



201 North Washington Square • Suite 910
Lansing, Michigan 48933
Telephone 517 / 482-6237 • Fax 517 / 482-6937 • www.varnumlaw.com

Timothy J. Lundgren

Direct: 616 / 336-6750
tjlundgren@varnumlaw.com

January 19, 2018

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, Michigan 48909

Re: MPSC Case No. U-18491

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find Geronimo Energy's Petition for Leave to Intervene, as well as the Proof of Service. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/kc
Enclosures
c. ALJ
All parties of record.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
to Reset Avoided Capacity Costs) Case No. U-18491
_____)

PETITION FOR LEAVE TO INTERVENE OF GERONIMO ENERGY

Geronimo Energy, by its attorneys Varnum LLP, hereby files this Petition for Leave to Intervene with the Michigan Public Service Commission ("Commission") to intervene in and become a party to the above-titled proceedings pursuant to R 792.10410 (Rule 410) of the Commission's Rules of Practice and Procedure and the Michigan Administrative Procedures Act, MCL § 24.201 *et seq.* Geronimo Energy also objects to Consumers Energy Company's request for *ex parte* treatment in this proceeding, for the reasons set forth in the Comments filed separately by Geronimo Energy in this proceeding. In support of this Petition, Geronimo Energy states as follows:

1. Geronimo Energy is a developer of renewable energy projects in Michigan and elsewhere, and has developed wind projects in Michigan and in Consumers' service territory, at least one of which is part of Consumers Energy Company's ("Consumers") current Renewable Energy Plan. Geronimo Energy has also recently proposed four renewable energy solar projects to Consumers (the "Solar Projects") pursuant to the requirements of the Public Utility Regulatory Policies Act of 1978, ("PURPA") and the Commission's November 21, 2017 Order in U-18090.
2. On December 1, Geronimo Energy sent to Consumers notice of its intent to sell the energy and capacity from four solar projects, totaling approximately 70 MW. Consumers

acknowledges receipt of these proposals in the Affidavit of Mr. Keith Troyer, filed in Case No. U-18090 on December 20, in which he says: “For example, one developer has notified the Company of its interest in contracting for 70 MW of solar projects across four facilities.”¹

3. On December 20, in Case No. U-18090, Consumers filed a Petition for Rehearing and Clarification (the “Petition”) and simultaneously filed a Motion to Stay Capacity Purchase Obligation (the “Motion”) in that Case and in this proceeding.²

4. In its Motion, Consumers claims that, “the Company has no capacity need over the 10-year planning horizon.” Motion, ¶6. Consumers furthermore claims that if it purchases the solar energy offered by Geronimo and others, then this would “burden the Company’s customers with up to \$519 million of added expense over the next 20 years for a commodity that is unnecessary to serve their demand.” See Motion ¶11.

5. Meanwhile, in Case No. U-18231, Consumers is seeking approval for an “addition of up to 525 MW of wind facilities and up to 100 MW of solar facilities.” Application in Case No. U-18231, p. 4. Furthermore, Consumers claims:

Absent the additional investment in renewable energy resources, the Company’s REC inventory would be depleted by 2022. The addition of the proposed wind and solar facilities will allow the Company to meet a 12.5% RPS by 2019 and a 15% RPS by 2021, to continue to meet a 15% RPS through the life of the RE Plan, and to maintain a reserve margin in the REC inventory. [Application, p. 5.]

6. Thus, while Consumers claims in this proceeding that it has no capacity need and thereby seeks to exclude projects proposed by Geronimo and others, the utility simultaneously seeks Commission approval for its own solar and wind projects in other proceedings.

¹ Affidavit of Keith G. Troyer, p. 4, available here: <http://efile.mpsc.state.mi.us/efile/docs/18090/0275.pdf>.

² Consumers’ Petition can be found here: <http://efile.mpsc.state.mi.us/efile/docs/18090/0275.pdf>. Its Motion can be found here: <http://efile.mpsc.state.mi.us/efile/docs/18090/0274.pdf>.

7. Geronimo meets the criteria for intervention as of right. The Commission has long recognized a two-prong test for standing of right that requires a prospective intervenor to show (i) that it will suffer an injury in fact, and (ii) that the interests allegedly endangered are within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. See *In re Application of The Detroit Edison Co for Authority to Increase its Rates*, Case Nos. U-15768, U-15751 (January 11, 2010); *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150; 90 S Ct 827; 25 L Ed 2d 184 (1970); *Drake v The Detroit Edison Company*, 453 F Supp 1123, 1127 (WD Mich, 1978) ("*Drake*").

8. Geronimo is a developer of renewable energy projects within Consumers' service territory and has sought and is seeking to enter into power purchase agreements with Consumers for the sale of energy and capacity from renewable energy projects. As such, the approvals sought by Consumers in this proceeding will directly and, if granted as filed, adversely affect Geronimo's ability to contract with Consumers for sale of renewable energy and capacity.

9. As a developer and owner of PURPA Qualifying Facilities ("QFs"), Geronimo's interests fall squarely within the zone of interests of PURPA and Michigan's implementing statutes, including Act 341 of 2016.

10. Geronimo therefore satisfies both the injury and zone of interests elements, thereby meeting the requirements of intervention as of right.

11. Geronimo will take the position that Consumers cannot reject offers of capacity from PURPA QFs while simultaneously proposing to expand capacity by building or buying new generation sources that it itself will own and by expanding the capacity purchases it makes from an affiliate (as the utility has proposed in U-18392).

12. Furthermore, Geronimo meets the requirements for permissive intervention. The Commission has stated that its “discretion to grant leave to intervene is broader than the two-prong test. . . . For example, the Commission can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor’s participation, or when the intervenor will bring a unique perspective to the issues raised by the case.” *In re the application of DTE Gas Company for approval of a gas cost recovery plan, etc.*, Case no. U-17691, November 22, 2016, p. 6.

13. Geronimo is uniquely positioned to bring forth in this proceeding facts related to alternative sources of capacity available to Consumers, as well as the costs and benefits of the same, thus assisting the Commission in meeting its obligation to determine if Consumers’ proposal is reasonable and prudent.

14. Geronimo thus satisfies the requirements for permissive intervention because it has a unique perspective on the issues to be decided in this case, and is in a unique position to provide pertinent evidence during the proceedings.

15. Geronimo reserves the right to take other positions and/or seek other relief based on a review of the various filings, responses to discovery, or positions taken by Consumers or other parties in their filings.

16. Geronimo’s specific interests, as set forth above, are not adequately represented by any other parties.

17. Finally, Geronimo objects to Consumers’ application for *ex parte* treatment in this proceeding for the reasons laid out in the Comments filed earlier.

WHEREFORE, Geronimo prays that the Commission:

- a. Grant Geronimo's petition to intervene;
- b. Deny Consumers' request for *ex parte* treatment; and
- c. Grant such other and further relief as is deemed lawful and appropriate.

Respectfully submitted,

Varnum, LLP
Attorneys for Geronimo Energy

January 19, 2017

Tim Lundgren (P62807)
Laura A. Chappelle (P42052)
The Victor Center, Suite 910
201 N. Washington Square
Lansing, Michigan 48933
616-336-6750

12590182_1.docx

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
to Reset Avoided Capacity Costs) Case No. U-18491
_____)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Kimberly Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 19th day of January, 2018, she served a copy of Geronimo Energy's Petition for Leave to Intervene upon those individuals listed on the attached Service List via email at their last known addresses.

Kimberly Champagne

SERVICE LIST
MPSC CASE NO. U-18491

Administrative Law Judge

Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917
rogersd8@michigan.gov

Counsel for Consumers Energy Company

Robert W. Beach
Anne M. Uitvlugt
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201
robert.beach@cmsenergy.com
anne.uitvlugt@cmsenergy.com
mpsc.filings@cmsenergy.com

Counsel for Cypress Creek Renewables, LLC

Jennifer Utter Heston
Fraser Trebilcock Davis & Dunlap, P.C.
124 W. Allegan, Ste. 1000
Lansing, MI 48933
jheston@fraserlawfirm.com