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Timothy J. Lundgren

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August 29, 2018

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

Re: MPSC Case No. U-20165

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find Energy Michigan, Inc.'s Response in Support of the Environmental Law & Policy Center, the Ecology Center, the Union of Concerned Scientists and Vote Solar's Motion to Strike Testimony of Certain Consumers Energy Company Witnesses, as well as Proof of Service. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/kjc

Enclosures

c. All parties of record.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)
CONSUMERS ENERGY COMPANY)
for Approval of an Integrated Resource Plan)
under MCL 460.6t and for other relief.)
_____)

Case No. U-20165

**RESPONSE OF ENERGY MICHIGAN, INC. IN SUPPORT OF THE
MOTION TO STRIKE TESTIMONY OF CERTAIN CONSUMERS ENERGY COMPANY
WITNESSES BY ENVIRONMENTAL LAW & POLICY CENTER, THE ECOLOGY CENTER, THE
UNION OF CONCERNED SCIENTISTS, AND VOTE SOLAR**

Energy Michigan, Inc. ("Energy Michigan"), by its attorneys Varnum LLP, hereby files this Response in Support of the Motion to Strike Testimony of Certain Consumers Energy Company Witnesses filed by Environmental Law & Policy Center, the Ecology Center, the Union of Concerned Scientists and Vote Solar's (collectively, "ELPC").

I. BACKGROUND

Pursuant to Michigan Rules of Evidence ("MRE") 401, 402 and 403, ELPC has moved to strike as irrelevant and outside the scope of this Integrated Resource Plan ("IRP") proceeding portions of the testimony of certain Consumers Energy Company's ("Consumers") witnesses in support of the utility's request to revise its Standard Offer Tariff and certain other issues related to Michigan's implementation of the Public Utilities Regulatory Policy Act of 1978 ("PURPA"). Specifically, "Consumers' irrelevant testimony relates to its request to overhaul (1) the method for calculating the Company's avoided costs, (2) the size of facilities eligible for the PURPA Standard Offer Tariff, (3) the term length of the PURPA Standard Offer Tariff, and (4) the length of the Company's PURPA capacity planning horizon." Motion to Strike, p. 1. ELPC argues that

allowing Consumers' extensive PURPA testimony on these issues in this proceeding violates MRE 403, in part by allowing Consumers to relitigate how the state implements PURPA, including how its avoided costs are determined, outside of Consumers' PURPA avoided cost proceeding in Case No. U-18090. Furthermore, these PURPA issues are not relevant to this IRP proceeding, which is focused on whether the Company's proposed IRP is "the most reasonable and prudent" means of meeting the Company's energy and capacity needs, as required by MCL 460.6t. Motion to Strike, pp. 1-2.

II. ARGUMENT

Energy Michigan supports ELPC's Motion to Strike the identified PURPA testimony for the reasons stated therein. MRE 403 provides:

Rule 403: Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Energy Michigan agrees with ELPC that "Consumers' presentation of witness testimony recommending changes to Michigan's PURPA implementation will significantly complicate the issues in this IRP proceeding, will require extensive reply testimony and legal arguments by other parties, will waste time, and should be excluded under MRE 403." Motion to Strike, p. 13. In short, Energy Michigan believes that in the interests of avoiding undue delay and waste of time with evidence and issues which are already being examined by the Commission in another proceeding, these issues should be excluded from this proceeding.

Energy Michigan also submits that Rule 403's provision ensuring that there is not "needless presentation of cumulative evidence" supports the need to strike Consumers' PURPA

testimony. Energy Michigan members, some of whom are owners or developers of PURPA Qualifying Facilities, have a vested interest in the Commission's determinations regarding PURPA. The core PURPA determinations, such as avoided cost methodology, standard offer contract provisions, length of PURPA contracts, and length of the planning year horizon, should be decided in a proceeding completely focused on these important parameters, as is currently occurring in the final stages of a two-year contested case proceeding in Case No. U-18090. The Commission has already found that periodic two-year reviews of these PURPA determinations will be undertaken, with the next such review taking place in 2019. See, Case No. U-18090, November 21, 2017 Order, p. 33.

Energy Michigan believes that permitting these same issues to proceed simultaneously in two proceedings is not only a "needless presentation of cumulative evidence," but will thwart the Commission's intent to create a "routine administrative process" for updating avoided costs.¹ Finally, and not unimportantly, multiple simultaneous PURPA proceedings on the same issues will both create a hardship on individual interested parties who will be forced to participate in multiple proceedings at the same time to address the same issues, but will also lead to procedural unfairness as the ordinary procedural processes for review and appeal of Commission determinations will be bifurcated and confused. This situation will cause the Commission's overall goal of achieving "a just, economical, and expeditious determination of the issues presented" to be frustrated. MPSC Rule 403(2), R 792.10403(2).

WHEREFORE, Energy Michigan, Inc. respectfully requests that the Commission:

¹ MPSC PURPA Technical Advisory Committee ("TAC") Report, dated April 8, 2016, Case No. U-17973, p. 11.

- a. Grant the Motion of the Environmental Law & Policy Center, the Ecology Center, the Union of Concerned Scientists and Vote Solar to Strike Testimony of Certain Consumers Energy Company Witnesses; and
- b. Grant such other and further relief as is deemed lawful and appropriate.

Respectfully submitted,

Varnum, LLP
Attorneys for Energy Michigan, Inc.

August 29, 2018

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STATE OF MICHIGAN

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Kimberly J. Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 29th day of August, 2018, she served a copy of Energy Michigan Inc.'s Response in Support of the Environmental Law & Policy Center, the Ecology Center, the Union of Concerned Scientists and Vote Solar's Motion to Strike Testimony of Certain Consumers Energy Company Witnesses and this Proof of Service upon those individuals listed on the attached Service List via email at their last known addresses.

Kimberly J. Champagne

SERVICE LIST
MPSC CASE NO. U-20165

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