STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of CONSUMERS ENERGY COMPANY for Reconciliation of its Power Supply Cost Recovery Plan (Case No. U-21423) for the 12-months ended December 31, 2024. /

MPSC Case No. U-21424

# ATTORNEY GENERAL'S REPLY TO EXCEPTIONS


Dana Nessel
Attorney General

Celeste R. Gill (P-52484)
Assistant Attorney General
Michigan Department of Attorney General, Special Litigation Division
P. O. Box 30755
Sixth Floor Williams Bldg.
525 West Ottawa St.
Lansing, MI 48909
Ph: (517) 335-7627
Email: gillc1@michigan.gov


Dated: July 20, 2026

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## INTRODUCTION

On June 12, 2026, Administrative Law Judge (ALJ) Jacqueline Langwith issued her proposal for decision ("PFD") in this case. In the PFD, Judge Langwith advised that exceptions to the PFD must be filed on or before July 6, 2026, and if exceptions are filed then any replies must be filed by July 20, 2026.

The ALJ disagreed with or otherwise did not adopt recommendations by the Attorney General related to an outage at Campbell Unit 1 (Outage Event #74), capacity overpayments to the Generate Freemont Digester (Freemont), and modification to the Company's FCM. The Attorney General addressed those issues in her exceptions to the PFD.

Consumers filed an exception to a recommendation in the PFD related to other PPAs that have terms similar to the one at issue in the Attorney General's proposed disallowance for Freemont. The Attorney General files this reply to that exception.

## ARGUMENTS

While examining the Attorney General's substantive arguments, the Commission should consider that Consumers Energy bears the burden of proof to demonstrate that its proposals are just and reasonable. A complete discussion regarding the Company's burden of proof is discussed in the Attorney General's Initial Brief.[1]

### A. The PFD's recommendation that the Company be directed to reassess the prudency of provisions like Section 7.1 should not be delayed.

The Attorney General's challenged the Company's recovery of payments made to Freemont for capacity and energy after the plant ceased operations in March 2024.[2] The PFD disagreed with the Attorney General's recommendation.[3] However, the PFD recommended "that Consumers be directed to terminate the Freemont PPA pursuant to Section 10.1, which the Company indicated that it intends to do. Further this PFD recommends that Consumers be directed to reassess the prudency of provisions like Section 7.1 since Consumers appears to have 80 contracts containing similar provisions."[4] In its exceptions, the Company indicates that it has already terminated the contract with Freemont.[5] The Company filed an exception to the rest of the recommendation.

According to the Company, language requiring capacity payments like Section 7.1 do not necessarily appear in all the Company's PPAs. It claims that its

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[1] Attorney General's Initial Brief, pp. 3 – 4.

[2] *See*, Attorney General's Initial Brief, pp. 12 – 17; and Attorney General's Reply Brief, pp. 5 – 7 for the complete analysis.

[3] PFD, pp. 32 – 33.

[4] *Id.*, at p. 33.

[5] Consumers Energy Company's Exceptions to the Proposal for Decision, p. 4.

PPAs contain varying types of commitments for making capacity payments.[6] It does not appear that the PFD asserted that all the Company's PPAs contain a similar provision, unless the Company is asserting that it only has 80 other PPAs. This argument only serves to distract attention away from the probability that a large number of the Company's PPAs may contain similar unreasonable and imprudent provisions.

The Company also argues that "[b]ecause only the Freemont PPA is part of the record in this case, Consumers Energy cannot meaningfully address the terms of its other PPAs on this record…"[7] It then recommends that any future review of capacity payment provisions occur through the Company's ordinary contracting process than "through a generalized determination of current or future agreements not part of this record."[8] It then commits to perform a reexamination of its PPA capacity payment provisions as part of future PPA negotiations.[9] The Company's recommendations are insufficient and do not appear to be consistent with the intent of the PFD's recommendation.

First, the PFD's recommendation does not appear to be relying entirely on the record in this case. It highlights the issue for further review. Second, a review of existing contracts can inform the Commission of the nature and extent of the use

[6] Consumers' Exceptions, p. 5.

[7] *Id.*

[8] *Id.*, at pp. 5 -6.

[9] *Id.*, at p. 6.

of this kind of contractual provision. As the Attorney General has argued in her briefs and exception to the PFD, such terms are not reasonable or prudent and capacity payments should not be recoverable under those terms.[10] Third, an individual review of future contracts dilutes any analysis of the reasonableness and prudence of such provisions. The Commission would be reduced to simply considering the reasonableness and prudence of an individual agreement and not whether such terms in and of themselves are imprudent. Finally, if the Commission agrees with the Attorney General on this issue, addressing the issue in future PPAs only will result in ratepayers potentially paying for costs that they should not pay.

The Attorney General recommends that the PFD's recommendation be carried out to the fullest extent possible. The Company should be required to review existing PPAs for similar contract provisions and should be required to justify why terms that require ratepayers to pay for capacity and energy that is not provided are reasonable and why it is prudent to continue to make payments under such circumstances. The Company should be required to report its findings in the first reconciliation case filed after the order in this case is entered.

[10] *See*, Attorney General's Initial Brief, pp. 12 – 17; Attorney General's Reply Brief, pp. 5 – 7; and Attorney General's Exceptions to the PFD, pp. 8 – 12.

## CONCLUSION AND RELIEF REQUESTED

The Attorney General respectfully requests that the Commission issue an Order that is consistent with the record in this case and the positions put forth in this Reply to Exceptions.

Respectfully submitted,

Dana Nessel
Attorney General

Celeste R. Gill

Digitally signed by Celeste R. Gill
Date: 2026.07.20 15:06:35 -04'00'

Celeste R. Gill
Assistant Attorney General
Michigan Department of Attorney General, Special Litigation Division
P. O. Box 30755
Sixth Floor Williams Bldg.
Lansing, MI 48909
Ph: (517) 335-7627
Email: gillc1@michigan.gov

Dated: July 20, 2026

**PROOF OF SERVICE - U-21424**

The undersigned certifies that a copy of the ***Attorney General's Reply to Exceptions*** was served upon the parties listed below by emailing the same to them at their respective e-mail addresses on the 20th day of July 2026.

Celeste R. Gill Digitally signed by Celeste R. Gill Date: 2026.07.20 15:07:04 -04'00'

Celeste R. Gill

**Consumers Energy Company:**
Bret Totoraitis
Michael Rampe
Evan Keimach
Spencer A. Sattler
Bret.totoraitis@cmsenergy.com
Michael.rampe@cmsenergy.com
Evan.keimach@cmsenergy.com
Spencer.sattler@cmsenergy.com
mpsc.filings@cmsenergy.com

**MPSC Staff:**
Daniel Sonneveldt
Monica Stephens
Anna Stirling
sonneveldtd@michigan.gov
stephensm11@michigan.gov
stirlinga1@michigan.gov

**AG Dana Nessel:**
Celeste R. Gill
GillC1@michigan.gov
Ag-enra-spec-lit@michigan.gov

Sebastian Coppola
sebcoppola@corplytics.com

**Biomass Merchant Plants (BMPs):**
Thomas Waters
tjw@runningwise.com

**Association of Business Advocating Tariff Equity (ABATE):**
Michael J. Pattwell
Stephen Campbell
Benjiman Holwerda
mpattwell@clarkhill.com
scampbell@clarkhill.com
bholwerda@clarkhill.com

**Administrative Law Judge:**
Jacqueline Langwith
langwithj@michigan.gov