

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

Cost Recovery Filing of ) Docket No. ER26-1138-000  
Consumers Energy Company )

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**COMMENTS OF  
THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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On January 23, 2026, the Federal Energy Regulatory Commission (Commission or FERC) received a filing from Consumers Energy Company<sup>1</sup> (Consumers Energy or Petitioner) seeking approval to recover costs incurred under a May 2025 Department of Energy order (DOE Order) issued pursuant to Section 202(c) of the Federal Power Act. The South Dakota Public Utilities Commission (SDPUC) submits the following comments in opposition to the cost recovery requested by Petitioner.

**I. Introduction and Summary**

The SDPUC is statutorily charged with the regulation of investor-owned electric utilities in South Dakota and ensuring that regulated utilities in this state provide adequate, efficient, and reasonable service at just and reasonable rates.<sup>2</sup> South Dakota utilities are load serving entities (LSEs) within Midcontinent Independent System Operator, Inc. (MISO), specifically located within Local Resource Zone 1 of the MISO North Region.

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<sup>1</sup> Use of “Consumers Energy” in these comments is also intended to include the Campbell Plant co-owners Wolverine Power Supply Cooperative, Inc. and Michigan Public Power Agency.

<sup>2</sup> See South Dakota Codified Law (SDCL) chapter 49-34A.

Pursuant to the provisions of the Commission’s August 15, 2025, Order<sup>3</sup>, the costs for which Petitioner seeks recovery in this matter are to be allocated throughout MISO Local Resource Zones 1-7 using a load ratio share and will, therefore, be borne in part by South Dakota ratepayers.

## **II. Service and Communications**

All pleadings, correspondence, and communications related to this proceeding may be directed to:

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## **III. COMMENTS**

### **1. Benefits of the DOE Order are not uniform across the Local Resource Zones in the MISO North and Central Regions.**

The SDPUC reiterates its position that allocating costs uniformly across Local Resource Zones (LRZs) 1-7 results in rates that are inherently prejudicial and are not just and reasonable. The Commission’s August 15, 2025 Order accepting Consumers Energy’s request to allocate costs across LRZs 1-7 using a load ratio share was based on the intended beneficiaries tied to the DOE Order.<sup>4</sup> Now, the Commission is tasked to ensure that the costs allocated to each LSE in

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<sup>3</sup> *Consumers Energy Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,158 (2025) (“Complaint Order”).

<sup>4</sup> See Complaint Order at ¶¶39-40.

LRZs 1-7 are roughly commensurate with the benefits the customers of each LSE received from the Campbell Plant remaining online as a result of the DOE Order.

While the DOE Order identified an emergency exists in the MISO North and Central Regions and FERC established in its August 15, 2025 Order that the costs associated with the DOE order should be allocated across LRZs 1-7, the Commission has now limited itself with only one mechanism to ensure the beneficiaries pay principle and roughly commensurate standard is properly applied. That mechanism is the exclusion of costs from Consumers Energy’s request that would have been incurred by Consumers Energy absent the DOE Order.

Under the Federal Power Act, all rates and charges approved by FERC must be just and reasonable.<sup>5</sup> “[T]he key constraint on the Commission’s authority to order recovery of such cost inputs is the just-and-reasonable standard and the cost-causation principles”.<sup>6</sup> “Cost-causation principles require that all approved rates reflect to some degree the costs actually caused by the customer who must pay them.”<sup>7</sup> Further, the Commission noted that costs can be allocated to beneficiaries of the DOE Order in a roughly commensurate manner and still meet cost causation principles.<sup>8</sup>

The Commission has a long-standing cost allocation principle that customers who receive no benefit must not be involuntarily allocated any of the costs.<sup>9</sup> While the DOE Order may have identified an emergency exists broadly across the MISO North and Central Regions, that does not relieve the Commission of its obligation to assess costs that are just and reasonable, properly attributed to the cost-causer, and roughly commensurate with the benefits received. The DOE

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<sup>5</sup> See 16 U.S.C. § 824d(a).

<sup>6</sup> *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028, 1049 (D.C. Cir. 2022).

<sup>7</sup> *Id.* at 1050 (quoting, *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 237 (D.C. Cir. 2013)).

<sup>8</sup> See Complaint Order at ¶38.

<sup>9</sup> FERC Order 1000 (Regional Cost Allocation Principle 2).

Order also doesn't relieve the Commission from making such determinations based upon substantial evidence and identifying the true beneficiaries of the Campbell Plant remaining online based on the physics of the electrical grid. Therefore, the Commission must ensure that the costs included for recovery are only those that match, or at a minimum are roughly commensurate with, the benefits received by each LSE in the various LRZs.

It is illogical to assume that energy generated by the Campbell Plant in LRZ 7 somehow benefits customers in South Dakota in an equivalent manner as those in Michigan, nor do the facts support such a conclusion. This is evidenced by the fact that South Dakota remains a net energy exporter,<sup>10</sup> transmission congestion in real-time prevents the free movement of energy across the MISO North and Central Regions,<sup>11</sup> and South Dakota wind generators are often curtailed due to congestion.<sup>12</sup>

Results of MISO's 2025-2026 Planning Resource Auction (PRA)<sup>13</sup> further provide evidence that South Dakota customers received no benefit from the Campbell Plant remaining online. Within the PRA results, MISO identifies the megawatts imported and exported by each LRZ. The only seasons that LRZ 1 relies on imports are winter and spring. During these seasons, either LRZ 7 or LRZs that are located between LRZs 1 and 7 are not exporting any megawatts. This shows that the few megawatts imported into LRZ 1 do not come from LRZ 7. Even though the PRA is based on capacity, it is illustrative of where resources are located in the MISO North and Central Regions and how LRZs will be either importing or exporting energy

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<sup>10</sup> See EIA data as shown at: <https://puc.sd.gov/commission/energy/HistoricalSDvsRetail.pdf>.

<sup>11</sup> See IMM Quarterly Report Summer 2025.

<sup>12</sup> For example, the Fuel Adjustment Clause filings filed with the SDPUC by Northern States Power Company dba Xcel Energy in July, August, and September 2025 report significant curtailment of wind in each of the reported months of June, July, and August, with Xcel reporting 74,627 MWh, 61,430 MWh, and 12,794 MWh of curtailed energy, respectively, for those months. These reports are available on the SDPUC's website at: <https://puc.sd.gov/Tariffs/Electric/xcel/FuelAdjustment/2025.aspx>.

<sup>13</sup> See MISO Planning Resource Auction Results for Planning Year 2025-26. April of 2025. Located at: [https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529\\_Corrections694160.pdf](https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529_Corrections694160.pdf).

during real time operations over the hours when Campbell Plant would be of the most benefit to the system.

It makes little sense to assume that the benefits to South Dakota are equivalent to those in Michigan. The SDPUC respectfully urges the Commission to conduct a robust reliability and benefits analysis, as is done for MISO's System Support Resources,<sup>14</sup> and remove costs sought for recovery by Consumers Energy in such a way as to account for the benefits actually received by each LSE.

**2. Depreciation expense, return on Campbell rate base, and other fixed costs should not be included for recovery under Schedule 55 of MISO's Tariff.**

As noted earlier, with the adoption of the load-ratio share cost allocation method in the August 2025 Order, the only mechanism the Commission left itself with to ensure just and reasonable rates is to exclude costs from recovery that do not match the benefits received by each LSE. Luckily, the DOE Order (and subsequent DOE 202(c) orders for Campbell Plant) left the door open for the Commission to do just that. The Campbell Plant was not ordered to remain online as a capacity resource<sup>15</sup> and, therefore, any costs associated with the DOE Order are energy costs only.

Petitioner seeks to include depreciation expense, return on Campbell rate base, property taxes, and insurance in its request for cost recovery. Depreciation expense amounts to \$5.721

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<sup>14</sup> See MISO's Tariff, Module C, Sections 38.2.7(c.) and 38.2.7(l.).

<sup>15</sup> See Attachment A to the Petition. Affidavit of Patrick D. Daly. Page 14, Footnote 17. "The MPPA's MISO market revenue includes a short-term bilateral capacity sale. Although the May 2025 DOE Order does not address the Campbell Plant's participation as a capacity resource, subsequent 202(c) orders impacting the Campbell Plant state that "the Campbell Plant shall not be considered a capacity resource." See, e.g., August 2025 DOE Order at Ordering Paragraph G. Based on the foregoing language, it is Consumers Energy's understanding that DOE does not intend for the Campbell Plant to be eligible to make capacity sales going forward."

million per month for Units 1 and 2 and \$4.743 million per month for Campbell Unit 3,<sup>16</sup> for a total of \$31.467 million<sup>17</sup>. Return on Campbell rate base amounts to \$21.061 million<sup>18</sup> using a WACC of 9.90 percent.<sup>19</sup> Property taxes and insurance amount to \$0.559 million. These fixed costs are inappropriate for recovery through Schedule 55 of MISO's tariff because they are capacity costs that are not new costs uniquely associated with the DOE Order.<sup>20</sup>

Campbell Plant was built to serve Consumers Energy's customer base; therefore, Consumers Energy received the benefit of the Campbell plant throughout its life and bore the risk of recovering the fixed costs related to that plant for the life of the plant. Any fixed costs (including depreciation expense, return on Campbell rate base, property taxes, and insurance) that were to be recovered by Consumers Energy's ratepayers through the planned retirement should remain with that customer base.

To now try to spread those fixed costs related to Campbell Plant across LSEs that never benefited from the plant during its useful life is inherently unfair. The company and their customers should bear the fixed costs of this plant because South Dakota was not part of the decision to build and operate the plant for South Dakota customers. Consumers Energy's decision to build, operate, and retire the Campbell plant was an independent decision that paid no consideration to the needs of South Dakota customers.

Consumers Energy will still be made whole for effectuating the DOE Order if the fixed cost of existing plant is excluded from cost recovery. Any new investment necessary for Campbell to comply with the DOE Order, which one may argue is a cost directly associated with

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<sup>16</sup> See Petition at p. 10.

<sup>17</sup> See Petition at p. 8.

<sup>18</sup> This number reflects the amount in Petitioner's corrected filing, which was filed on February 12, 2026.

<sup>19</sup> See Petition at p. 8.

<sup>20</sup> Schedule 55 of MISO Tariff: "Costs associated with the DOE Order have been incurred, and will continue to be incurred, during the Order Duration Period ("Order Costs")."

the DOE Order, was not capitalized and is included in the O&M costs Consumers Energy seeks to recover.<sup>21</sup> Given this, there are no new costs directly associate with the DOE Order in the depreciation expense, return on Campbell rate base, and other fixed costs now sought to be recovered by Consumers Energy.

Petitioners appear to argue that depreciation expense recovery is required under *FPC v. Hope Natural Gas Co.*<sup>22</sup>, which applied the Fifth Amendment’s takings clause to utility rates. *Hope* prohibits the taking of utility property without just compensation as a violation of the Fifth Amendment. Here, the depreciation expense is not tied to a benefit received by those from whom recovery is sought. The depreciation expense and other fixed costs are not being taken without just compensation because those are not costs that were incurred *but for* the DOE Order. Rather, they are costs that the Consumers Energy ratepayers bore, and would continue to bear, regardless of whether Campbell plant was generating megawatt hours associated with the DOE Order or lying in a pile of rubble.

FERC has applied cost causation principles in allocating costs, assessing expenses "to those who cause the costs to be incurred and reap the resulting benefits" (*NextEra Energy Resources, LLC v. Federal Energy Regulatory Commission*, 118 F.4th 361 (2024)). South Dakota customers did not reap the benefits of the Campbell Plant throughout the years. Petitioner’s customers did. Therefore, South Dakota customers should not pay these fixed costs.

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<sup>21</sup> See Attachment A to the Petition. Affidavit of Patrick D. Daly. Page 7, ¶ 21. “To comply with the directive to continue operating the Campbell Plant, the Company has undertaken projects that ordinarily would be capitalized because they extend the asset’s useful life. However, the costs of these projects are being recorded as O&M costs and are *not* being capitalized.”

<sup>22</sup> *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

**3. Consumers Energy’s ratepayers continue to receive the benefit from the bargain made to retire the Campbell Plant, even with the DOE Order, whereas South Dakota customers do not.**

Since Campbell Plant was retired before the end of its useful life, Michigan determined that the early retirement of Campbell Plant was a benefit to Consumers Energy’s ratepayers.<sup>23</sup> Those benefits were negotiated in a settlement, where there was consideration exchanged in order to reach settlement.<sup>24,25</sup> To conclude that the settlement was reasonable, a reasonable mind must also conclude that the benefits obtained by Consumers Energy’s ratepayers as result of retiring Campbell Plant early outweighed the cost of paying down the remaining plant balance (i.e. depreciation expense and return on Campbell rate base) through a regulatory asset. Consumers Energy’s ratepayers will continue to receive the benefits of that bargain, as well as the considered outcomes of the settlement, even if Campbell is generating electricity due to the DOE Order.

Recovering the costs that were included in the settlement agreement from LSEs across Zones 1-7, as Consumers Energy requests in its Petition, would directly conflict with cost-causation and beneficiaries pay principles. Through the settlement, Campbell Plant’s depreciation expense, return on Campbell rate base, and other fixed costs are inherently tied to the benefits within the settlement. South Dakota was not a party to the settlement, had no voice in that matter, and will not receive any of the benefits obtained by the parties through settlement.

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<sup>23</sup> MI PSC Case Nos. U-21090 (IRP Approval) and U-21585 (Regulatory Asset Approval).

<sup>24</sup> MI PSC Case No. U-21090 (IRP Settlement).

<sup>25</sup> MI PSC Order Approving Settlement, Case No. U-21090. Example of one benefit: “The settlement agreement provides that Consumers ‘will donate \$5 million in 2022 to a low-income fund that provides bill assistance to Consumers Energy’s electric customers.’” [...] “The settlement agreement also provides that Consumers will donate \$2 million annually to the same fund during the amortization period for the regulatory asset created to recover the unrecovered book balance of Campbell Units 1, 2, and 3.” [...] These donations will not be recovered in rates.”

As such, South Dakota should not be allocated any of the costs that Consumers Energy customers would continue to pay as set forth in the settlement allowing Campbell Plant to retire early.

#### **IV. CONCLUSION**

Inclusion of fixed capacity costs in the load ratio share allocation to Local Resource Zones 1-7 is contrary to the DOE Order, DOE Extension Orders, cost causation principles, and Schedule 55 of MISO's Tariff. The fixed costs Consumers Energy seeks to recover from South Dakota ratepayers would have been paid by Consumers Energy's ratepayers even without the DOE Order. As such, those costs should not be subject to recovery under Schedule 55 of MISO's Tariff since they are not associated with the DOE Order.

Further, in its June 13, 2025, letter to the Commission, the DOE explicitly stated that "the Campbell Plant shall not be counted as a capacity resource." This clarifies that DOE did not intend for fixed capacity costs to be recovered from all customers in the MISO North and Central Regions. If DOE intended otherwise, they would have ordered Campbell to be maintained online as capacity resource.

Based on the arguments above, fixed costs including depreciation expenses, return on Campbell rate base, property taxes, and insurance are not appropriate for inclusion in Consumers Energy's cost recovery for effectuating DOE Order and Petitioner's requested recovery should be reduced accordingly.

Dated this 13th day of February 2026.

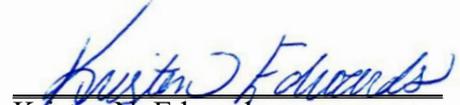
SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION

  
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**CERTIFICATE OF SERVICE**

I, Kristen N. Edwards, hereby certify that I served a true and correct copy of the foregoing Comments of The South Dakota Public Utilities Commission, pursuant to Rule 2010, 18 C.F.R. § 385.2010, by causing the same to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Pierre, South Dakota this 13th day of February 2026.

  
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