



OLSON, BZDOK & HOWARD

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September 26, 2013

Ms. Mary Jo Kunkle
Michigan Public Service Commission
6545 Mercantile Way
P. O. Box 30221
Lansing, MI 48909

RE: MPSC Case N° U-17473

Dear Ms. Kunkle:

The following is attached for paperless electronic filing:

Petition to Intervene by the Sierra Club

Appearance of Christopher M. Bzdok on Behalf of the Sierra Club

E-Service List

Sincerely,

Emerson Hilton
emerson@envlaw.com

xc: Parties to Case No. U-17473
Laurie Williams (laurie.williams@sierraclub.org), Nachy Kanfer
(nachy.kanfer@sierraclub.org) & Kristin Henry (kristin.henry@sierraclub.org)
Shannon Fisk (sfisk@earthjustice.org) & Matthew Gerhart
(mgerhart@earthjustice.org), Earthjustice

STATE OF MICHIGAN

MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the application of
Consumers Energy Company for a
Financing Order Approving the
Securitization of Qualified Costs

Case N^o. U-17473

ALJ Sharon L. Feldman

PETITION TO INTERVENE OF THE SIERRA CLUB

1. The Sierra Club, a national environmental organization, seeks to intervene in this case to represent the interests of its Michigan-based members in receiving reliable and cost-effective electricity that is generated and delivered in an environmentally sound manner.

2. The Sierra Club is a national, nonprofit environmental organization with approximately 600,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club has many years of experience working on energy and electric generation issues throughout the United States, including in Michigan.

3. The Sierra Club has 15,899 members in Michigan, at least 4000 of which live, work, and pay electric bills in the Consumers Energy Company ("Consumers" or "Company") service territory. These 4000 or more members are directly affected by the rates, policies, terms, and conditions governing Consumers' provision of electricity to them. As a result, these members have a strong interest in having their electricity provided in a dependable and environmentally responsible manner, and at costs that are competitive and relatively stable over the long term. Collectively and individually, these members also have a strong interest in avoiding economic harm caused by unreasonable or imprudent utility practices.

4. In this case, Consumers has asked the Michigan Public Service Commission (“MPSC” or “Commission”) to issue a financing order that would allow the securitization of nearly half a billion dollars of Company assets, and which would allow for associated securitization charges to be collected from Consumers’ ratepayers. The relief sought by Consumers in this case is closely tied to issues in two other ongoing proceedings, Case Nos. U-17429 and U-17453, in which the Sierra Club was previously granted intervention by right.

5. Although this is not a traditional rate case governed by MCL 460.6a, a change in Consumers’ electric rates and rate structure is a highly likely outcome of this case. An increase in the Company’s rates, or an increased risk of higher rates in the future, will directly affect ratepayers – including many members of the Sierra Club – who reside and work within Consumers’ electric service territory.

6. Before the Commission can approve any increase in a utility’s cost of service to its ratepayers, MCL 460.6a(1) requires that all interested parties be provided with “a reasonable opportunity for a full and complete hearing.” For purposes of intervention, the Commission has recognized that ratepayers have a special interest in proceedings that directly implicate changes to a utility’s rates. See, e.g., *In re Application of The Detroit Edison Co for Authority to Increase its Rates*, MPSC Case Nos. U-15768 and U-15751 (January 11, 2010) (“*In re Detroit Edison*”), 8.

7. Commission rules and precedent provide that an association may be granted intervention to represent the interests of its members. See *In re Detroit Edison* at 8 (citing MPSC Rules of Practice and Procedure, R 460.17101(f), (g)(vii), and R 460.17201); see also *Drake v Detroit Edison*, 453 F Supp 1123, 1129 (WD Mich 1978) (“[A] plaintiff may be granted standing when he asserts interests not of his own but of a third party that meet the zone of interests test.”). To establish standing to intervene in a Commission proceeding, an association can assert and represent the interests of its third-party members without specifically identifying each individual member whose interests are to be represented. *Id.*

8. The Commission generally recognizes two types of intervention: intervention by right and permissive intervention.

9. To be granted intervention by right, a prospective intervenor must satisfy a traditional two-prong test for standing in Commission proceedings. *In re Detroit Edison* at 7, citing *Ass'n of Data Processing Service Orgs Inc v Camp*, 397 US 150 (1970); see also *Re Michigan Consolidated Gas Co*, MPSC Case No U-10150 (December 8, 1992),

3. To satisfy the first prong of the *Data Processing* test, an intervenor (or, as in this case, the third-party members of an intervening association) must be likely to suffer an injury-in-fact as a result of the outcome of the proceeding. *In re Detroit Edison* at 7; *Drake*, 453 F Supp at 1129. An increase in rates constitutes an injury-in-fact under this standard. *Drake*, 453 F Supp at 1127.

10. As outlined above, Sierra Club members who live and work within Consumers' service territory will suffer an injury-in-fact if the result of this proceeding is a decision that will result in, allow, or threaten an increase in the Company's electric rates. The Sierra Club's members may also be injured by imprudent utility practices that result in higher electric bills, increased risk of sudden rate increases, imprudent rate structure methodology, greater fluctuations in electricity prices, environmental harm, and safety concerns.

11. To satisfy the second prong of the *Data Processing* test for standing to intervene in Commission proceedings by right, a prospective intervenor must be within the zone of interests protected or regulated by the statute or statutes governing a particular proceeding. *In re Detroit Edison* at 7. "The zone of interests test does not present a difficult barrier for litigants to negotiate insofar as it must only be shown that the asserted interests are *arguably* within the zone of interests to be protected." *Drake*, 453 F Supp at 1129 (emphasis added).

12. MCL 460.1 *et seq.* and MCL 460.6a, as well as other statutes establishing the Commission's jurisdiction to regulate Consumers' rates, generally seek to protect

ratepayer interests, and they provide for ratepayer participation and advocacy in Commission proceedings. Because the Sierra Club's members are Consumers customers, and because they may be forced to bear the cost of certain financial practices and ratemaking methods proposed by Consumers in this case, such members are within the zone of interests protected by these and other statutes governing Commission proceedings.

13. The Sierra Club's members are likely to suffer an injury-in-fact as a result of the outcome of this proceeding, and they are within the zone of interests protected and regulated by various statutes governing this case. The Sierra Club respectfully submits, therefore, that it meets both prongs of the Commission's test for intervention by right.

14. The second type of intervention recognized by the Commission is permissive. Even if the Commission determines that a prospective intervenor is not entitled to intervention by right, the Commission has discretion to permit intervention where a party will provide a unique perspective on the issues raised by the case, or where the party's expertise and ability to provide useful information to the Commission outweighs any delay occasioned by the party's intervention. See *In re Detroit Edison* at 7; *In re Mascotech Forming Technologies Inc*, MPSC Case No. U-11057 (June 5, 1996), 1-2.

15. The Sierra Club meets the Commission's test for permissive intervention because the Sierra Club will provide useful information to the Commission and a unique perspective on the issues presented for its review in this proceeding.

16. The Sierra Club will bring significant expertise to bear in this proceeding. This expertise encompasses a broad range of environmental and energy concerns that fully complement the myriad technical, financial, and policy issues the parties and Commission will face in this proceeding. In general, the Sierra Club's staff and expert witnesses have extensive knowledge and experience in the areas of ratepayer advocacy, electric generation and supply, electric utility financing and accounting, and the effect of electric utility practices on rates and environmental quality. The benefits of the Sierra

Club's participation in this case will far outweigh the delay – if any – occasioned by its intervention.

17. The Sierra Club will also bring a unique perspective to the issues raised in this case because the Sierra Club has worked for years in Michigan, on behalf of its members, to help develop and advance energy policies that benefit both ratepayers and the state's environment.

18. The Sierra Club plans to evaluate Consumers' application, testimony, and exhibits; to conduct and participate in discovery; and to take positions on relevant issues that serve the interests of its members. Although the Sierra Club's positions in this case will depend on its detailed review of the filings, discovery responses, cross-examination, and other information that may come to light as the record is developed, the Sierra Club will generally take the position that Consumers' requests for relief cannot be granted unless they are consistent with Michigan and federal law and are faithful to Commission precedent, and unless the granting of such relief would result in rates that are just and reasonable.

19. This petition to intervene is timely.

20. No other party adequately represents the interests of the Sierra Club.

21. The Sierra Club requests that all notices and pleadings be served on the following:

Christopher M. Bzdok
Emerson Hilton
Olson, Bzdok & Howard, P.C.
Counsel for the Sierra Club
420 E. Front St.
Traverse City, MI 49686
(231) 946-0044
chris@envlaw.com and
emerson@envlaw.com

and on:

Ruth Ann Liebzeit, Legal Assistant
ruthann@envlaw.com

and Kimberly Flynn, Legal Assistant
kimberly@envlaw.com

For all of these reasons, the Sierra Club respectfully requests that the Commission grant this petition to intervene and treat the Sierra Club as a party to this proceeding.

OLSON, BZDOK & HOWARD, P.C.
Counsel for the Sierra Club

Date: September 26, 2013

By: _____

Emerson Hilton (P76363)
420 E. Front St.
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MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
PUBLIC SERVICE COMMISSION

ENTRY OF APPEARANCE IN AN ADMINISTRATIVE HEARING

This form is issued as provided for by 1939 PA 3, as amended, and by 1933 PA 254, as amended. The filing of this form, or an acceptable alternative, is necessary to ensure subsequent service of any hearing notices, Commission orders, and related hearing documents.

General Instructions:

Type or print legibly in ink. For assistance or clarification, please contact the Public Service Commission at (517) 241-6170.

Please Note: The commission will provide service of documents in this proceeding to only one person for each party.

THIS APPEARANCE TO BE ENTERED IN ASSOCIATION WITH THE ADMINISTRATIVE HEARING:

Case / Company Name: _____ Docket No. _____

Please enter my appearance in the above-entitled matter on behalf of:

1. (Name)	_____
2. (Name)	_____
3. (Name)	_____
4. (Name)	_____
5. (Name)	_____
6. (Name)	_____
7. (Name)	_____

Name _____

Address _____

City _____ State _____

Zip _____ Phone (____) _____

Email _____

Date _____

Signature: _____

☐ I am not an attorney

☐ I am an attorney whose:

Michigan Bar # is P- _____

_____ Bar # is: _____
(state)

STATE OF MICHIGAN

MICHIGAN PUBLIC SERVICE COMMISSION

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ALJ Sharon L. Feldman

ELECTRONIC SERVICE LIST

On the date below, an electronic copy of the **Petition to Intervene of the Sierra Club and Appearance of Christopher M. Bzdok** was served on the following:

Name/Party	E-mail Address
Sharon L. Feldman, ALJ	feldmans@michigan.gov
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Counsel for Energy Michigan Inc. Eric J. Schneidewind Timothy J. Lundgren	ejschneidewind@varnumlaw.com tjlundgren@varnumlaw.com

The statements above are true to the best of my knowledge, information and belief.

OLSON, BZDOK & HOWARD, P.C.
Counsel for Sierra Club

Date: September 26, 2013

By: _____
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