicants authority to make affiliate sales¹ when the ten percent retail cap has not been reached, you propose the following pricing protections for whenever the ten percent retail cap is met: (1) that CMS Energy be permitted to sell energy to Consumers Energy at a price not to exceed the prevailing price of electricity at the Midwest Independent System Operator, Inc. (MISO) Indiana Hub;² (2) that Consumers Energy be permitted to sell

¹ See *CMS Marketing, Services and Trading Company*, 92 FERC ¶ 61,262 (2000) and *Consumers Energy Company*, 94 FERC ¶ 61,180 (2001).

² Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator,

energy to CMS Energy at (or above) the prevailing price of electricity at the MISO Indiana Hub; and (3) that CMS Energy be permitted to sell capacity to Consumers Energy at the market clearing price of a competitive solicitation process to be held by Consumers Energy to procure capacity to meet Consumers Energy's reserve requirements for the 2014 – 2016 MISO Planning Years, in the event that CMS Energy is a successful bidder in these auctions. You contend that the MISO Indiana Hub is an established, relevant market price that mitigates any affiliate abuse concerns for sales made outside of the competitive solicitation process. You also contend that Consumer Energy's competitive solicitation process satisfies the requirements established by the Commission in *Edgar*³ and *Allegheny*.⁴

Your filings were noticed on March 1, 2013 and May 15, 2013, with comments, protests or interventions due on or before March 22, 2013 and May 28, 2013. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittals filed in the referenced docket are accepted for filing, as requested.

Please submit a compliance filing, within 30 days of the date of this order, to amend the limitations and exemptions sections of the Applicants market-based rate tariffs to include a reference to the instant order. Further, please indicate whether sales between the Applicants occurred at a time when the ten percent retail cap had been met when reporting such sales in the Applicants Electric Quarterly Reports (EQR).⁵ We will require that the Applicants submit an informational filing advising the Commission when the retail load served by alternative suppliers falls below the ten percent retail cap to the extent that they seek to engage in affiliate transactions without the additional pricing protections discussed above. We also remind the Applicants to abide by the

Inc.

³ *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

⁴ *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

⁵ The Applicants should consult with the Office of Enforcement (OE) to determine how to designate whether an affiliate sale occurred at a time when the ten percent retail cap was or was not met. You may contact the OE regarding this matter at EQR@FERC.GOV.

commitments the Commission accepted when granting their requests to make affiliate sales when the ten percent cap has not been met.⁶

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission
Attn: Michelle Barnaby
Phone: (202) 502-8407
Office of Energy Market Regulation
888 First Street, N.E.
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West

⁶ See *CMS Marketing, Services and Trading Company*, 92 FERC ¶ 61,262 (2000) and *Consumers Energy Company*, 94 FERC ¶ 61,180 (2001).

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
CONSUMERS ENERGY COMPANY)
for approval of long-term power purchase)
auction procedures)
_____)

Case No. U-17496

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS
COUNTY OF JACKSON)

Dorothy H. Wright, being first duly sworn, deposes and says that she is employed in the Legal Department of Consumers Energy Company; that on October 17, 2013 she served an electronic copy of Consumers Energy Company’s “**Application**” upon the persons listed in Attachment 1 hereto, at the e-mail addresses listed therein.

Dorothy H. Wright

Subscribed and sworn to before me this 17th day of October, 2013.

Debra S. Weirich, Notary Public
State of Michigan, County of Jackson
My Commission Expires: 10/31/18
Acting in the County of Jackson

ATTACHMENT 1 TO CASE NO. U-17496

(Parties to Case No. U-17429)

**Counsel for the Michigan Public
Service Commission Staff**

Amit T. Singh, Esq.
Spencer A. Sattler, Esq.
Assistant Attorneys General
Public Service Division
6520 Mercantile Way, Suite 1
Lansing, MI 48911
E-Mail: singha9@michigan.gov
sattlers@michigan.gov

**Counsel for Energy Michigan, Inc. and
FirstEnergy Solutions Corp.**

Eric J. Schneidewind, Esq.
Laura A. Chappelle, Esq.
Jacob McDermott, Esq.
Charlene Rericha
Brian Knipe
Lou D'Alessandris
Varnum LLP
The Victor Center, Suite 810
201 N. Washington Square
Lansing, MI 48933
E-Mail: ejschneidewind@varnumlaw.com
lachappelle@varnumlaw.com
jmcdermott@firstenergycorp.com
crericha@firstenergycorp.com
bknipe@firstenergycorp.com
ldalessandris@firstenergysolutions.com

Timothy J. Lundgren, Esq.
Varnum LLP
333 Bridge Street
P.O. Box 352
Grand Rapids, MI 49501-0352
E-Mail: tjlundgren@varnumlaw.com

**Counsel for the Michigan State Utility
Workers Council, Utility Workers Union
of America, AFL-CIO**

Steven D. Weyhing, Esq.
Warner Norcross & Judd LLP
120 N. Washington Sq., Ste. 410
Lansing, MI 48933
E-Mail: sweyhing@wnj.com

**Counsel for the Michigan
Environmental Council ("MEC"), the
Natural Resources Defense Council
("NRDC"), and the Sierra Club**

Christopher M. Bzdok, Esq.
Emerson Hilton, Esq.
Ruth Ann Liebzeit, Legal Assistant
Kimberly Flynn, Legal Assistant
Olson, Bzdok & Howard, P.C.
420 E. Front Street
Traverse City, MI 49686
E-Mail: chris@envlaw.com
emerson@envlaw.com
ruthann@envlaw.com
kimberly@envlaw.com

James Clift
Michigan Environmental Council
602 W. Ionia Street
Lansing, MI 48933
E-Mail: james@environmentalcouncil.org

Rebecca Stanfield
Natural Resources Defense Council
20 N. Wacker Drive, Suite 1600
Chicago, IL 60606
E-Mail: rstanfield@nrdc.org

Shannon Fisk, Esq.
Matthew Gerhart
Earthjustice, Inc.
1617 John F. Kennedy Blvd, Suite 1675
Philadelphia, PA 19103
E-Mail: sfisk@earthjustice.org
mgerhart@earthjustice.org

**Counsel for the Association of
Businesses Advocating Tariff Equity
("ABATE")**

Robert A. W. Strong, Esq.
Clark Hill PLC
151 S. Old Woodward Ave., Suite 200
Birmingham, MI 48009
E-Mail: rstrong@clarkhill.com

ATTACHMENT 1 TO CASE NO. U-17496

(Parties to Case No. U-17429)

**Counsel for Midland Cogeneration
Venture Limited Partnership (“MCV”)**

Richard J. Aaron, Esq.
Warner Norcross & Judd LLP
120 North Washington Square, Suite 410
Lansing, MI 48933
E-Mail: raaron@wnj.com
ejordan@wnj.com

David R. Whitfield, Esq.
Warner Norcross & Judd LLP
111 Lyon Street, NW, Ste. 900
Grand Rapids, MI 49503-2487
E-Mail: dwhitfield@wnj.com

**Counsel for Attorney General
Bill Schuette**

Donald E. Erickson, Esq.
John A. Janiszewski, Esq.
Assistant Attorneys General
Environment, Natural Resources,
and Agriculture Division
6th Floor Williams Building
525 W. Ottawa Street
P.O. Box 30755
Lansing, MI 48909
E-Mail: ericksond@michigan.gov
janiszewskij2@michigan.gov

**Counsel for New Covert Generating
Company, LLC**

Rodger A. Kershner, Esq.
Jon D. Kreucher, Esq.
Alex G. Cavanaugh, Esq.
Howard & Howard Attorneys PLLC
450 West Fourth Street
Royal Oak, MI 48067
E-Mail: RAK@h2law.com
JDK@h2law.com
ac@h2law.com

Counsel for Renaissance Power, L.L.C.

Jennifer Utter Heston, Esq.
Fraser, Trebilcock, Davis & Dunlap, P.C.
124 West Allegan Street, Ste. 1000
Lansing, MI 48933
E-Mail: jheston@fraserlawfirm.com

**Counsel for Energy Innovation
Business Council**

Bruce Goodman, Esq.
Varnum, Riddering, Schmidt & Howlett,
LLP
333 Bridge Street, N.W.
P.O. Box 352
Grand Rapids, MI 49501-0352
E-Mail: bgoodman@varnumlaw.com

Counsel for Interstate Gas Supply, Inc.

John M. Dempsey, Esq.
Brandon C. Hubbard, Esq.
Dickinson Wright PLLC
350 S. Main Street, Suite 300
Ann Arbor, MI 48104
E-Mail: jdempsey@dickinsonwright.com
bhubbard@dickinsonwright.com