

21-CEP/CNF Update Workgroup Strawman Proposals for Baseload Additions

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Proposal to Balance Supply and Demand

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The Association of Businesses
Advocating Tariff Equity



The Local Utility Should Forecast Demand For Electricity Without Market Intervention Related to Incremental Efforts to Control Demand

The Local Utility Shall Also Forecast Sales
System Reliability/Reserves
Reassess Level of Planning Margins/MISO
Forecast or Rate Case

The Local Utility Should Analyze Its Current Inventory

Plants Owned by Utility as Adjusted For:

Retirements

Clean Air Effects

The Local Utility Should Analyze Its Current Inventory

Demand Control:

Mandatory

Voluntary

Rate Changes to Make Cost Based

Interruptible Rates

The Local Utility Should Analyze Its Current Inventory

PPA's With Third Parties (PURPA and non-PURPA)

Adjust for termination with advent of Day 2

Adjust for termination if natural gas is primary fuel

Spot Market vs Local Production

Local Utility Should:

Analyze using cost and reliability as primary criteria
Identify the dollar cross over point

Local Utility to Identify Needed Characteristics

Capacity

Dispatchability

Availability

Baseload

Intermediate

Peaking

DSM

Timing

Local Utility Should Identify Available Options and Clean Air Act/CO2 Assumptions

New generation (traditional or unconventional)

New PPA's (with performance standards)

Transmission Upgrades

Cogeneration and dispersed generation

Local Utility Should Identify Available Options and Clean Air Act/CO2 Assumptions

Demand Control:

- Retail Pricing Signals

- Efficiency Measures

- Utility and Third Party Programs

- Energy Standards

- Short (3 yr) and Long (10 yr) Plan

Assessment Criteria

Cost as reflected in retail rates

Reliability of meeting system needs

Longevity

Acquisition Process - RFP

Informal input/consensus by stakeholders and bidders

PSC approval/3rd Party Evaluator/PSC Staff

Approved RFP made public

Standardized Agreements

Acquisition Process - Bids

Capacity payments measured in \$/kW/month

Initial energy charge measured in \$/kWh

Estimate of future energy prices

Operating characteristics

Requested term of contract if over minimum 20-year

Acquisition Process – Bids (continued)

Qualifications of bidder

Tentative timeline and milestones – construction, installation, implementation

Other benefits associated with bid

Project acceptance criteria

Long term performance standards

Acquisition Process – Bids (continued)

Bid Review:

Price

Reliability

Longevity

Other Factors in case of a tie

Acquisition Process – Bids (continued)

Contested case with PSC selection of winners

Costs just and reasonable for ratemaking/Act 304 approval

Ratebase property will be removed from rate base at fair value in an expedited contested case

Acquisition Process – Bids (continued)

If timeline and milestones are met and facilities used and useful – then there will be a rate increase

If timeline and milestones are not met, bid acceptance may be revoked by PSC or on complaint of party

No public assistance or incentives for any option



21st Century Energy Plan
Capacity Need Forum Update Policy Sub-Group

Tanya Paslawski, Chair

Michigan Public Service Commission

June 7, 2006

CNF Update Policy Sub-Group (Tanya Paslawski – Chair)¹

Policy Recommendations

- The State of Michigan should create an open, transparent, fair, just, reasonable, and non-discriminatory competitive procurement process that best serves the public interest of Michigan's electricity consumers to meet future generation resource needs.
- Risk should be assigned to those parties best positioned to manage it (e.g., risks associated with construction should be the responsibility of EPC contractors; interest rate risk should be borne by swap counterparties; fuel risk should be assumed by commodity suppliers; and weather risk should fall to insurers).
- The policies of the State of Michigan should support the further development of wholesale and retail competitive electricity markets, and benchmarks should be established to assist in the quantification of the success of current policies.
- Regional matters must be considered in the continued evaluation of capacity needs (i.e., Midwest Independent System Operator and activities in other states).
- Regulatory certainty is necessary to allow companies to make long-term decisions about investment in the State of Michigan.

¹ Participants include Gener Gotiangco (Covert Generating), Terry Harvill (Constellation), Rodger Kershner (Howard and Howard/LS Power), Bob Nelson (Fraser Law Firm), Tanya Paslawski (Direct Energy), and Eric Schneidewind (Energy Michigan).

CNF Update Policy Sub-Group (Tanya Paslawski – Chair)

Policy Recommendations

- The State of Michigan should adopt a policy that a competitive procurement process is among the most effective means to achieve these objectives.
- A competitive procurement process should complement and improve the state's economic growth by, among other things, securing the most efficient and least-cost power generation and transmission assets for Michigan's electricity consumers.
- All investor-owned electric utilities serving more than one million customers should employ a competitive bidding process when purchasing long-term electric generation resources.
- The competitive bidding process should be open to Commission scrutiny, as are other regulated utility practices.
- There should be reasonable standards of conduct for transactions between utilities and their affiliates and standards for transactions between utilities and competitive bidders conducting business under any competitive procurement process.

CNF Update Policy Sub-Group (Tanya Paslawski – Chair)

Policy Recommendations

- To the extent that parties agree that the current Michigan “hybrid” electricity structure is dysfunctional and unsustainable, the State of Michigan should not adopt any policies that perpetuate the current structure.
- Accordingly, the State of Michigan should strongly consider limiting an incumbent investor-owned electric utility serving more than one million customers from directly participating in the competitive procurement process and adding additional generation resources to the utility’s rate base.
- Any activity in the competitive procurement process by an incumbent investor-owned electric utility serving more than one million customers should be limited to the determination of future generation resource requirements in cooperation with the Michigan Public Service Commission and interested parties.
- However, any competitive affiliate of an incumbent investor-owned electric utility should be permitted to participate in the competitive procurement process equally with other qualified bidders.
- Any guarantees for cost recovery or other incentives must be available to all bidding parties.
- To the extent retail choice customers are responsible for cost recovery they should participate in the benefit of the supplies secured including all current generation-related charges.

CNF Update Policy Sub-Group (Tanya Paslawski – Chair)

RFP Competitive Bidding Procurement Process

- Every five years, each investor-owned electric distribution utility serving more than one million customers should file a “Capacity Need Assessment” and an associated “Competitive Procurement Plan” addressing the subsequent ten years of resource needs.
- The Capacity Need Assessment and Competitive Procurement Plan should be treated as a contested case proceeding before the Michigan Public Service Commission.
- The Capacity Need Assessment should include all related regional entities and activities that establish Michigan as the most appropriate geographic location for new capacity additions.
- The Michigan Public Service Commission shall determine the amount of capacity needed and other relevant details (i.e., location constraints due to reliability concerns, specified percentage of renewable energy, etc.) that will form the basis of a competitive procurement Request for Proposal.

CNF Update Policy Sub-Group (Tanya Paslawski – Chair)

RFP Competitive Bidding Procurement Process

- The Commission shall retain and compensate at the soliciting utility's expense an Independent Evaluator to administer the competitive procurement process.
- The Independent Evaluator shall evaluate the RFP and the subsequent bids, and select the winning bidder based on the Commission's previously determined evaluation criteria via the contested case proceeding or Commission rule.¹
- The contract shall contain appropriate guarantees, as established by the Commission, regarding the development of the generation resource and the reliability of services.
- Any disputes challenging the decision as not meeting the criteria for decision specified by the Commission's rules shall be addressed by the Commission in an expedited manner.
- Costs resulting from the winning bidder(s) shall be *per se* just and reasonable and capped at the winning bid amount.
- Simultaneously with the first plan cases, the Michigan Public Service Commission shall establish rules to govern a competitive procurement process by a rulemaking proceeding.¹

¹ Time constraints may warrant the first RFP be established by Commission Order with a permanent process in administrative rules to follow.

21 ST CENTURY ENERGY PLAN

A horizontal brushstroke in a vibrant blue color, tapering at both ends, positioned below the first line of text.

**CAPACITY PROCUREMENT
PROCESS STRAWMAN
CONCEPT**

Concept Team

- Jennifer Alvarado – Great Lakes Renewable Energy Association
- David Gard – Michigan Environmental Council
- Tom Knoll - Kalamazoo County Health & Community Services
- Robert Nelson - Fraser Trebilcock Davis & Dunlap, PC
- Richard Polich – Energy options & Solutions
- Robert Strong (Ad Hoc) – ABATE

Capacity Procurement Principals

- All resources included in process
 - ◆ Supply Side
 - ◆ Demand Side
- Renewable & energy efficiency/demand side options should be considered first.
- Resources procured through competitive bid
- Capacity plan is utility specific and developed by Utility
- Need to focus on keeping the process time to a minimum
- Need to make the process as open and fair to all parties as possible.
- Final contracts with utilities
- Automatic Commission approval of inclusion in rates if process is followed properly

Conceptual Capacity Procurement Process

PHASE I – CAPACITY PLAN (105 Days)

Utility Files Capacity Need Proposal

- Projects sources to meet needs
- Identifies timing of needs
- Includes modeling assumptions
- Includes proposed request for Proposal to meet needs

Comment Filed Responding to Utility Proposal

60 day
Comment Period

Commission Issues Order

- Identifies modification to Utility Proposal
- Finalizes capacity procurement plan
- Specifies resources to be used
- Specifies timing
- Establishes final RFP

45 Days after
Comments Filed

PHASE II – Capacity Procurement (approximately 1 year)

RFP(s) Issued

15 Days after
Commission
Order

Binding Proposals Submitted

180 Days

3rd Party Evaluates Proposals

60 Days

Utilities execute contracts with successful bidders

30 Days

*At this point, contracts are guaranteed
Commission approval and Utilities are
guaranteed cost recovery*

Phase III – Contested Case Proceeding for Inclusion in Rates (Anybodies Guess)

Critical Components of Bid Process

- Competitively Neutral
- All Resources are Eligible
- All Parties have access to Evaluation tools and models prior to bid submission
- 3rd Part evaluation
- Process must be open
- Utilities can bid but must bid on same basis as all other parties. Cost overruns are at bidders expense and cannot be used to increase costs to rate payers.

Key Issues & Concerns

- MISO Delays
- Interconnection Cost Responsibility and Bid impact
- Creation of fair competitive comparison of alternative solutions
- Stratification of resources

21st CENTURY ENERGY PLAN

Policy Strawman for the Development of
a
Certificate of Need Process

Basics of Certificate of Need

- Process used in many States
 - Traditionally Regulated States and Restructured States
 - Voluntary Two Tier Process
 - **Tier I**
 - Need for the new supply is established
 - Determines a Plan or Approach for Resource Acquisition
 - **Tier II**
 - Proceeding that establishes the cost on a plant specific basis.
 - Cost Basis for Plant Additions based on Competitive Bidding of Engineering, Construction and Procurement (EPC)
-

Certificate of Need

- Comprehensive Filing of Least Cost Plan/IRP
 - As Needed Basis (not prescribed)
 - Contested Case Open Process
 - Supply addresses EE, DSM, Renewables, etc.
 - Certificate is non-rescindable
-

Key Issues

- Separates different types of risk into parts
 - Risk of being second guessed many years later
 - Risk to Cost and Schedule
 - Process is voluntary, traditional approach still available
 - May commence permitting, siting, interconnect studies with or without CON – Manage Risk to Schedule
 - Is necessary but not sufficient by itself to stimulate development of Capital Intensive Assets (Baseload)
 - Pre-Approval does not address other key issues that will need to be attended. For Instance:
 - Effects of Retail Open Access on Load Swings – long term planning for long term assets
 - Cash flow during construction
-

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July 20, 2006

VIA ELECTRONIC MAIL *grstoji@michigan.gov*

Mr. George Stojic
Engineering and Service Quality
Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909

Re: ***Follow-up Comments on CNF***

Dear Mr. Stojic:

These comments should be read in conjunction with the comments I previously supplied in a letter to you dated July 7, 2006. These comments outline ABATE's position regarding whether there should be any changes to the Commission's policy used to implement Act 141.

The major change that is needed is to move rates to cost of service such that the incumbent utilities can fairly compete against AESs. Basing retail rates on the cost to serve each class of customers is the fairest way to set prices for electric service. The current subsidies in rates are inherently unfair and lead to a false or inefficient allocation of resources. Customers with under priced service will generally consume more than if the price for that service were set equal to the cost of service. Cross-class subsidies can lead to demand distortions in that subsidized customers create higher demands which, in turn, leads to the need for new generation capacity. Proper price signals will avoid unnecessary new investment and will keep costs more reasonable for all customers.

The current system where customers are guaranteed open access should remain intact. Rules have been developed which limit the amount of "gaming" that can be seen in the marketplace where customers are assumed to jump on and off the utility's generation when wholesale prices change. Further, the risk faced by utilities has been greatly lessened as a result of the implementation of the Day 2 LMP market. This change has dried up the bilateral contract market where the only remaining sources of generation and electricity are gas fired units which are very expensive. If the only available capacity is gas fired, then utilities should be able to compete very well against any price, after assuming that their retail rates are set correctly. An

Mr. George Stojic
July 20, 2006
Re: *CNF*
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incumbent utility with predominantly coal fired generating capacity, coupled with some nuclear, should have a major competitive advantage over any entity that must base its prices on the marginal fuel of natural gas. Consequently, no further market changes are necessary.

To emphasize a point I made at the last group meeting, the contested case ABATE envisions following the third party evaluator's choice of bids, should be limited in scope and be expeditious. However, bidders and customers must have an adequate process available to them to ensure that they are afforded due process to protect their interests. In order to avoid abuse, the Commission should be able to assess costs if an unsuccessful bidder engages in a frivolous challenge to the winner(s).

Thank you for this opportunity to provide these comments.

Very truly yours,

CLARK HILL PLC

Robert A. W. Strong

cc: Pat Poli, pmpoli@michigan.gov
/ag

21st Century Energy Plan Strawman 2 Policy Subgroup¹

Update 7/25/06

In response to the Michigan PSC Staff's request for additional information from the four policy subgroups at the July 11, 2006 CNF Update work group meeting, the Strawman 2 workgroup submits the following clarifications and additional information for incorporation into the policy proposal already submitted.

It is important to keep in mind that all of the pieces of appropriate policy to obtain new capacity described below are intertwined and removal or modification of some pieces would likely result in the need to alter what remains. A holistic approach to the policy questions at hand is imperative.

The Need for Change is Important, but No Longer an Emergency

The recently updated demand forecasts from the incumbent utilities appear to have provided the state with a brief respite from the apparent emergency situation suggested by the original Capacity Need Forum report in January. A few months ago it appeared that capacity would be required to meet the state's needs in 2011 – an impossible target when the lead time to plan, design and build a large base load power plant is 6 to 7 years. According to the updated demand forecasts recently released, a new base load plant will not be needed until 2013 to 2015. The additional time can be well used because long term power planning is not a precise science. While the cost of bringing a plant online too soon is undesirable, the cost of not having a plant available soon enough is potentially ruinous.

The respite that appears from the latest forecast will provide the state the opportunity to carefully consider the proper course to revise the present regulatory and statutory frameworks and still allow for the provision of generating capacity when it is needed.

Update/Clarification of Process to Procure New Capacity in the State

Contested Case

As the Strawman 2 group previously submitted, a *contested case proceeding* that ultimately shows the need for new capacity in the state should be the first step in the process. Whether that new capacity is needed for reliability purposes, or to provide economic power to certain customers, or both, must be part of the analysis. The Strawman 2 policy position assumed that the new capacity was deemed necessary to ensure system reliability. Power procurement should be addressed on a company by company basis without the need for state involvement.

¹ Group members include Scott Frederick (Wolverine Power Marketing), Terry Harvill (Constellation), Rodger Kershner (Howard and Howard/LS Power and Covert Generation), Bob Nelson (Fraser Law Firm/Customer Choice Coalition), Tanya Paslawski (Direct Energy), Fred Polenz (WPS), Eric Schneidewind (Energy Michigan), Thomas Weeks (WPS), and Alex Zakem (WPS).

Reliability is a Regional Issue.

Michigan utilities operate within a region transmission area (the Midwest ISO) and are part of a grid that extends throughout the eastern and Midwestern United States along with parts of Canada. Michigan utilities no longer dispatch their own generation – rather, the generation is bid into the MISO Midwest Market and is dispatched by MISO. The MECS transmission control area operates as one control area, but includes both Consumers Energy and Detroit Edison service territories. Therefore, Michigan alone cannot guarantee reliability for Michigan electric customers due to events in other states or countries, but Michigan can do its part within the context of regional reliability activities.

MISO is responsible for grid reliability across its footprint and, as part of that requirement, identifies the areas where more generation and more transmission would be most effective in enhancing the reliability of the electric market and grid. In fact, MISO is currently addressing the question of how to ensure that necessary capacity is available in its footprint in a case before FERC. The Strawman 2 group would like to stress the importance of including regional system planning and reliability activities. The regional nature of reliability serves to highlight the importance of ensuring that transmission options are fully explored as a means to address increased reliability needs.

Reliability Solutions Must be Statewide

If the analysis in the 21st Century Energy Plan is focused solely on the boundaries of Michigan, then *reliability must be viewed as a statewide issue, not a local distribution utility issue.*

Although the Strawman 2 group had previously proposed that the analysis of need be conducted according to utility service territory, such a small scale focus would fail to capture the benefits of resources outside the boundaries of a local distribution utility, which resources in fact make the system more reliable statewide (DTE partial ownership of the Ludington plant in Consumers Energy’s territory is a good example). In fact, capacity should be built where it will most efficiently and effectively provide the reliability sought in this effort. As a result, the MPSC should have the responsibility for determining when and how much capacity is needed through a contested case proceeding and all customers of utilities serving more than 1 million customers should contribute to the costs in relation to the benefit they receive.

Consequently, the Strawman 2 group proposes that:

- a. analysis of need for generation capacity for reliability be done on a statewide basis, not a local distribution territory basis;
- b. if the MPSC finds a need for additional generation for reliability in the state, that *all* electric customers of major utilities pay for the reliability portion, regardless of which local distribution service territory they are in;
- c. the charge for the reliability portion be evaluated based on only the need for reliability;
- d. any costs of new generation above that needed for reliability be paid only by those that are purchasing energy supplied by the new generation. To be clear, if a 500 MW base load plan is chosen because the energy output is most economic in the long run, all customers would pay for the capacity costs of a 500 MW peaker, while only those

purchasing energy from the owner of the plant would pay for any additional costs of the base load plant; and

- e. if and when MISO incorporates a capacity or reliability or reserve charge in its market pricing, the charges for reliability paid by all customers would end. Customers should not pay twice for the same capacity. Generation owners would be compensated by MISO for the value of capacity/reliability.

Customers should not be forced to pay for products or services they do not receive.

Costs for existing or new capacity should not be recovered from competitive customers or customers of large utilities outside the location where the new capacity is built unless evidence in the contested case proceeding shows the state will benefit and a specific quantification of benefit and cost is determined and is actually received. Our proposal is similar to the “reliability surcharge” made by the MPSC staff in the January 3, 2006, CNF report with the addition that the payments would be made by *all* customers of large IOU’s in the state, no matter where the new generation is located or who is the owner. The reliability amount could be securitized to allow a plant to be financed after an open and transparent competitive bid is conducted as discussed below. The lowered finance costs that would be available with the certainty of cost recovery must be passed on to consumers and would be apparent in the bids submitted.

Competitive Bidding.

The ability to own and operate new generation should be open to all parties and all sources of power. A competitive bidding process must be used to determine the best option for Michigan customers. Utilities have a poor track record of building large base load plants both in terms of budget and timing, and no Michigan utility has built a new base load plant in over 25 years. Developers whose main business is to build and operate power plants are the logical parties to build in this state (assuming their success in a transparent competitive bidding process as discussed in more detail in the Strawman 2 original proposal). Whether or not a new generation plant is needed should be determined through a competitive process that allows state decision makers to weigh all available options before imposing costs on rate payers. The process must be open and transparent, run by an independent, disinterested evaluator to ensure the validity and fairness of the outcome.

There must be a level playing field for all bidders.

Incumbent utilities have at their disposal a variety of assets in the form of information, real estate and equipment that were financed by and purchased at the expense of their customers. Allowing incumbent utilities to game the bidding process by using resources at zero imputed cost obscure the cost advantages of competitive power providers would exacerbate the present problem and further stifle market development in the state. No regulated utility should be permitted to build generating assets, and thereby begin to reestablish its generating monopoly, unless it shows through the competitive bidding process that, absent customer financed advantages, it would be the least cost power producer.

Return to Service/Obligation to Serve

Concerns have been expressed during policy discussions regarding the difficulty of planning for customer migration with rate base assets. First, it should be noted that implementation of the

“reliability” proposal will resolve most of the problems raised by utilities associated with planning for uncertain load. Since all customers would be paying for capacity, this will greatly reduce or eliminate the burdens of providing required capacity for returning customers. Also, while logic dictates that generation providers benefit from serving more customers, the utility concerns about these issues can be address in one of the following ways:

- a. Eliminate the 12 month notice period and allow customers to return at will to utility service at market prices. A market priced tariff should be developed that reflects Hourly, Daily or Monthly market prices (e.g., see ComEd Rate HEP, Rider MEP, and Rider ISS).
- b. Returning customers may return to the utility’s standard tariffs with a minimum stay of no greater than 12 months.
- c. Since customers returning to utility service may be balanced with customers leaving utility service, utilities should be required to show actual harm in order to allow for more stringent rules.

OR

Bid out the return to service/provider of last resort provisions as a competitive process. That is, designate a supplier or suppliers to provide the provider of last resort service to returning customers.

Hybrid Market Structure

The hybrid market structure in Michigan has been noted as the reason why new capacity cannot be financed. The updated procedure for obtaining necessary capacity addresses the financing concern and therefore the concern expressed about the hybrid system. Other concerns that may have been raised by fellow policy subgroups will be addressed as they are made public.

Other

Aside from the concerns about the ability to obtain new capacity in the state without policy changes, the following additional policy considerations are submitted for the information of the staff in considering larger policy issues:

1. Utilities should focus on their responsibilities as a distribution company and not be competing against alternative electric suppliers. Once a competitive market opens, the generation services provided by the incumbent utility should be limited to, at most, provider of last resort with pass through rates to customers who do not chose and suppliers should be competing against each other for customers’ business. Even under the hybrid model in which regulated tariff rates are available to customers, the utility mindset that seems focused on eliminate competition entirely should not be tolerated by regulators or legislators.

Solution: (1) Incentives should be provided to make the utilities main focus be on maintaining and improving the distribution system for all customers and (b) utilities should be forbidden from utilizing competitively sensitive information like customer load

data available to them only because of their status as distribution utilities to their advantage in marketing to customers with preferred load profiles. Any information the utility has should be available to all suppliers in a way that protects customers from slamming and cramming.

2. Improper cost allocation between the distribution and generation functions improperly provides utilities an additional subsidy. Any cost that a utility would not incur if it did not provide generation services, such as marketing, should not be recoverable through distribution rates.

Solution: In the next round of rate cases, the parties should be required to focus on identifying such costs currently improperly recovered in distribution rates.

Proposed MPSC Generation Plant Approval Process and Policy Considerations

23 July 2006

A. The Plant Approval Process

Phase I Submission – Integrated Resource Plan

On an as needed basis, the Utility will file a Comprehensive Integrated Resource Plan (IRP) designed to evaluate the relationship between the energy demands of the utility's full service customers to the total supply requirements necessary to meet this demand. This filing will have two major aspects; one consisting of an Energy Supply Analysis and the other an Energy Supply Plan that is based on the Energy Supply Analysis.

1. **Energy Supply Analysis:** Includes an analysis of the energy and capacity-based demand and supply balance over short, intermediate and long-term timeframes. The Energy Supply Plan will include such elements as:
 - a. Current and future energy demand and energy demand profiles
 - b. Reserve margin requirements based on a loss of load analysis.
 - c. Existing supply resources from generation and transmission within the region.
 - d. A broad generation technology assessment.
 - e. General supply-related and plant-based costs as necessary to support resource cost modeling.
 - f. An analysis of transmission capabilities and constraints.
 - g. An analysis of pertinent supply options, including their associated energy and capacity costs, such as:
 - i. Energy efficiency and active demand management options
 - ii. Short-term power purchase agreements
 - iii. Renewable energy alternatives
 - iv. The potential purchase of existing generation assets
 - v. New generating plant development options
- 2a. **Energy Supply Plan** – This part consists of a plan for meeting the demand-based needs of full service customers to ensure that supply meets demand, including the reserve margins for both energy and capacity. The detailed Energy Supply Plan may include such elements as:
 - a. Short-term power purchase agreement(s)
 - b. An intermediate and/or long-term Energy Supply Strategy
 - c. A Renewables Energy Supply Plan
 - d. A Demand Management and/or Energy Efficiency Plan or Proposed Pilot Programs
 - e. An Environmental Compliance Strategy
 - f. New plant construction
- 2b. **Request for a Certificate of Need** - If the Energy Supply Plan identifies the need for new plant construction, the Utility shall also file a request for a Certificate of Need for the Plant and associated material supporting this request.

The request for a Certificate of Need will include such elements as:

- a. Conceptual engineering for the proposed plant
- b. Fuel type, generating capacity and plant performance characteristics such as heat rate and capacity factor
- c. Plant siting information
- d. The MISO/METC Interconnection Strategy
- e. A Permitting and Licensing Strategy
- f. Proposed partnerships, if applicable, and the proposed financing strategy
- g. The treatment of Construction Work in Progress (CWIP)
- h. A schedule for proceeding with further analysis or filings
- i. An explanation and schedule of how the final cost(s) of the plant will be determined using an Engineering, Procurement and Contracting (EPC) approach such as:
 - i. Lump Sum Turn Key (LSTK) with the EPC contractor taking the full contingency risk (full project wrap).
 - ii. Open Book (negotiated bid) EPC contract where the utility negotiates the major equipment and cost basis of the plant with the selected EPC contractor.

The Commission shall, within 180 days:

1. Issue an order granting or denying the Certificate of Need.
2. If the plan is approved, it shall include explicit approval that all costs of the plan shall be fully recoverable if executed prudently.

All costs incurred in the development of this filing shall be fully recoverable in rates. All costs related to the development of a generation plant development plan shall be fully recoverable.

Following the issuance of a Certificate of Need granting only a portion of the requested relief, or imposing additional conditions on the grant of a certificate, the utility would have the option of proceeding with the proposed project in accordance with the terms of the order amending or withdrawing its application.

Phase II Submission – Commission Order Authorizing Facility Construction

Following the procedure(s) outlined in the Certificate of Need as issued in Phase I, the utility shall file with the Commission a comprehensive package of materials, including preliminary engineering specifications and site-specific analysis seeking final approval of the detailed cost basis of generation plant addition(s) derived from the EPC contracting approach. In this filing, the Commission shall evaluate the prudence of costs derived from EPC competitive bidding that resulted in establishing the final price of the plant. This proceeding will take place in a timely manner as the final execution of the EPC contract is contingent upon securing an Order Authorizing Facility Construction.

In addition, the utility shall file materials related to rate treatment for the facility, as applicable.

The Utility shall file the following materials with the Commission:

1. The final design characteristics including fuel type, type of plant and related major components and equipment and the plant's operating characteristics.

2. The final developed cost basis of the plant, as established under the EPC-related procedures specified in the Certificate of Need.
3. An updated project schedule including construction and milestones.

The Commission shall issue an Order approving or denying the requested relief within 90 days:

1. The prudence of the final plant costs, design and development schedule.
 - a. Costs in excess of those approved in the Order shall be recoverable if the utility demonstrates that such costs could not have reasonably been avoided subject to prudence review standards.
 - b. The indices and cost trackers for adjusting the facilities costs based on inflation, commodity price increases and/or force majeure events.
2. Utility Cost Recovery
 - a. Rates incorporating the previously approved cost and schedule of the facility shall go into effect annually during the construction period. Upon the commercial operation of the facility, rates incorporating the previously approved recovery of the facility cost (depreciation) and other operating and maintenance expenses shall go into effect. Such rates are not subject to refund if the facility has been constructed in a manner consistent with the certification order.
 - b. The Commission shall be required to approve rates that allocate the costs of the facility among customer classes in a manner that reflects cost causation and that does not subsidize one rate class at the expense of another class.

Following issuance of an order granting only a portion of the requested relief, the utility would have the option of proceeding with the proposed project in accordance with the terms of the order or withdrawing its application.

Phase III – Periodic updates to Commission during execution of EPC contract

The Utility will provide periodic updates to Commission Staff per the schedule filed with the Commission.

B. Policy Requirements under Michigan’s Hybrid Regulatory Model

1. A regulated utility’s obligation to serve customers under the hybrid regulatory model should be revised and limited only to those customers who opt to remain a full service customer of the utility. Regulated utilities should not be required to procure capacity or energy supplies for “Choice” customers. Customers that have exercised this privilege should no longer have a right to receive the regulated rates enjoyed by non-choice customers should they decide to return to the incumbent utility. This is as much a matter of fairness to the bundled customers as it is a necessary and practical part of generation supply planning.

As a practical matter, a utility requires predictability of future customer load and hence supply obligations. Load forecasting is complex and an assumption-rich activity. A utility must be able to reasonably predict its potential supply obligation and revenues to facilitate proper long-term generation planning. In order to absorb the potentially large revenue swings associated with customer choice within the hybrid regulatory environment, the Commission must establish mechanisms that fairly manage the associated risks. There are a number of solutions to this problem including limiting choice, requiring returning customers to pay incremental cost to serve or market price, and implementing a non-bypassable charge for the reliability and market benefits of new generation.

A utility's remaining bundled customers must not be required to bear the risks of short or long supplies resulting from the switching behavior of Choice customers. As customers leave, costs escalate to the remaining customers. If Choice customers are allowed to return to the Utility under regulated rates, again costs can escalate to existing customers. In order to protect those customers that stay with the utility, Choice customers who wish to return to the utility should be offered rates commensurate with the additional costs to supply them.

Some customers may wish to retain the privilege of Choice, but if this option is to continue, it cannot be risk-free with the utility and existing bundled customers absorbing the impacts. These choice customers cannot retain Choice and operate as a power system free-rider and do so on the backs of the remaining bundled customers. If customers wish to exercise Choice, they should have no guarantee that they can return to the utility at the same bundled rates as those that have not left. We urge the Commission to adopt policies that properly assign market risk to those customers who elect Choice or would wish to do so in the future.

2. Each load serving entity using transmission or distribution networks operated by others shall be required to provide generation-related services associated with the delivery of service to customers at a level no less than the level required to maintain the integrity and reliability of the transmission and distribution system. For instance, each Load Serving Entity shall provide adequate capacity planning and operating reserves appropriate for the LSE's generation sources and load so as to maintain equal reliability for all transmission and distribution customers.

3. There are two different ways in which the Utility may guarantee the final price of the generation plant. One is to have the EPC contractor assume complete risk for the project as some considerable premium price. The other is to allow an adjustment to the project rate of return should the utility bear some of this risk on a risk reward basis. If the project is under budget or ahead of schedule the Utility would keep the difference in the assigned cost recovery. If the plant was over budget or past due, the Utility would assume this cost risk.

4. Rate deskewing is another key component of leveling the competitive playing field and providing greater customer load and revenue certainty. An energy policy for the State must also address this critical need.