May 21, 2020

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI  48917

RE:  MPSC Docket No. U-20650

Dear Ms. Felice:

Attached herewith for filing in the above-referenced matter, please find Retail Energy Supply Association’s Exhibits RES-1 through RES-5, which were admitted into evidence at the hearing held on May 21, 2020 in the above-referenced matter and should stand as official exhibits.

If you have any questions, please feel free to contact my office. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.

Jennifer Utter Heston

Jennifer Utter Heston

JUH/ab
Attachments
cc: All counsel of record
Question:

RESA-CECo-4: Please provide a copy of the proposed terms and conditions for participation in the residential demand response pilot program.

Response:

The Company is in the process of developing the enrollment process and terms and conditions for participation in the proposed gas demand response residential pilot. The terms and conditions for the proposed gas pilot will be similar to those for the electric Bring Your Own Device (BYOD) demand response program. The electric BYOD program terms and conditions are provided as U20650-RESA-CE-047_ATT_1 as an example.

Steve Q. McLean
January 29, 2020

Clean Energy
Consumers Energy – Peak Power Savers Smart Thermostat Program –
Customer Terms and Conditions

Thank you for your interest in participating in the Consumers Energy Peak Power Savers® Smart Thermostat Program (the “Program”). The Program is offered by Consumers Energy ("Consumers Energy") and is implemented by Uplight, Inc. ("Uplight"). These Terms of Use (these “Terms”) are a legal agreement between you and Consumers Energy governing your participation in the Program.

BY CLICKING ["I AGREE"] OR BY OTHERWISE USING THE SERVICE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS YOU MAY NOT PARTICIPATE IN THE PROGRAM.

In the case of inconsistencies between these Terms and information included in any other materials related to the Program (e.g., promotional materials and mailers), these Terms will always govern and take precedence.

1. The Program. The Program will include customers who have a central air conditioner and Wi-Fi enabled Smart Thermostat and are on a Time of Use Rate. Uplight, on behalf of Consumers Energy, will control the customer’s thermostat during demand response events called by Consumers Energy and measure the energy load shift that Consumers Energy will be able to utilize for the company’s Michigan Public Service Commission demand reduction requirements.

1.1 Devices. By participating in the Program you hereby grant to Consumers Energy and Uplightl the right to remotely access and control one or more smart thermostats at the address you are enrolling (each, your “Device”). When you authorize a Device, you may be presented with additional terms from the Device manufacturer (the “Manufacturer”). These Terms are in addition to, and are not replaced by, those terms. By authorizing a Device, you understand and agree that you are enabling Uplight to control that Device in connection with the Program.

1.2 Control. As part of this Program, Uplight may automatically change the temperature setpoint on your Device without any manual intervention by you. At any time that you desire, you may override this temperature setpoint simply by turning your Device to a different temperature or using the other methods enabled by the Device Manufacturer.

1.3 Changes. Consumers Energy reserves the right, in its sole discretion, to modify or to discontinue the Program at any time.

1.4 Eligibility. In order to register for the Program, you agree to provide to Uplight and Consumers Energy information to verify your eligibility for the Program. You agree that the information that you provide to Uplight or Consumers Energy in connection with the Program (“User Data”) will be true, accurate, current and complete, and you further agree that you will maintain and promptly update the User Data to ensure that it remains true, accurate, current and complete. This Program is available to full service residential customers served on a residential rate and who have the required metering equipment and infrastructure installed. Customers must have a participating Wi-Fi enabled thermostat (supported models: Emerson Sensi, Sensi Touch, Nest, Nest E, ecobee4, and ecobee3 lite), or be willing to purchase one. Customers must have a central air conditioning unit and an always-on Wi-Fi network. If Customer is a residential tenant, Customer assumes responsibility of obtaining permission from the landlord or property owner to participate in the Program. Customer eligibility to participate in the Program is determined solely by Consumers Energy and participating customers may be disenrolled at any time at Consumer’s Energy’s discretion. The Customer will be required to provide contact information needed to receive mandatory program communications, as described below.

2. Enrollment & Disenrollment. After enrollment is requested, Customer will be enrolled in the Program at the point eligibility is confirmed. Enrollment is voluntary; however, once enrolled you must commit to a minimum of 12 months. Customers are required to authorize the Program software onto their thermostat to receive the program incentive.
2.1 Energy Savings Days. Participating customers agree to participate in Critical Peak Events called “Energy Savings Days”. During a Critical Peak Event the Customer agrees that Consumers Energy may control the resident’s thermostat and shall be authorized to adjust the thermostat setting. If the Customer adjusts the thermostat during the Program they may be ineligible to receive the full program incentive. “Energy Savings Days” may occur any day of the week including weekends between the hours of 7:00 AM and 8:00 PM for no more than an eight hour period in any one day. “Energy Savings Days” may be implemented for, but not limited to, maintaining system integrity, making an emergency purchase, economic reasons, or when there is insufficient system generation available to meet anticipated system load. “Energy Savings Days” may only occur outside the hours of 7:00 AM to 8:00 PM during a declared emergency event as directed by Midcontinent Independent System Operator (“MISO”). Consumers Energy may call up to 14 “Energy Savings Days” events from June through September on non-holiday weekdays.

3 Incentives. In connection with the Program, Consumers Energy may offer certain rebates, offers, or other incentives (“Incentives”). Consumers Energy reserves the right to determine qualification for Incentives in its sole discretion. Failure to participate in the Program for its entire duration or overriding automatic Device control on a regular basis may disqualify you from Incentives. In particular, Consumers Energy reserves the right to eliminate Incentives if you opt out of 3 or more events in any 12 month period.

4 Communication. Customer agrees to receive mandatory Program communications and to provide and maintain valid contact information for such communications. Customer accepts responsibility for the receipt of these communications and for any increased energy charges resulting from failure to receive them. By enrolling, Customer accepts Consumers Energy’s Electronic Communications Terms & Conditions, including but not limited to those provisions regarding live and automated voice notifications and text messages when the customer provides a phone number (both land line and wireless).

5 Your Information. By submitting User Data and any other data, materials, or information in connection with the Program, data, materials, content or other information in connection with the Program, you are licensing such information to Uplight and Consumers Energy for the purpose of providing the Program. In addition, you hereby authorize Uplight to access your information maintained by Consumers Energy and/or Device Manufacturer solely in order for Uplight to provide the Program. You understand and agree that by authorizing Uplight to control your Device in connection with the Program, Uplight and its partners may receive access to data from your Device directly, including data collected from its sensors. You agree that Consumers Energy may include customer’s name, address, Consumers Energy account number, Consumers Energy services and resulting energy savings in a database hosted by Uplight, and such information may be included in reports or other documentation submitted to Consumers Energy and/or the Michigan Public Service Commission. Consumers Energy will treat such information as confidential and the information in the reports shall only be in the aggregate. For more information on the particular data that Uplight will receive access to, please contact Consumers Energy at (877) 742-7150

6 Personal Non-Commercial Use. The Program is offered for your own personal non-commercial use. Any commercial participation in the Program is expressly prohibited.

7 Costs. Consumers Energy and Uplight are not responsible for providing the systems necessary to participate in the Program, such as Devices or Internet access.

8 No Warranty; Disclaimer. YOUR PARTICIPATION IN THE PROGRAM IS AT YOUR SOLE DISCRETION AND RISK. THE PROGRAM IS OFFERED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND. CONSUMERS ENERGY AND UPLIGHT EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATING TO THE PROGRAM, WHETHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES FOR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR NON-MISAPPROPRIATION OR INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY) AND ANY WARRANTIES OR CONDITIONS ARISING UNDER ANY OTHER LEGAL REQUIREMENT. CONSUMERS ENERGY AND UPLIGHT MAKE NO WARRANTIES THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR-FREE. Participation in the Smart Thermostat Program are voluntary and designed to enable customers to reduce their energy bill through changing their behavior by reducing energy use during high cost times of peak demand. Participating customers accept the risk that participation may add to monthly electric bills.
Indemnification. To the fullest extent allowed by the law you agree to indemnify, and hold Uplight and Consumers Energy, its officers, directors, employees and agents, harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation reasonable attorney’s fees and costs, arising out of or in any way connected with your participation in the Program.

Limitation of Liability.

10.1 Limitation of Liability. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL UPLIGHT OR CONSUMERS ENERGY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING IN CONNECTION WITH THE PROGRAM, EVEN IF UPLIGHT OR CONSUMERS ENERGY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF YOU ARE DISSATISFIED WITH THE PROGRAM OR WITH ANY OF THESE TERMS, OR FEEL UPLIGHT OR CONSUMERS ENERGY HAS BREACHED THESE TERMS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE PARTICIPATION IN THE PROGRAM. CONSUMERS ENERGY’S LIABILITY IS LIMITED TO BILLING THE CUSTOMER AT THE APPROVED RATE.

10.2 Exclusions. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. NOTHING IN THESE TERMS AND IN PARTICULAR WITHIN THIS “LIMITATION OF LIABILITY” CLAUSE SHALL ATTEMPT TO EXCLUDE LIABILITY THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

Termination.

11 Termination. 

11.1 Termination By Consumers Energy. Consumers Energy may terminate the Program, or your participation in the Program, at any time, with or without cause, by providing you with written notice of such termination, which may be via email.

11.2 Your Termination. You may terminate your participation at any time after 12 months of program participation for any reason by sending an email to SmartThermostatSupport@clearesult.com.

11.3 Rights at Termination. Upon termination, all rights granted to you by these Terms will immediately cease. Consumers Energy and Uplight are not liable to you or any third party for termination of the Program or your participation in the Program.

11.4 Survival. Any suspension, termination or cancellation of the Program will not affect your obligations under these Terms which by their sense and context are intended to survive such suspension, termination or cancellation.

General.

12 General.

12.1 Consent and Capacity. You are over 18 years of age and have the necessary legal capacity to execute this agreement and enroll in this program, and have received the necessary consents and approvals from the owner(s) or occupant(s) of any premises where the Services will be provided. You are solely responsible for any failure to receive necessary consents and approvals. Your participation is completely voluntary.

12.2 Entire Agreement. These Terms are the entire and exclusive agreement between Consumers Energy or Uplight and you regarding the Program, and supersede and replace any prior agreements regarding the same.

12.3 No Assignment. You will not assign these Terms or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Consumers Energy. Any purported assignment or delegation by you without the appropriate prior written consent of Consumers Energy will be null and void.

12.4 Severability and Waiver. In the event that any provision in these Terms is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect. The failure of Consumers Energy to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision.

12.5 By participating in this Program, you agree to receive emails from Consumers Energy or its partners at
the email address provided for this Program. These emails may contain information about Consumers Energy products and services; other energy related products, services and Programs; as well as energy related legislative and environmental issues. You may opt out of receiving these emails at any time by contacting Consumers Energy at (877) 742-7150 or emailing SmartThermostatSupport@cleareult.com; however, it may take up to 10 days to take effect.
Question:

RESA-CECo-5: Please provide a copy of the proposed terms and conditions for participation in the small to medium C&I customer demand response pilot program.

Response:

While the Company is in the process of developing the contract and terms and conditions for participation in the proposed gas demand response C&I pilots, the Company expects that they will be similar to the C&I electric demand response program contract terms and conditions provided as U20650-RESA-CE-048_ATT_1.

___________________________
Steve Q. McLean
January 29, 2020

Clean Energy
Customer and Consumers Energy are referred to herein collectively as the “Parties” and each individually as a “Party” to this Agreement.

Effective Date of Agreement: □ □ □□ / □ □ □ Year

Company: CONSUMERS ENERGY COMPANY
a Michigan Corporation

ONE ENERGY PLAZA
JACKSON MI 49201-2357

Customer:

1. Initial Term: Shall commence on June 1, 2020 and shall run through (select one):
   □ September 30, 2020 (1 year)
   □ September 30, 2021 (2 years)
   □ September 30, 2022 (3 years)
   □ September 30, 2023 (4 years)

2. This Agreement will become effective on the date identified above and will extend for an Initial Term through the end date identified above. The Customer must notify Consumers Energy Company (“Consumers Energy” or the “Company”) by September 1st in the final year of the Initial Term of their desire to renew participation in the Demand Response Program (“Program”) through the execution of a new Program Agreement and the amount of reduction/nomination kW for the following Program Period (June 1 through October 1). Customer participation under this Agreement shall be based on the limitations, terms and eligibility as described in the Company’s Program and the Company’s Electric Rate Book, as approved by the Michigan Public Service Commission. Notice of renewal of participation in the Program by the Customer to the Company shall be made in writing and mailed using the United States Post Office first-class mail. Customer’s notice to renew participation in the Program shall be sent to Consumers Energy Company, Attention: Customer Services – DR Program, 165 W Michigan Avenue, Jackson, MI 49201.

3. Payment Revisions. The Company will notify each customer enrolled in a multi-year agreement by July 1 of the price for the following Program Period and will submit a contract change order to the customer identifying any necessary changes and requesting signatures of approval. If either the Program’s Emergency Capacity Payments or Emergency Event Energy Payments increase by greater than 10% year to year, this Agreement shall automatically terminate and the customer and the Company may reopen negotiations for a new Program Agreement for the following year. If the Parties mutually agree to new annual payment amount(s), the new payment(s) shall become effective June 1 of the following year and continue throughout the Program Period beginning June 1 (i.e. June 1 through September 30). In the event that the Program’s Emergency Capacity Payment or Emergency Event Energy Payment increase by less than 10% year over year, the new payment amount(s) shall become effective on June 1 and continue throughout the Program Period beginning June 1 (i.e. June 1 through September 30).

4. Program Description. Participants in the Program help reduce peak demand when energy use is the highest and maintain a ready supply of energy for Michigan. Participants will receive an annual Emergency
Capacity Payment for the capacity amount specified in this Agreement within 60 days of the Effective Date of the Agreement.

5. **Administration Solutions.** Customer agrees to work with Consumers Energy to develop an appropriate energy reduction plan for Customer’s business; and (ii) to provide Consumers Energy access and use of contact, billing and energy usage data, and facility information concerning each Site Address (as defined below) (“Customer Data”). Consumers Energy shall manage Customer’s curtailable electrical capacity in the Program and upon notification by Consumers Energy and acceptance by Customer, provide real-time support to Customer during demand response events (“Demand Response Events”); and enable data transfer, monitoring and reporting of meter data and provide technical assistance, maintenance, repair and hosting of the System. In addition, as necessary, Consumers Energy will coordinate with Customer to capture kilowatt-hour (“kWh”) pulses from Customer’s primary utility meter to provide Customer near real-time, Internet-enabled power monitoring.

6. **System.** Consumers Energy may equip one or more of Customer facility addresses (each address is referred to as a “Site Address”) as identified on the Site Address Attachment attached hereto with the System, which includes site devices owned by Consumers Energy that can enable direct load management, power metering, data collection, near real-time data communication, and Internet-based reporting and analytics. There shall be no cost to the Customer associated with the System equipment or installation of the System equipment.

7. **Customer Support Requirements.**

   a. **Representations and Warranties.** Customer holds all applicable licenses and/or permits pursuant to the Agreement that are required for the proper participation in the Program.

   b. **Demand Response Performance.** Customer has the intent and ability to generate and/or reduce electrical demand to achieve Accepted Capacity (as defined below) at each Site Address when notified by Consumers Energy Demand Response Events.

   c. **Acceptance Testing.** At each Site Address where the site devices are installed, Customer agrees to collaborate with Consumers Energy in a timely manner in testing, enabling and maintaining the System.

   d. **Energy Reduction Plan.** Customer must provide to Consumers Energy their Energy Reduction Plan describing the equipment and steps that will be taken to meet their curtailment nomination.

8. **Program Rules.** The terms of this Agreement reflect the current Program terms and conditions, which may be amended from time to time by Consumers Energy. The current terms are summarized below:

   | Program Availability          | During the Program period of June 1 - September 30, emergency events could be called at any time Monday through Friday between 11 am and 7 pm in response to Midcontinent Independent System Operator, Inc. (“MISO”) reliability emergencies (“Emergency Event(s)”). Customer is required to participate in any Emergency Event called by MISO. |
   | Event Frequency and Duration  | **Emergency Events** - Up to five (5) events during the Program Period, each up to four hours each. |
   | Advanced Notification         | **Emergency Events** - Customer will receive at least a thirty (30) minute but no more than a twelve (12) hour notice in advance of an Emergency Event. Customers are advised to estimate load reduction capability over a twelve (12) hour timeframe for planning purposes. |
Dispatch Readiness Test

After Customer’s Energy Reduction Plan has been reviewed by Consumers Energy and Customer’s site installation has been completed, Customer will receive an email from Consumers Energy asking Customer to select a date to participate in a thirty (30) minute Dispatch Readiness Test of Customer’s Energy Reduction Plan. The Dispatch Readiness Test is optional to the Customer but recommended by Consumers Energy.

Audit

Consumers Energy may call one (1), one-hour audit (“Audit”) per Program Period to confirm Contracted Capacity (as defined below). If called, this audit is required as the Customer’s program payment will be determined by performance.

Online Portal

Customer will have access to an online portal “Dashboard” where Customer can monitor their performance during both an Emergency and Economic Event. Portal will be activated before the season starts on June 1 and will remain active until the season concludes on September 30.


   a. **Contracted Capacity.** For purposes of this Agreement, “Contracted Capacity” shall represent the Customer’s performance obligation (in kilowatts (“kW”)). The Contracted Capacity shall be based on an analysis of Customer’s prior summer consumption data and pre-enrollment load reduction testing.

   b. **Delivered Capacity.** For purposes of this Agreement, an event’s “Delivered Capacity” shall be defined as the amount of load in kW reduced for each hour in a Demand Response Event. Delivered Capacity for each event hour is calculated as the difference between the measured energy demand and the baseline energy demand. Consumers Energy will use a MISO-approved baseline calculation method. MISO’s default baseline is the Ten Day Baseline. The Ten Day Baseline is calculated as the average hourly demand from the previous ten (10) non-weekend non-holiday non-event days prior to the event. Customer is required to reduce the full amount specified as Contracted Capacity for the hourly average of an emergency event. An alternative baseline may be used, so long as it is pre-approved by MISO.


   a. **Emergency Capacity Payments.** Consumers Energy will pay Customer an Emergency Capacity Payment price of $25/kW (“Capacity Rate”) of Contracted Capacity capped at 120% per Program Period as defined in section 9(b) above for a one (1) year contract; $26/kW for a two (2) year contract, $27/kW for a three (3) year contract and $28/kW for a four (4) year contract. Consumers Energy will pay Customer the Capacity Rate multiplied by the Contracted Capacity. The Capacity Payment will be made within sixty (60) days of the Effective Date of the Agreement by both Parties.

   b. **Emergency Event Energy Payments.** In Program Periods when one or more Emergency Events are called, Consumers Energy will pay Customer an energy payment of $50/MWh multiplied by the event’s Delivered Capacity multiplied by the hours for each such event as defined in section 9(b) above.

   c. **Underperformance.** If Customer fails to deliver their total Contracted Capacity for an Emergency Event ordered by Consumers Energy, as provided for in this Agreement, the following shall occur: (i) Customer shall be assessed the real time commodity price ($/MWh), as determined by the MISO Midwest Energy Market, for the kW curtailment which was underperformed per event; and (ii) Customer’s future Contracted Capacity will be reduced to the amount of load reduced during the Emergency Event for the balance of this Agreement.

11. Payment Timing.** After an Emergency Event and Customer’s Delivered Capacity has been verified, Consumers Energy shall make Emergency Event Energy Payments for Customer’s participation by the issuance of credits to the Customer’s bill.
12. Cancellation. Customer may cancel this Agreement any time before December 31, 2019. Cancellation requests must be submitted in writing to: ConsumersEnergy.DemandResponseProgram@cmsenergy.com. If Customer cancels after program equipment has been installed, Customer will incur a cancellation fee of $300.

13. Confidentiality.

a. Nondisclosure to Third Parties. In performing under the Agreement, each Party to this Agreement will be exposed to certain Confidential Information (as hereinafter defined) of the other Party. Each Party on its own behalf and on behalf of its employees, contractors and agents (collectively, “Representatives”) agrees not to, except as required by applicable law or regulation, use or disclose such Confidential Information without the prior written consent of the other Party, either during or after the Term. To protect Confidential Information, each Party agrees to: (i) limit dissemination of Confidential Information to only those Representatives having a “need to know”; (ii) advise each Representative who receives Confidential Information of the confidential nature of such information; and (iii) have appropriate agreements, policies and/or procedures in place with such Representatives sufficient to enable compliance with the confidentiality obligations contained herein. The term “Confidential Information” means all information which is disclosed, either orally or in written form, by either Party or its Representatives and shall be deemed to include: (w) any notes, analyses, compilation studies, interpretations, memoranda or other documents prepared by either Party or its Representatives which contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to a receiving Party or its Representatives pursuant hereto; (x) any information concerning the business relationship between the Parties; and (y) Customer Data.

b. Exclusions from Confidential Information. Notwithstanding the obligations in Section 13(a) above, Confidential Information does not include any information that:

i. is or becomes generally known to the public without breach of any obligation owed to the disclosing Party;

ii. was known to the receiving Party prior to its disclosure by the disclosing Party without breach of any obligation owed to the disclosing Party;

iii. is received from a third party without the receiving party having any knowledge of any breach by such third party of any obligation owed to the disclosing Party; or

iv. was independently developed by the receiving Party without reference to or reliance upon the disclosing Party’s Confidential Information.

14. Limitation of Liability. Consumers Energy’s and its contractors’ and subcontractors’ liability hereunder is limited to direct actual damages as the sole and exclusive remedy, and total damages under the Agreement shall not exceed $100,000 or the total amounts paid to Consumers Energy under the Agreement, whichever is less. In no event shall either Party, its parent, officers, directors, partners, shareholders, employees or affiliates, or any contractor or subcontractor or its employees or affiliates, be liable to the other Party for special, indirect, exemplary, punitive, incidental or consequential damages of any nature whatsoever connected with or resulting from performance or non-performance of obligations under the Agreement, including without limitation, damages or claims in the nature of lost revenue, income or profits, loss of use, or cost of capital, irrespective of whether such damages are reasonably foreseeable and irrespective of whether such claims are based upon negligence, strict liability contract, operation of law or otherwise.

15. Additional Terms.

a. Customer also agrees, with respect to Consumers Energy’s management of the System, it:

i. receives a limited, revocable, non-transferrable and non-exclusive right to use and access during the Term the System and shall use the System solely for its internal use subject to the terms of the Agreement and not for the benefit of any third party. Except as expressly permitted in the
Agreement, Customer agrees that it shall not receive any right, title or interest in, or any license or right to use or access, the System or any patent, copyright, trade secret, trademark or other intellectual property rights therein by implication or otherwise;

ii. shall use the System in accordance with all applicable law;

iii. shall not and shall prohibit causing or permitting, the copying, reverse engineering, disassembly, decompilation or attempting to derive the source code of the System, or other intellectual property of Consumers Energy or creation of any derivative work thereof;

iv. expressly disclaims any passing of title to the System, any trade names, trade dress, trademarks, service marks, commercial symbols, copyrightable material, designs, logos and/or any other intellectual property of Customer;

v. shall not delete, alter, cover, or distort any copyright or other proprietary notices or trademarks from the System and to use reasonable care to prevent the System and Consumers Energy’s intellectual property rights contained in the software from damage and unauthorized use.

b. **Miscellaneous.** Customer may not assign any of its rights or delegate any of its performance obligations hereunder without the prior written consent of Consumers Energy. The Agreement, including all attachments, constitutes the entire agreement between Customer and Consumers Energy and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. This Agreement shall be binding upon the Parties together with their successors and permitted assigns. Each Party shall be responsible for its Representatives’ compliance with the Agreement. Customer shall promptly notify Consumers Energy in writing of any changes occurring during the Term to the Customer address(es) set forth in this Agreement.

c. **Force Majeure.** The Parties to this Agreement shall be excused from any failure or delay in the performance of their obligations if such obligations are prevented from being fulfilled due to Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure, shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance. A “Force Majeure” shall include any act, event, or occurrence beyond the Party’s reasonable control, which the Party, despite its best efforts, is unable to prevent, avoid, overcome, delay or mitigate, including but not limited to: floods, epidemics, earthquakes, quarantine, blockade, war, insurrection or civil strife or terrorism, provided, however, that Force Majeure shall in no event include (i) failure of Subcontractors or Suppliers to deliver services, materials or components or receipt from any Subcontractor or Supplier of defective services, material or components unless same were themselves caused by a Force Majeure Event; (ii) technological impossibility; (iii) a governmental act or failure to act, or order or injunction, caused by any act or failure to act of the Seller or any Subcontractor or Supplier; (iv) strikes or work stoppages; or (v) inclement weather.

d. **Warranty Limitations.** THE SYSTEM (AND ANY SOFTWARE, HARDWARE, OR OTHER COMPONENT THEREOF) AND ALL SERVICES HEREUNDER ARE PROVIDED AS IS BY CONSUMERS ENERGY WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

e. **Governing Law; Actions; Etc.:** This Agreement shall be deemed a Michigan contract and shall be governed by and interpreted in accordance with the laws of the State of Michigan; excluding any
conflicts of laws principles that would result in this Agreement being interpreted in accordance with any different law. Venue for any lawsuit arising out of or in connection with this Agreement shall be exclusively in the courts of the State of Michigan or a Federal court sitting in the State of Michigan. Any legal action against Consumers Energy relating to this Agreement or the breach thereof shall be commenced within one year from the date on which the claimed breach, default or other cause of action arose (and, without limiting the foregoing, in all events not later than one year after the date of completion or other cessation of performance of the work hereunder). This Agreement is intended for the benefit of the parties herein only and does not grant any rights to any third parties unless otherwise specifically stated herein. If Customer defaults in the timely performance of any of its obligations hereunder, then Consumers Energy may, at its option, and in addition to any and all other rights or remedies it may have hereunder or at law or equity, terminate this Contract by written notice to Customer.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the Effective Date.

CONSUMERS ENERGY COMPANY

By: ____________________________
   (Signature)
   ____________________________
   (Print or Type Name)
   ____________________________
   (Date)

(Customer)

By: ____________________________
   (Signature)
   ____________________________
   (Print or Type Name)
   ____________________________
   (Date)
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Question:

RESA-CECo-6: Please provide a copy of the proposed terms and conditions for participation in the large C&I customer demand response pilot program.

Response:

Please see discovery response U20650-RESA-CE-048.

___________________________
Steven Q. McLean
January 29, 2020

Clean Energy
Question:
RESA-CECo-7: If not already provided in response to the foregoing discovery requests, please provide a copy of the proposed customer contract(s) for the demand response pilot programs.

Response:
Please see discovery responses U20650-RESA-CE-047 and U20650-RESA-CE-048.

[Signature]

Steven Q. McLean
January 29, 2020

Clean Energy
Question:

RESA-CECo-1: Will gas customer choice ("GCC") customers be permitted to participate in the demand response pilot programs proposed in Consumers’ witness Steven Q. McLean’s pre-filed direct testimony? Please explain why or why not.

Response:

As part of the pilot the Company will evaluate the feasibility of including GCC customers in demand response. If feasible, GCC participation in the pilot will be allowed to help the Company evaluate program effectiveness for different customer segments.

Steven Q. McLean
January 27, 2020

Clean Energy
Question:

RESA-CECo-2: Will end use transportation ("EUT") customers be permitted to participate in the C&I demand response pilot programs proposed in Consumers’ witness Steven Q. McLean’s pre-filed direct testimony? Please explain why or why not.

Response:

As part of the pilot the Company will evaluate the feasibility of including EUT customers in demand response. If feasible, EUT participation in the pilot will be allowed to help the Company evaluate program effectiveness for different customer segments.

___________________________

Steven Q. McLean
January 29, 2020

Clean Energy
Question:
RESA-CECo-8: Please identify the amount of projected demand response programs costs that will be recovered from: i) GCC customers; and ii) EUT customers.

Response:
There is no special treatment of GCC or EUT customers related to recovery of the projected gas demand response program costs. Cost recovery from GCC and EUT customers is based on standard allocations and included in distribution/transportation rates as proposed in this filing.

Steven Q. McLean
January 29, 2020

Clean Energy
Question:

RESA-CECo-3: If EUT customers are permitted to participate in the C&I demand response pilot programs, then please describe how Consumers intends to coordinate implementation of the programs with alternative gas suppliers.

Response:

As part of evaluating the ability of EUT customers to participate in the pilot, the Company plans to consider and test alternative gas supplier communication and coordination protocols for the C&I demand response pilot programs. Consumers Energy plans to develop and evaluate these coordination efforts.

___________________________

Steven Q. McLean
January 29, 2020

Clean Energy
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of

CONSUMERS ENERGY COMPANY for

authority to increase its rates for the
distribution of natural gas and for other
relief

____________________________________)

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 21st day of May, 2020, she served Retail
Energy Supply Association’s Exhibits RES-1 through RES-5 and this Certificate of Service
on the persons identified on the attached service list via electronic mail.

[Signature]

Angela R. Babbitt

Digitally signed by
Angela R. Babbitt
Date: 2020.05.21
11:38:54 -04'00'
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