STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to implement the provisions of Sections 22 through 49 and related definitions of Public Act 235 of 2023.	))))	Case No. U-21568

At the November 5, 2026 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Shaquila Myers, Commissioner

ORDER

On November 28, 2023, Governor Gretchen Whitmer signed into law Public Act 235 of 2023 (Act 235), which, among other things, amends Sections 22 through 49 of Public Act 342 of 2016 (Act 342), to increase the renewable portfolio standards (RPS) for electric providers from 15% through 2029, to 50% in years 2030 through 2034, and 60% in 2035 and thereafter. Act 235 took effect on February 27, 2024.

Section 22(3) of Act 235 requires electric providers to file with the Commission their respective amended renewable energy plans (REPs) within one year of the effective date of Act 235. For rate-regulated electric providers, the amended REP shall include a mechanism for recovering the incremental cost of compliance within their rates and a forecast of the renewable energy resources needed to comply with the new RPS set forth in Section 28(1). For rate-regulated electric providers, the Commission shall conduct a contested case pursuant to the

Administrative Procedures Act of 1969 (APA), MCL 24.201 *et seq*., and the Commission shall issue a final order in these matters approving the REP, approving the REP with changes consented to by the provider, or rejecting the REP within 300 days from the date of filing. MCL 460.1022.

On February 8, 2024, the Commission issued an order in this docket (February 8 order) setting a staggered schedule for the amended REP filings pursuant to Section 22 of Act 235 and requesting comments on several topics related to implementation of Act 235. The Commission received several comments and on April 25, 2024, the Commission issued an order in Case No. U-21568 (April 25 order) summarizing and responding to comments as well as seeking additional comment on the draft amended REP filing requirements attached to the order as Exhibit A. On May 23, 2024, the Commission issued an order in Case No. U-21568 (May 23 order) summarizing and responding to the comments and approving the amended REP filing requirements and template.

On April 29, 2026, Energy Michigan filed a request for a declaratory ruling in Case No. U-22112 (Energy Michigan's request) pursuant to Section 63 of the APA, MCL 460.263, and Mich Admin Code, R 792.10448 (Rule 448), regarding the interpretation of Sections 28 and 29 of Act 235 as they relate to the purchase or acquisition of renewable energy credits (RECs) for RPS compliance and the clean energy standard (CES). Also on April 29, 2026, Billerud Americas Corporation (Billerud) filed a request for a declaratory ruling in Case No. U-22113 (Billerud's request) pursuant to Section 63 of the APA and Rule 448,[1] regarding the interpretation of

[1] In its request, Billerud erroneously cited to Section 81 of the APA and Mich Admin Code, R 792.10435 as the legal authorities under which it filed its request. Billerud's request, p. 1. However, Section 81 of the APA pertains to proposals for decision and Rule 435 pertains to exceptions to proposals for decision. For accuracy and clarity, the Commission includes the correct citations to Section 63 of the APA and to Rule 448 in this order.

Sections 28 and 29 of Act 235 as they relate to the requirements for bundling of RECs generated from behind-the-meter (BTM) resources.

Energy Michigan's request sought a declaratory ruling from the Commission answering the following questions:

> 1. Whether the reference to "renewable energy and capacity" in Section 28(5)(b) of Act 235 should be interpreted to mean "renewable energy credits and capacity," such that the purchase of the underlying commodity energy is not a prerequisite for a REC to qualify as "bundled" under the statute.
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> 2. Whether RECs generated by facilities located within the State of Michigan should be presumed to satisfy any bundling requirement under Sections 28(5) and 29(1) of Act 235, on the basis that in-state generation inherently provides capacity and energy benefits to the local grid and the applicable Midcontinent Independent System Operator, Inc. (MISO) Zone.
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> 3. Whether the phrase "or otherwise acquiring" in Section 28(5)(b) of Act 235 permits the Commission to find that a load-serving entity [(LSE)] satisfies the capacity and energy components of the bundling requirement when in-state renewable generation reduces the load that the load-serving entity must otherwise serve. [MCL] 460.1029(2)).

Energy Michigan's request, pp. 4-5.

Energy Michigan provided its own interpretation of Sections 28 and 29 and arguments in support thereof. Energy Michigan's request, pp. 5-10. Billerud's request included substantially similar questions although asked from the perspective of behind-the-meter (BTM) generation. Billerud's request, pp. 4-5. Billerud also provided its own interpretation of the statutory sections and arguments in support thereof. *Id*., pp. 5-11.

In the August 6, 2026 order in Case Nos. U-21568 *et al*. (August 6 order), the Commission denied Energy Michigan's and Billerud's requests for a declaratory ruling and found that the questions regarding the interpretation of Sections 28 and 29 in Act 235 would be more appropriately addressed through a comment period. Therefore, the Commission opened the docket in Case No. U-21568 for public comment on the following questions:

1. Should the reference to "renewable energy and capacity" in MCL 460.1028(5)(b) be interpreted to mean "both renewable energy and capacity as well as the associated REC" or "renewable energy credits and associated capacity," such that the purchase of the underlying energy commodity is not a prerequisite for a REC to qualify as "bundled" under the statute?

2. If MCL 460.1028(5)(b) is interpreted to require renewable capacity and RECs without the associated energy, should the RECs be limited to the pro-rata share of capacity from a particular renewable energy system?

a. If so, how should this be calculated?

b. If not, why not?

3. Should the phrase "or otherwise acquiring" in MCL 460.1028(5)(b) be interpreted to allow a load-serving entity to satisfy the capacity and energy components of the bundling requirement under a presumption that in-state renewable generation reduces the load that the load-serving entity must otherwise serve?

a. If this presumption is true, in what situation would the 5% limitations within MCL 460.1028(5)(c) take effect?

4. Should BTM in-state generation be presumed to provide capacity and energy benefits to that customer's electric provider, the local grid, and the applicable RTO [regional transmission operator] zone so that RECs generated BTM by facilities located within the state of Michigan are presumed to satisfy any bundling requirement under MCL 460.1028(5) and MCL 460.1029(1)?

a. Why (or why not) would this situation be different than the situation contemplated in question 3?

5. MCL 460.1029(1)(b) makes no mention of energy, only capacity and RECs. Should out-of-state resources be treated differently from in-state resources with respect to the provisions in MCL 460.1028(5)?

6. If MCL 460.1029(1)(b) is intended to apply only to capacity and RECs without the associated energy, should it be interpreted such that the RECs and capacity acquired out of-state must both be acquired from the same facility?

August 6 order, pp. 13-14. The Commission directed initial comments to be filed no later than 5:00 p.m. (Eastern time (ET)) on August 27, 2026, and reply comments no later than 5:00 p.m. (ET) on September 10, 2026.

On August 27 and August 28,[2] 2026, the Commission Staff (Staff), Indiana Michigan Power Company (I&M), Consumers Energy Company (Consumers), Energy Michigan, Billerud, Michigan Energy Innovation Business Council (EIBC), Michigan Electric and Gas Association (MEGA), BioWorks Energy LLC, and DTE Electric Company (DTE Electric) filed initial comments. On September 10, 2026, Consumers, DTE Electric, and Energy Michigan filed reply comments. For brevity purposes, only a brief summary of the initial and reply comments is provided in this order.

Initial Comments

1. Should the reference to "renewable energy and capacity" in MCL 460.1028(5)(b) be interpreted to mean "both renewable energy and capacity as well as the associated REC" or "renewable energy credits and associated capacity," such that the purchase of the underlying energy commodity is not a prerequisite for a REC to qualify as "bundled" under the statute?

The Staff opines that the REC 5% limitation could only apply to fully unbundled RECs and when those REC purchases are accompanied by the capacity from the associated renewable facility through a contract, tariff or other binding agreement, the 5% limitation could be alleviated. Similarly, those RECs that are accompanied through a contract, tariff, or other binding agreement, by energy from the associated renewable facility, the 5% limitation could be alleviated as long as the facility is located in Michigan. Staff's initial comments, p. 1.[3]

I&M comments that interpreting "renewable energy and capacity" to mean RECs and capacity but not the underlying energy would allow providers more procurement flexibility, enable capacity-plus-RECs transactions, reduce compliance costs, and simplify multistate portfolio

[2] The Staff filed revised initial comments on August 28, 2026. The summary of comments in this order refers to the Staff's revised initial comments. *See*, Case No. U-21568, filing # U-21568-0041.

[3] The Staff's initial comments were not paginated and therefore, the Commission applies pagination in natural order.

allocations. I&M states that if the Commission allows this interpretation, it should do so with proscriptive, uniform rules to establish exclusive ownership, prevent duplications, and allow cost recovery. I&M's initial comments, p. 2.

Consumers lists three guiding principles for interpreting Section 28(5)(b), namely: "(1) preserving the statutory distinction between bundled and unbundled RECs; (2) preventing double counting of renewable attributes, energy, and capacity benefits; and (3) maintaining the intended effectiveness of the 5% limitation on unbundled RECs." Consumers' initial comments, p. 2. Citing the definition of "renewable energy" in MCL 460.1011(a), Consumers states that the reference to "renewable energy and capacity" in Section 28(5)(b) should mean the renewable energy, capacity, and the associated REC. Consumers explains that Section 28(5) provides three options for RPS compliance in its subsections: (a) self-generation, (b) contracting for or otherwise acquiring renewable energy and capacity, and (c) acquiring RECs without associated energy or capacity. Per Consumers, if renewable energy in subsection (b) was understood to mean "renewable energy credits," subsection (b) would collapse into subsection (c), making the limitation on unbundled RECs easier to avoid. Consumers argues that the proper interpretation is that subsection (b) requires bundled transactions, with the caveat that Section 29(2) does not require physical scheduling or delivery of the associated MWh to the utility's load zone. Consumers' initial comments, pp. 2-3.

Energy Michigan contends that "renewable energy and capacity" in Section 28(5)(b) should be understood to mean "RECs and capacity," which Energy Michigan says is consistent with other provisions of Act 235 and the understanding that a REC is a stand-in for renewable energy. Energy Michigan argues that the renewable character is present in the REC and not the electrons so requiring additional designated renewable energy to be paired with a REC would be

duplicative. Energy Michigan points to MCL 460.1039(1), which states that one REC shall be granted for one megawatt-hour (MWh), to illustrate the direct connection between a REC and the generated energy. Energy Michigan explains that adopting this interpretation resolves the apparent conflict between Section 28(5) and Section 29(1) regarding the bundled energy requirement. Energy Michigan's initial comments, pp. 2-3.

Billerud's comments substantially mirror Energy Michigan's initial comments. Billerud adds that this issue is of particular importance to it as a BTM generator because since Billerud generates and consumes its energy and capacity, a reading that requires a separate purchase of the underlying energy would mean that Billerud does not qualify as a bundled resource despite its clean energy and capacity contributions to the local grid. Billerud encourages an interpretation that does not undermine the value of its RECs. Billerud's initial comments, p. 2.

EIBC contends that "renewable energy" within Section 28(5)(b) should be understood to be represented by a corresponding REC and cites reasoning similar to that of Energy Michigan and Billerud in their respective initial comments. EIBC's initial comments, p. 1.

Prefacing its comments, MEGA notes that its members, including Alpena Power Company (Alpena) have previously shared their concerns with the Commission regarding the issues in this docket, including that smaller providers like Alpena do not own generation and meet all capacity, energy, and RECs needs with contractual agreements that are not necessarily tied to a specific resource. MEGA's initial comments, p. 4 (citing Alpena's March 8, 2024 comments in Case No. U-21568, p. 4, filing #U-21568-0009). MEGA also repeats Alpena's concern regarding the scarcity of market participants with bundled energy and RECs and the potential for higher costs as a result. MEGA's initial comments, p. 4 (citing Alpena's March 8, 2024 comments in Case No. U-21568, p. 3, filing #U-21568-0009). MEGA then notes the April 25, 2024 order in this

docket (April 25 order) in which the Commission stated its intent to employ statutory interpretation with flexibility included in Act 235 when justified. MEGA's initial comments, p. 4 (citing April 25 order, p. 24). MEGA states that the market remains the least-cost way of meeting environmental requirements for smaller utilities under what it characterizes as a poorly constructed law that does not consider affordability the way customers and utilities do. MEGA's initial comments, pp. 4-5.

In response to Question 1, MEGA agrees with Energy Michigan's position and reasons that understanding "renewable energy" to be the REC makes sense from a financial and affordability perspective and allows greater market flexibility. MEGA's initial comments, p. 5.

DTE Electric prefaced its initial comments with a recommendation for the Commission to preserve the established treatment of RECs and associated products under Sections 28 and 29, wherein a bundled REC consists of the REC and its associated energy and capacity is a separate resource adequacy product not required to accompany every REC. DTE Electric's initial comments, p. 1.[4] In response to Question 1, DTE Electric quotes Section 28(5) and states that it interprets "purchasing or otherwise acquiring renewable energy and capacity" to mean that the utility can either: (1) purchase bundled RECs without separately purchasing capacity, or (2) acquire renewable energy and capacity with the associated RECs through a power purchase agreement (PPA). DTE Electric contends that the Commission should preserve Option 1 as the established treatment of RECs. The company adds that Section 29 separately addresses when capacity from a renewable resource must be included, namely for out-of-state resources. DTE Electric's initial comments, pp. 2-3.

[4] DTE Electric's initial comments were not paginated and therefore the Commission applies natural pagination beginning with the first page following the cover page of DTE Electric's initial comments.

2. If MCL 460.1028(5)(b) is interpreted to require renewable capacity and RECs without the associated energy, should the RECs be limited to the pro-rata share of capacity from a particular renewable energy system?

a. If so, how should this be calculated?

b. If not, why not?

The Staff believes that the percentage of the total zonal resource credits (ZRCs) that is acquired from the facility should equal the percentage of annual RECs generated by that same facility that can be purchased or used for compliance under Section 28(5)(b). Staff's initial comments, pp. 1-2.

I&M suggests a pro-rata methodology that: (1) limits eligible RECs to the share associated with the capacity required; (2) uses clearly defined accredited capacity, actual eligible generation, exclusive contractual title, and registry-based retirement controls; and (3) accommodates seasonal accreditation, derates facility expansions, and other RTO-recognized changes. I&M explains that these are needed to recognize legitimate changes in a facility's recognized capacity and to protect a utility that calculates its REC share in good faith based on capacity information at one point in time only to have the facility's recognized capacity change. I&M's initial comments, pp. 2-3.

Under this scenario, Consumers supports a pro-rata share approach that prioritizes proportionality to avoid a small amount of capacity being paired to a large number of RECs and undermining the statutory distinction between Section 28(5)(b) and (c). Consumers adds that any calculation should consider facility's nameplate capacity, projected capacity factor, and the share of capacity contracted for, but should preserve flexibility to maintain consistency with MISO resource adequacy principles. Consumers' initial comments, pp. 3-4.

Energy Michigan does not believe that capacity should be required to be paired with RECs from in-state renewable energy systems, but agrees that, given Section 29, capacity must be paired with REC purchases from out-of-state. Energy Michigan states though that it is not clear what

benefit there is from requiring capacity to come from the same renewable generator that provided the RECs. Energy Michigan's initial comments, p. 3.

Billerud contends that this question should not be reached if the Commission accepts Billerud's interpretation explained in response to Question 1, but that if the Commission finds a capacity requirement applies, it should not impose a pro-rata limitation on RECs generated by in-state BTM facilities. Billerud reasons that in-state BTM resources provide local grid benefits and their RECs should be treated as bundled. Billerud's initial comments, p. 2.

EIBC does not believe that a capacity purchase should be imposed on in-state RECs to make them compliant with Act 235, noting that if in-state RECs are presumed to be bundled that this would resolve the issue. EIBC states that out-of-state generators that have to couple RECs with capacity pursuant to Section 29(1)(b) face the problem that RECs measure generated energy and are not directly related to capacity, but EIBC does not express an opinion how out-of-state RECs should be coupled. EIBC's comments, p. 2.

If the Commission adopts such an interpretation, MEGA states that a pro-rata share may be practical but could also be onerous in execution and defeat the purpose of a flexible market product to meet environmental compliance. MEGA's initial comments, p. 6.

DTE Electric does not interpret Section 28(5)(b) as establishing a separate compliance pathway involving capacity and RECs without the associated renewable energy and refers back its response to Question 1. Thus, DTE Electric contends that no pro-rata capacity calculation is necessary and that the quantity of bundled RECs should continue to correspond to the renewable energy. DTE Electric's initial comments, p. 3.

3. Should the phrase "or otherwise acquiring" in MCL 460.1028(5)(b) be interpreted to allow a load-serving entity to satisfy the capacity and energy components of the bundling requirement under a presumption that in-state renewable generation reduces the load that the load-serving

entity must otherwise serve?

a. If this presumption is true, in what situation would the 5% limitations within MCL 460.1028(5)(c) take effect?

According to the Staff, it should not be presumed that in-state renewable generation reduces load without a specific contractual/binding agreement or tariff relationship. Staff's initial comments, p. 2.

I&M opines that to the extent an electric utility's load is being reduced by in-state renewable generation resources that provide capacity value, it is reasonable to assume those resources are providing bundled energy, capacity, and REC benefits since those resources reduce the amount of energy and capacity the utility would otherwise need to procure. I&M's initial comments, p. 3.

Consumers states that "or otherwise acquiring" should be read broadly enough to include non-traditional arrangements, but not so broadly that grid location or general system benefits automatically satisfy the bundling requirement. Consumers contends that providers must show a specific, traceable, and documented relationship between the REC and the energy or capacity benefit. The company warns that such a broad presumption would mean Michigan-sited RECs could be considered bundled RECs automatically, thus undermining the 5% unbundled REC limitation and potentially infringing on the ownership rights of entities that own or contract for in-state generation. Consumers adds that BTM generation better supports the qualification under "otherwise acquiring" because it reduces the load the utility must serve at that location. Consumers' initial comments, p. 4.

Energy Michigan first states that an in-state renewable generator (either BTM or providing for resale) provides the capacity and energy components of a bundled REC whether or not those are included in a single contractual instrument. As to the phrase "or otherwise acquiring" in Section 28(5)(b), Energy Michigan interprets this as a grant of discretion to the Commission to

determine when capacity is included with a REC. Specifically, "[i]n the event that a direct or indirect capacity benefit is being provided to the local grid in a manner that does not involve an actual purchase of that capacity, then the statutory language here provides the Commission with the flexibility to recognize these benefits, which may be derived indirectly or in other forms than 'purchase.'" Energy Michigan's initial comments, pp. 3-4. Further:

> [t]he language in [Section 29(a) and (b)] additionally makes it clear that a strict purchase of capacity alone cannot be required to make a compliant REC under 1028(5)(b). If that were the case, then the distinction between 1029(1)(a) and (1)(b) would be erased. Section 1029(1)(a) allows for a compliant REC to be located "[a]nywhere in this state" but Section 1029(1)(b) requires that if the REC is located outside of this state, then it is compliant "only if the electric provider includes the capacity . . . ." If an electric provider is required under MCL 460.1028(5)(b) to separately purchase the capacity of a renewable energy system that is located within the State of Michigan in order to obtain compliant RECs, the distinction made in MCL 460.1029(1) between in-state and out-of-state renewable energy systems collapses.

Energy Michigan's initial comments, p. 4. Energy Michigan proposes that the 5% limitation would apply where out-of-state RECs are used to meet renewable obligations without a concomitant purchase of capacity. *Id*.

Billerud contends that the presence of the phrase "or otherwise acquiring" allows the Commission to recognize capacity and energy benefits without a direct purchase and points to a settlement agreement approved by the Commission in Case Nos. U-21809 and U-21811 (Upper Peninsula Power Company's (UPPCo's) REP and integrated resource plan consolidated cases) in support. This settlement agreement recognized that UPPCo acquired capacity and energy benefits from its real-time market pricing (RTMP) BTM customer (i.e., without a direct purchase). Billerud's initial comments, p. 3. Billerud contends that Section 29(1)'s distinction between in-state and out-of-state systems confirms its position and adds that the 5% limitation would still apply where the statute requires capacity to accompany RECs. *Id*.

EIBC takes the same position as Energy Michigan and Billerud with substantially similar reasoning. EIBC's initial comments, pp. 2-3.

MEGA states that a broader interpretation would create more market participation and competition that would increase affordability but adds that a presumption may be overly broad and the Commission may have to impose reasonable requirements to ensure compliance and that renewable generation reduces the load a provider must serve. MEGA's initial comments, p. 6.

DTE Electric does not agree that "or otherwise acquiring" should be interpreted as suggested in Question 3, arguing that the premise of the question is flawed in that it assumes a bundling requirement should include the REC, renewable energy, and capacity within a single product. DTE Electric maintains that capacity is a separate product. DTE Electric's initial comments, p. 4. Next, DTE Electric refers to its response to Question 1 and explains that while in-state renewable resources supply energy to the grid or reduce load, that "does not establish that a particular electric provider has acquired capacity from the renewable resource or is entitled or able to use the resource to satisfy its resource adequacy obligations." *Id*. The company states that purchasing or otherwise acquiring capacity is determined by contract or tariff and that grid benefits or market effects alone do not establish acquisition of renewable energy or capacity. *Id*.

4. Should BTM in-state generation be presumed to provide capacity and energy benefits to that customer's electric provider, the local grid, and the applicable RTO zone so that RECs generated BTM by facilities located within the state of Michigan are presumed to satisfy any bundling requirement under MCL 460.1028(5) and MCL 460.1029(1)?

a. Why (or why not) would this situation be different than the situation contemplated in question 3?

The Staff referred to its comments responding to questions 1, 2, and 3 and stated that BTM generation is no different from any other generation for the purpose of this question. Staff's initial comments, p. 2.

I&M states that a utility must have sufficient capacity to meet all customers' needs inclusive of BTM customers, so a utility's capacity need is not reduced by BTM generation. However, if BTM provides accredited capacity value, the Commission should recognize this within the REC compliance framework. I&M's initial comments, pp. 3-4.

Consumers disagrees that BTM in-state generation should categorically satisfy the bundling requirement but states that BTM generation can provide energy and capacity benefits (to be demonstrated through the applicable tariff, contract, settlement provision, interconnection arrangement, capacity accreditation, or other mechanisms). Consumers adds that double counting of BTM RECs must be avoided. Consumers opines that Section 28(5)(c) intends to limit reliance on RECs acquired without the associated energy or capacity and if all in-state RECs are presumed to be bundled, the limitation would apply only to out-of-state unbundled RECs. A better interpretation, per Consumers, is that the in-state location satisfies Section 29(1)(a)'s location requirement, but not that in Section 28(5)(b) automatically and the 5% limitation applies to any REC acquired without the associated energy and capacity. As to why this would be different than the scenario in Question 3, Consumers explains that the distinction is that BTM generation can be tied directly to a specific customer's metered load and, therefore, to a providers' retail sales and capacity obligations. Consumers states that the broader in-state presumption in Question 3 is not limited to resources with a traceable benefit to a particular provider and thus, BTM resources make a better case for qualifying treatment when the provider can document the associated energy or capacity benefit. Consumers' initial comments, pp. 5-6.

Energy Michigan proposes that in-state generation, either BTM or for resale, should be treated with a rebuttable presumption that it is providing the same local benefits of capacity and energy. Energy Michigan explains its background and experience as a proponent for small- and large-scale renewable generation and contends that many renewable projects would be harmed if their RECs are deemed to be unbundled if not accompanied by its capacity since many have capacity and energy contracts with utilities but have the option to sell RECs separately or retire them, as permitted by the Commission's October 5, 2018 order in Case No. U-20095. Energy Michigan emphasizes the policy implications and goals of Act 235 and explains that in-front-of-meter projects provide the same local grid benefits as BTM projects and thus their RECs should be presumed to be bundled under Section 28. As to the difference with the scenario in Question 3, Energy Michigan states that its understanding of the "or otherwise acquiring" language facilitates the treatment of in-state generated RECs as bundled in addition to Energy Michigan's interpretation included here. Energy Michigan's initial comments, p. 6.

Similar to Energy Michigan, Billerud comments that BTM in-state generation should be presumed to provide capacity and energy benefits to the electric provider, local grid, and MISO zone and any associated RECs should be presumed to meet the bundling requirement in Section 28(5) and Section 29(1). Billerud references its response to Question 3 in support as well as its interpretation that requiring a purchase of capacity to bundle an in-state REC would require reading a separate capacity requirement into Section 29(1)(a), leading to a conflict between Sections 29(1)(a) and (b). Per Billerud:

> [a]ny attempt to read a capacity purchase requirement into Section 29(1)(a) encounters three independent structural objections: First, it would contradict Section 29(1)(a)'s unambiguous text. Second, it would eliminate the operative distinction between subsections (a) and (b) of Section 29(1), rendering the two-subsection structure purposeless and the capacity language in subsection (b) redundant. Third, because every REC must by logical necessity originate either

> inside or outside Michigan, a uniform capacity requirement would render Section 29(1), as a whole, surplusage.

Billerud's initial comments, p. 4. Billerud recites the legislative history of Act 235 and repeats the load reduction benefits of BTM generation in support. *Id*.

EIBC takes the same position as Energy Michigan and Billerud with reasoning substantially similar to that expressed in Energy Michigan's initial comments. EIBC's initial comments, pp. 3-4.

MEGA explains that, unlike the scenario represented in Question 3, BTM resources are likely to have contractual obligations to a provider and those resources would be part of any filing by that provider in meeting its resource adequacy obligations. Thus, MEGA states that these resources would be more measurable and attributable to the provider that is seeking to use the environmental benefits. MEGA's initial comments, pp. 6-7.

Similar to its response to Question 3, DTE Electric states that generalized grid benefits do not establish acquisition of a product from a renewable energy system and notes an additional concern that for BTM generation, the renewable energy may first serve the customer's load on the customer side of the meter and the provider, while perhaps experiencing reduced metered demand, may do so without receiving the renewable energy or resource adequacy rights in the BTM resource. Thus, DTE Electric argues that neither in-state or out-of-state location nor BTM location should create this presumption and the treatment of a BTM resource should continue to depend on the actual rights and products conveyed under an arrangement. DTE Electric's initial comments, pp. 4-5.

BioWorks Energy's comments were not responsive to every specific question but rather responsive to the broader interpretation issues regarding Sections 28 and 29 as well as the topic in Question 4. BioWorks Energy asks the Commission to interpret Act 235 in a way that allows

RECs generated from in-state renewable energy (like biogas from anaerobic digestion at wastewater treatment plants) to be considered bundled RECs when the associated generation provides energy and capacity benefits to the provider and local grid. As to Question 4, BioWorks Energy supports an interpretation that recognizes the energy and capacity benefits in-state biogas-to-electricity facilities provide to utilities in terms of load reduction, energy, and capacity and supports Billerud's response that "or otherwise acquiring" is supportive of this interpretation as well. BioWorks Energy explains how its facilities provide energy and capacity benefits and how adopting its proposed interpretation would preserve the value of bundled RECs from such facilities and encourage development of other biogas-to-electricity facilities at wastewater treatment facilities across the state. BioWorks Energy cautions that treating such RECs as unbundled or requiring a separate sale of capacity with RECs from BTM generators would diminish REC value. BioWorks Energy's initial comments, pp. 1-3.

5. MCL 460.1029(1)(b) makes no mention of energy, only capacity and RECs. Should out-of-state resources be treated differently from in-state resources with respect to the provisions in MCL 460.1028(5)?

Per the Staff, out-of-state resources meet the requirements in Section 28 only if the capacity is bundled with RECs and utilizes the pro-rata relationship that the Staff discussed in its response to question 2, but the associated energy is not necessary to meet the statutory requirement for out-of-state resources. Staff's initial comments, p. 3.

I&M states that there is no basis to treat in-state and out-of-state resources differently under Section 28(5). I&M adds that Section 29 only specifies where resources whose RECs are used for compliance may be located and that out-of-state resource RECs must be bundled with capacity. I&M's initial comments, p. 4.

Consumers does not believe that out-of-state and in-state resources should be treated categorically differently under Section 28(5), except for the additional capacity-related condition for out-of-state resources imposed by Section 29(1)(b). Consumers adds that for in-state and out-of-state resources, if the RECs are bundled the utility must demonstrate the associated energy or capacity arrangement, and if they are unbundled, the RECs should remain subject to the limitations in subsection (c). Consumers' initial comments, p. 6.

Energy Michigan observes that Section 29 contemplates a difference between in-state and out-of-state resources and contends that requiring a showing of capacity for in-state resources would erase this difference. Per Energy Michigan:

> all it takes to maintain the distinction the statute makes between in- and out-of-state RECs is, for out-of-state resources, to remove the presumption in favor of capacity benefits to the local grid that Energy Michigan believes should be applied to in-state resources, and to require out-of-state RECs used for compliance to be bundled with capacity (with the exception of the 5% permitted to be unbundled under MCL 460.1028(5)(c)).

Energy Michigan's initial comments, p. 7. Energy Michigan also claims that the legislative history of Act 235 supports this understanding. *Id*.

Billerud's and EIBC's comments take the same position as Energy Michigan, citing similar statutory textual reading and policy reasoning. Billerud's initial comments, p. 5; EIBC's initial comments, pp. 4-5.

MEGA contends that the sections must read together and that there is no difference between in- and out-of-state resources except for the limitations in Section 29(1)(b). MEGA's initial comments, p. 7.

DTE Electric quotes Section 29 before noting that, while it does not mention "energy," the term RECs within Section 29 must be read in conjunction with the acquisition pathways in Section 28(5) where a bundled REC consists of a REC and the associated renewable energy, and a

limited quantity of REC-only acquisitions is permitted. The company contends that out-of-state resources should be treated differently only as expressly provided in Section 29 and highlights that Section 29 does not require firm transmission to the zone where the load is served. DTE Electric states that any capacity condition in Section 29 should not be seen as redefining a bundled REC generally or imposing a capacity requirement under Section 28(5)(b). Lastly, the company notes that RECs acquired under Section 28(5)(c) are not subject to Section 29, and, accordingly, the Commission should not classify an energy-and-REC transaction as a REC-only acquisition under subdivision (c) merely because the provider did not also acquire capacity. DTE Electric's initial comments, pp. 6-7.

6. If MCL 460.1029(1)(b) is intended to apply only to capacity and RECs without the associated energy, should it be interpreted such that the RECs and capacity acquired out of-state must both be acquired from the same facility?

The Staff contends that that capacity and RECs should come from the same out-of-state facility to qualify under Section 29(1)(b) and Section 28(5)(b). Otherwise, an electric provider could satisfy compliance by purchasing any RECs from a REC market and any other capacity in the RTO, contrary to the 5% REC limit in Section 28(5)(c). Staff's initial comments, p. 3.

I&M supports flexibility in achieving RPS and clean energy goals but adds that the most reasonable interpretation of Section 29 is that it requires the capacity and RECs to be from the same facility. I&M's initial comments, p. 4.

Recalling its earlier expressed interpretations and that Section 29(1)(b) does not require delivery into the providers' RTO territory, Consumers states that renewable energy, capacity, and associated RECs should originate from the same facility or from a single integrated transaction in which the association is clear and verifiable. Consumers adds that any allowance for replacement

or aggregated RECs should have clearly defined portfolio arrangements where RECs and capacity are tracked. Consumers' initial comments, pp. 6-7.

In further clarifying comments, Consumers notes Section 29(1)(b)'s requirement for out-of-state resources but contends that this does not mean that out-of-state resources are exempt from Section 28(5), meaning out-of-state RECs must still use one of the Section 28(5) pathways. Bundled out-of-state RECs must comply with Section 28(5)(b) and Section 29(1)(b) and unbundled ones must comply with Section 28(5)(c). Consumers suggests the following: "do not equate location with bundling; require documentation of the claimed energy and capacity benefit; avoid double counting; preserve a meaningful role for the 5% cap; and use a functional rather than strict physical-delivery test." Consumers' initial comments, p. 7.

Energy Michigan contends that reading an energy requirement into Section 29(1)(b) would be duplicative since the REC represents renewable energy and would be contrary to the principles of statutory construction. Energy Michigan notes again that it does not see any benefit from requiring capacity bundled with out-of-state RECs to be from the same facility. Per Energy Michigan:

> [n]evertheless, it is a fact that the language of Section 29(1)(b) does say that out-of-state RECs are compliant "if the electric provider includes the capacity from the renewable energy system toward meeting its resource adequacy obligations to the applicable regional transmission organization." MCL 460.1029(1). The use of the definite article "the" in reference to the "renewable energy system" rather than the indefinite article "a" could be taken as a meaningful direction to require capacity from the same system as the REC derives.

Energy Michigan's initial comments, pp. 7-8. If the Commission does require capacity and RECs to be from the same facility, Energy Michigan asks that the RECs be based on the system's capacity factor. *Id*., p. 8.

Neither Billerud nor EIBC expressed an opinion in response to Question 6. Billerud's initial comments, p. 5; EIBC's initial comments, p. 5.

MEGA comments that when read in isolation, it would logically follow that "only if the electric provider includes the capacity from the renewable energy system toward meeting its resource adequacy obligations" the capacity would need to be from the same facility. MEGA's initial comments, p. 7.

DTE Electric refers to its responses to Questions 1 and 5. DTE Electric's initial comments, p. 6.

Reply Comments

In its reply comments, Consumers again asks the Commission to interpret "renewable energy and capacity" in Section 28(5)(b) according to the statutory definition of "renewable energy" and should not be construed to mean RECs and associated capacity since this would blur the distinction between Section 28(5)(b) and (c). Consumers' reply comments, pp. 2-3. Consumers raises the legislative history of Act 235 and explains that, prior to Act 235, Section 28(5)(b) allowed compliance with the RPS by purchasing or otherwise acquiring RECs with or without the associated renewable energy. Senate Bill 271 of 2023 (SB 271) revised Section 28 to intentionally remove the REC-only language to instead state that compliance may be achieved by "purchasing or otherwise acquiring renewable energy and capacity." Consumers' reply comments, p. 3 (citing SB 271) (quoting Section 28(5)(b)). Consumers explains that the Legislature added Section 28(5)(c) that separately addresses the purchase/acquisition of RECs. Per Consumers:

> [b]ecause MCL 460.1028(5)(c) did not exist before Act 235, and because the prior reference to purchasing renewable energy credits "with or without the associated renewable energy" was struck from MCL 460.1028(5)(b), the statutory revisions demonstrate that MCL 460.1028(5)(b) was intended to require renewable energy and capacity, not merely renewable energy credits.

Consumers' reply comments, p. 3.

Consumers maintains its interpretation but alternatively recommends that, if the Commission finds that an acquisition of either associated renewable energy or associated capacity satisfies Section 28(5)(b), the qualifying commodity should originate from the same renewable energy system, be transferred through a binding and auditable arrangement, and be proportional to the number of RECs claimed as bundled. Consumers' reply comments, p. 4. Consumers also asks, to the extent that RECs may qualify as bundled based solely on the existence of associated capacity, that a proportionality requirement be applied to avoid a nominal capacity amount pairing with a disproportionate amount of RECs. *Id*., pp. 4-5. Consumers repeats that in-state renewable generation should not be presumed to automatically provide the energy and capacity necessary to satisfy the bundling requirement. *Id*., p. 5. For BTM generation, Consumers recommends that the Commission require objective documentation linking the REC to the claimed energy or capacity benefit. *Id*., pp. 5-6.

Consumers also disagrees with the suggestion that the treatment for merchant Public Utility Regulatory Policies Act of 1978 (PURPA), PL 95–617; 92 Stat 3117, facilities and other front-of-meter resources should be applied to BTM resources, reasoning that:

> [f]or merchant, PURPA, and other front-of the-meter resources, energy, capacity, and renewable energy credits may be owned, retained, or transferred separately, including in circumstances where qualifying facilities retain and separately transfer RECs. Accordingly, any treatment of those resources must turn on the electric provider's transaction-specific ownership and acquisition rights, rather than on a categorical rule applicable to all merchant, PURPA, or other front-of-meter resources.

Id., p. 6.

Consumers then repeats its interpretation for out-of-state resources subject to Section 29(1)(b), referring to the capacity requirement and noting that the capacity requirement does not eliminate

the necessity to satisfy one of the compliance pathways in Section 28(5). Consumers states that its interpretation gives independent meaning to Section 28 and Section 29, whereas other interpretations risk one provision superseding the other. While physical delivery is not required from out-of-state resources, Consumers states that, if out-of-state RECS are claiming to be bundled, the provider must show that the REC is tied to renewable energy and capacity satisfying both Sections 28 and 29 and adds that any REC and qualifying capacity should come from the same renewable energy system. If they are unbundled, Consumers contends that they must comply with Section 28(5)(c), including the RTO-territory requirement, 5% limitation, and limitation on use after 2035. Consumers' reply comments, pp. 6-7. Lastly, Consumers recommends that "the Commission adopt clear, administrable principles rather than a rigid physical-delivery test or an overly broad presumption based on location." *Id*., p. 7. Here, Consumers emphasizes the importance of documentation and traceability between a REC and the renewable energy and capacity used for compliance. *Id*.

In its reply comments, DTE Electric asks the Commission to reject some intervenors' interpretation of "renewable energy" in Section 28(5)(b) to mean RECs, arguing that such an interpretation would allow an unbundled REC to be treated under Subsection 5(b) as opposed to Subsection 5(c), which expressly addresses unbundled RECs, and would lead to an irreconcilable overlap between the two subsections. Per DTE Electric:

> [u]nder that interpretation, a REC acquired without its associated renewable energy could qualify under subsection (5)(b) merely because capacity was also acquired, without being subject to the limitations that the Legislature expressly imposed on REC only acquisitions under subsection (5)(c). Yet subsection (5)(c) separately limits qualifying RECs acquired without associated renewable energy or capacity to 5% of an electric provider's RECs used annually for compliance, excludes those RECs from Section 29, and prohibits their use for compliance after 2035.

DTE Electric's reply comments, pp. 2-3.[5] The company argues that subsections (5)(b) and (5)(c) must be read such they maintain their distinct functions. *Id*., p. 3. Turning to Section 29, DTE Electric states that this section imposes a capacity requirement on out-of-state resources and that this additional condition does not redefine a bundled REC or the associated renewable energy requirement in Section 28(5). DTE Electric repeats that it does not support an interpretation where new presumptions based on the location of a renewable energy system or the generalized benefits thereof are substitutes for the products and rights actually obtained by an electric provider. Thus, DTE Electric asks that the Commission:

> confirm that a bundled REC under MCL 460.1028(5)(b) includes the REC and its associated renewable energy; that capacity is a separate product and is not required to accompany every bundled REC; that RECs acquired without associated renewable energy or capacity remain subject to MCL 460.1028(5)(c); and that MCL 460.1029 imposes the additional statutory requirements applicable to RECs sourced from renewable energy systems located outside Michigan.

DTE Electric's reply comments, p. 3.

Energy Michigan organized its reply comments as replies to the Staff and then replies to Consumers. Beginning with the Staff's response to Question 1, Energy Michigan agrees with the Staff's understanding of the 5% limitation applying to unbundled RECs, not RECs associated with either energy or capacity, and thus, agrees that the function of "or" in Section 28(5)(c) could be read to allow for energy *or* capacity to be included. However, Energy Michigan contends that the bundling requirement can be met by other circumstances than those described by the Staff, as described in Energy Michigan's initial comments. Energy Michigan's reply comments, pp. 1-2. As to Question 2, Energy Michigan does not oppose the Staff's pro-rata recommendation if the

[5] DTE Electric's reply comments were not paginated. Therefore, the Commission applies pagination in natural order beginning with the first page following the cover page of DTE Electric's reply comments.

Commission accepts it but repeats its position that RECs should be based on the resource's capacity factor, which Energy Michigan sees as a similar principle to the Staff's position. *Id*., p. 2. Energy Michigan disagrees with the Staff's response to Question 3 and states that the 5% limitation would still apply to out-of-state unbundled RECs and in-state RECs that do not yield demonstrated local load reduction benefits. *Id*. In response to Question 4, Energy Michigan describes an adverse result of the Staff's position that BTM generation should not be viewed differently. Per Energy Michigan:

> [u]nder Staff's interpretation of the language here, both BTM and many PURPA and other renewable projects with long-term PPAs that do not include RECs will find that their RECs are saleable only to the utility purchasing their capacity and energy. As noted in our Comments, this adversely affects the economics of these projects and it does so in mid-stream, so to speak. That is, these projects entered into long-term agreements with a reservation of RECs on the assumption that these environmental benefits would be saleable in the REC market. If the 5% limitation applies as Staff interprets it, then the seller will effectively be forced to sell to a single purchaser, who may or may not be in the market for additional RECS, and in any event has no competition for those RECs so no need to pay fair market pricing. Staff's recommendations are focused entirely on regulatory language but ignore the impact of that language on the affected parties.

Id.

Turning to Consumers' reply to Question 1, Energy Michigan refers to its interpretation described in its initial comments as well as its reply comments to the Staff. *Id*., p. 3. Energy Michigan contends that Consumers' interpretation of Section 29 as imposing locational requirements and Section 28(5) as imposing bundling requirements misses several points, namely: (1) Section 29 is not strictly locational–it also includes a bundling requirement; (2) Consumers admits that, under its interpretation, Section 29(1)(a) would still require a purchase of capacity in order to comply with Section 28(5)(b), thus erasing the distinction between Section 29(1)(a) and (b); (3) Consumers never explains how double counting would arise under Energy Michigan's interpretation; and (4) Consumers fails to explain how a presumption in favor of in-state renewable

generation would infringe on ownership rights of entities contracting to purchase or sell in-state renewable energy. *Id*., pp. 2-3.

Discussion

The Commission first thanks the Staff and commenters in this docket for their insight and efforts in resolving the interpretation questions regarding Sections 28 and 29 of Act 235. As the questions in this docket involve interpretations of statutory language, it is pertinent to begin with a recitation of the relevant statutory sections.

Section 28(5) reads:

> Each electric provider shall meet the renewable energy credit standard, subject to subsection (3), with renewable energy credits obtained by any of the following means:
>
> (a) Generating electricity from renewable energy systems for sale to retail customers.
>
> (b) Purchasing or otherwise acquiring renewable energy and capacity.
>
> (c) Purchasing or otherwise acquiring renewable energy credits without the associated renewable energy or capacity. Renewable energy credits acquired under this subdivision shall be produced within the territory of the regional transmission organization of which the electric provider is a member, and, except for a municipally owned electric utility, shall not exceed 5% of an electric provider's renewable energy credits annually used to comply with the renewable energy standard. Renewable energy credits acquired under this subdivision are not subject to the requirements of section 29 and shall not be used to comply with the renewable energy standard after 2035.

MCL 460.1028(5).

Section 29 reads, in relevant part, as follows:

> (1) Subject to subsections (2) to (4), a renewable energy system that is the source of renewable energy credits used to satisfy the renewable energy standards shall be located as described in either of the following:
>
> (a) Anywhere in this state.

> (b) Outside of this state, but only if the electric provider includes the capacity from the renewable energy system toward meeting its resource adequacy obligations to the applicable regional transmission organization.
>
> (2) Subsection (1) does not require an electric provider to procure firm transmission rights to ensure deliverability to the resource adequacy zone where the load is served.

MCL 460.1029.

When interpreting a statute, the Commission's goal is to ascertain and give effect to the intent of the Legislature. *Mich Ed Ass'n v Sec of State*, 489 Mich 194, 217; 801 NW2d 35 (2011). Our starting point is the language of the statute itself. *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 13; 795 NW2d 101 (2009). The Legislature is presumed to have intended the meaning that it plainly expressed, and clear statutory language must be enforced as written. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012); *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012); *People v Dowdy*, 489 Mich 373, 379; 802 NW2d 239 (2011).

However, when the statutory language is ambiguous, the Commission may look beyond the words of a statute to ascertain legislative intent. A statutory provision is ambiguous if it is equally susceptible to more than a single meaning. Statutory language is not ambiguous merely because a reviewing court questions whether the Legislature intended the consequences of the language under review. Rather, an ambiguity exists only where the language of a statute as used in its particular context has more than one common and accepted meaning. Where common words used in their ordinary fashion lead to one reasonable interpretation, a statute cannot be found ambiguous. Further, a finding of ambiguity is to be reached only after all other conventional means of interpretation have been applied and found wanting. *Sun Valley Foods Co v Ward,* 460 Mich 230, 236-237, 596 NW2d 119 (1999).

Moreover, "what is 'plain and unambiguous' often depends on one's frame of reference," and warrants considering the context of the passage by reading it "in relation to the statute as a whole and work in mutual agreement." *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n*, 484 Mich 1, 13; 795 NW2d 101 (2009) (citations omitted). Therefore, the Commission reads a statute "as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined." *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013). In so doing, the Commission "avoid[s] a construction that would render part of the statute surplusage or nugatory" and considers both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Ford Motor Co v Dep't of Treasury*, 496 Mich 382, 407; 852 NW2d 786 (2014) (citation omitted); *People v Redden*, 290 Mich App 65, 76-77; 799 NW2d 184 (2010) (citation omitted).

Lastly, the fundamental rule of construction of statutes is to ascertain and give effect to the intention of the Legislature. Whenever possible, statutes are to be construed to give them validity and a reasonable construction. Seeming inconsistencies in the various provisions of a statute should be reconciled, if possible, to arrive at a meaning which gives effect to all parts of the statute; a construction leading to an absurd consequence should be avoided. *Petition of Michigan State Hwy Comm, Canton Twp, Wayne Co*, 383 Mich 709, 714-715; 178 NW2d 923 (1970).

With the statutory provisions and the principles of statutory construction in mind, the Commission now provides guidance responsive to each of the questions described above.

1. Should the reference to "renewable energy and capacity" in MCL 460.1028(5)(b) be interpreted to mean "both renewable energy and capacity as well as the associated REC" or "renewable energy credits and associated capacity," such that the purchase of the underlying energy commodity is not a prerequisite for a REC to qualify as "bundled" under the statute?

In examining the language of Section 28(5), the Commission is persuaded that Energy Michigan's position represents the most reasonable interpretation of Section 28(5)(b). To explain,

Section 28(5) sets out the means by which an electric provider can achieve compliance with the RPS, namely: (a) an electric provider may rely on RECs that shall be from a renewable energy system that generates electricity for sale to retail customers, (b) an electric provider may purchase or otherwise acquire renewable energy and capacity, or (c) an electric provider may purchase or otherwise acquire RECs without the associated renewable energy or capacity. Pursuant to MCL 460.1011(c), a REC is a credit granted under a certification and tracking program, the Michigan Renewable Energy Certification System (MIRECS), established under Section 41 of Act 235, MCL 460.1041, which represents generated renewable energy, as discussed further below.

Thus, Section 28(5)(b) and (c) allow for bundled and unbundled REC options for RPS compliance. Section 29 then provides locational requirements for the renewable energy system to ensure a level of deliverability to Michigan for Michigan-compliant RECs used under Section 28(5)(a), (b), and (c). Section 29(a) recognizes that the renewable energy system generating RECs within the state is clearly deliverable to the state due to the system's in-state location. Section 29(b) is distinct from Section 29(a) in that an electric provider using RECs generated from an out-of-state renewable energy system must include the capacity from that renewable energy system toward meeting the electric provider's resource adequacy obligations for the applicable regional transmission organization (RTO). Thus, Section 29 contains a clear distinction between in-state and out-of-state sources by requiring that RECs from out-of-state resources be paired with capacity from the renewable energy system. Section 29 does not include a capacity requirement for in-state resources and does not include an energy requirement for either in-state or out-of-state resources.

In this particular context of Act 235 dictating the RPS compliance methods, the Commission finds that there is seemingly a conflict between Section 28 and Section 29 when Section 28(5)(b) is read to require that a REC be bundled with the underlying renewable energy and capacity. Under this reading, the distinction between in-state and out-of-state resources provided for in Section 29 becomes nugatory by requiring the same accompaniment of capacity with a REC in Section 28 for in-state resources that Section 29 purposely omits. The Commission finds that an interpretation of Section 28(5)(b) that nullifies the explicit distinction of Section 29 should be avoided.

The Commission finds that the statutory definitions of "renewable energy" and "renewable energy credit" support adoption of Energy Michigan's interpretation. It is true that "renewable energy" and "renewable energy credit" are two distinct terms with distinct definitions under Act 235; however, "renewable energy credit" is defined as representing generated renewable energy. MCL 460.1011(c). Thus, Energy Michigan is correct that a REC is a tradeable commodity representing renewable energy.

As evident by the many recitations of Section 28(5)(b) in this order, the statute uses the term "renewable energy" and then distinctly uses the term "renewable energy credits" in Section 28(5)(c). However, in applying the statutory and real-world definitions of REC and renewable energy, the Commission finds that "renewable energy" in Section 28(5)(b) may have multiple meanings, including a meaning that matches that of a renewable energy credit in the context of the compliance options outlined in Section 28(5). To explain, a REC is a marketable commodity that has been certified through MIRECs and represents an amount of renewable

energy[6] generated from a renewable energy system as defined in Act 235. *See*, MCL 460.1011(a), (c), and (i). In other words, the REC represents the renewable attribute of the underlying energy generated from the renewable energy system but is a separate commodity that can be detached from that underlying energy and sold, retired, or otherwise separated through the MIRECS certification process. Because it is the REC that represents the certified, trackable, and measured renewable attribute of a specific amount of energy to be used for RPS compliance purposes, the underlying energy cannot be considered renewable energy once a REC is certified and separated from the underlying energy. Thus, in the context of RPS compliance in Section 28, requiring the purchase or acquisition of "renewable energy" necessitates the renewable attribute that is represented by the REC, not the underlying energy. Therefore, in that context, it is reasonable to interpret Section 28(5)(b)'s use of "renewable energy" as synonymous with the term REC.

While Consumers argues in its initial comments that reading "renewable energy" in Section 28(5)(b) to mean "renewable energy credit" would mean that Subsection (5)(b) collapses into Subsection (5)(c) and allows providers to escape the 5% limitation on unbundled RECs, the Commission disagrees and finds that the distinction between Subsections (5)(b) and (5)(c) is maintained. Under the Commission's interpretation, Subsection 5(b) requires a REC and capacity (as described below), and Subsection 5(c) pertains to RECs that are not associated with either energy or capacity.

Thus, the Commission finds Energy Michigan's interpretation of Section 28(5)(b) to be reasonable and agrees that the provision "purchasing or otherwise acquiring renewable energy and capacity" should be read as allowing for a REC and capacity without the required purchase or

[6] Under Section 39 of Act 235, one REC is granted per one megawatt-hour of electricity generated from a renewable energy system. MCL 460.1039(1).

acquisition of the underlying energy. Further, as discussed below, the Commission also agrees with Energy Michigan's interpretation that in-state renewable resources should be presumed to provide load reduction or capacity benefits that satisfy the bundling requirement of Section 28(5)(b).

2. If MCL 460.1028(5)(b) is interpreted to require renewable capacity and RECs without the associated energy, should the RECs be limited to the pro-rata share of capacity from a particular renewable energy system?
   a. If so, how should this be calculated?
   b. If not, why not?

The Commission agrees with the Staff's proposal for pro-rata treatment for RECs associated with capacity, which was tacitly agreed to by the other commenters. Specifically, the percentage of the ZRCs that is acquired from the facility should equal the percentage of annual RECs generated by that same facility that can be purchased or used for compliance under Section 28(5)(b). The Commission finds that this approach will avoid the concern raised by Consumers that a nominal amount of capacity could be tied to a large number of RECs. Under the Staff's approach, the facility's nameplate capacity, projected capacity factor, and the share of capacity contracted for will be considered and there will be consistency with MISO's resource adequacy and accreditation principles.

However, the Commission agrees with Energy Michigan's position that capacity does not need to be purchased and included with the accompanying REC for in-state renewable energy systems. As discussed below in response to Question 3, the Commission finds that a REC paired with the presumed capacity and load reduction benefits from in-state renewable generation satisfies the bundling requirement under Section 28(5)(b). Therefore, the pro-rata methodology would apply where purchased capacity is paired with the accompanying REC for out-of-state

resources and for RECs from in-state resources where it has been shown that the presumed capacity benefit has not been realized.

3. Should the phrase "or otherwise acquiring" in MCL 460.1028(5)(b) be interpreted to allow a load-serving entity to satisfy the capacity and energy components of the bundling requirement under a presumption that in-state renewable generation reduces the load that the load-serving entity must otherwise serve?

a. If this presumption is true, in what situation would the 5% limitations within MCL 460.1028(5)(c) take effect?

As noted above, the Commission agrees with Energy Michigan that the phrase "or otherwise acquiring" in Section 28(5)(b) allows an electric provider to satisfy the bundling requirement of a REC to be paired with capacity by applying the rebuttable presumption that in-state renewable generation reduces load and provides capacity benefits. The use of "or otherwise acquiring" denotes circumstances outside of a traditional purchase agreement or contract for the purchase of capacity that allows the Commission to recognize quantifiable, measured, and traceable load reduction and capacity benefits associated with in-state renewable generation. The Commission emphasizes that the presumed load reduction and capacity benefit is a rebuttable presumption, meaning that if it is shown that these benefits are not being realized within the provider's RTO, the capacity presumption would not apply and a provider would be required to bundle or purchase the capacity with the RECs to illustrate that the benefit of capacity is being realized within the electric provider's RTO.

Consumers disagreed that in-state renewable energy generators should be presumed to provide capacity benefits and argued that providers must show a specific, traceable, and documented relationship between the REC and the energy or capacity benefit. The Commission finds that the process of certification of a REC through MIRECS achieves the specificity, traceability, and documentation for the REC and the underlying energy and capacity. In the MIRECS certification

process, the generation type, source, date of creation, and generator information are verified and documented with the REC; therefore, there is traceability between a REC used for RPS compliance and the capacity subject to the presumption.

The Commission agrees with Energy Michigan that the 5% limitation on unbundled RECs enumerated in Section 28(5)(c) would not be rendered superfluous by this interpretation but would remain applicable to out-of-state RECs that are not accompanied by capacity and to in-state RECs for which it has been shown that the associated load reduction or capacity benefit has not been realized.

4. Should BTM in-state generation be presumed to provide capacity and energy benefits to that customer's electric provider, the local grid, and the applicable RTO zone so that RECs generated BTM by facilities located within the state of Michigan are presumed to satisfy any bundling requirement under MCL 460.1028(5) and MCL 460.1029(1)?

a. Why (or why not) would this situation be different than the situation contemplated in question 3?

Similar to the Commission's interpretation and reasoning responsive to Question 3, the Commission finds that BTM generation has the ability to provide load reduction and capacity benefits such that it can be presumed to provide the capacity benefits that satisfy the bundling requirement under Section 28(5)(b).

5. MCL 460.1029(1)(b) makes no mention of energy, only capacity and RECs. Should out-of-state resources be treated differently from in-state resources with respect to the provisions in MCL 460.1028(5)?

In looking to the plain language of Section 29, the Commission finds that out-of-state resources satisfy the bundling requirement with capacity bundled with a REC (using the pro-rata relationship described in response to Question 2), but energy is not required to be included for out-of-state resources pursuant to Section 29(1). The Commission finds that in-state and out-of-state resources should not be treated differently under Section 28(5)(b), in that both out-of-state and in-

state resources must meet RPS compliance through purchasing or otherwise acquiring RECs bundled with capacity, but out-of-state resources must then meet the additional requirement of bundling RECs with capacity. As explained above, the Commission finds that in-state renewable generation should be presumed to provide load reduction and/or capacity benefits that satisfy the bundling requirement in Section 28(5)(b) unless it is shown that those benefits are not being realized. The Commission notes that the inclusion of energy with the bundled REC and capacity would also be compliant. Otherwise, if a provider opts to use unbundled out-of-state RECs, the 5% limitation in Section 28(5)(c) applies.

6. If MCL 460.1029(1)(b) is intended to apply only to capacity and RECs without the associated energy, should it be interpreted such that the RECs and capacity acquired out of-state must both be acquired from the same facility?

The Commission finds that, to maintain traceability and clear documentation of RECs and the associated out-of-state capacity and to avoid diminishing the effect of the 5% limitation in Section 28(5)(c), RECs and the associated capacity should be sourced from the same facility to meet the compliance requirements in Sections 28 and 29. The Commission finds that this interpretation is supported by the language in Section 29(1), which states that out-of-state RECs are compliant if the electric provider "includes the capacity from *the* renewable energy system toward meeting its resource adequacy obligations . . . ." MCL 460.1029(1)(b) (emphasis added). The use of "the" as opposed to "a" or "any" denotes specificity to the same renewable energy system that produced the RECs. Further, the Staff's caution against a provider meeting compliance by purchasing RECs from a REC market and any other capacity within the RTO territory and such an arrangement being contrary to the purpose of the 5% limitation is well-taken. To avoid such a result, the Commission requires out-of-state resources to source capacity and RECs from the same source.

THEREFORE, IT IS ORDERED that, going forward, the implementation of Sections 28 and 29 of Public Act 235 of 2023 by the Commission shall proceed according to the interpretations described in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at sheac1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Shaquila Myers, Commissioner

By its action of November 5, 2026.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-21568

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on November 5, 2026 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna Brown

Subscribed and sworn to before me
this 5th day of November 2026.

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

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