

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
regarding the regulatory reviews, revisions,)
determinations, and/or approvals necessary for)
CONSUMERS ENERGY COMPANY)
to fully comply with Public Acts 286 and 295 of)
2008.)
_____)

Case No. U-15805

At the November 19, 2015 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Sally A. Talberg, Commissioner
Hon. Norman J. Saari, Commissioner

ORDER

On October 13, 2015, Consumers Energy Company (Consumers) filed an application pursuant to Section 33(3) of 2008 PA 295 (Act 295), MCL 460.1033(3) requesting *ex parte* review and approval of a 15-year renewable energy purchase agreement (REPA) with Geronimo Huron Wind, LLC (Geronimo). The REPA provides for 100 megawatts (MW) of renewable energy, capacity and renewable energy credits (RECs) from the Apple Blossom Wind Farm (Apple Blossom) in Huron County. Consumers anticipates that the wind farm will provide approximately 284,700 megawatt hours of energy and 285,000 renewable energy credits annually. The REPA further provides that Consumers will have the opportunity to purchase Apple Blossom after 13 years of commercial operation.

According to the application, the REPA resulted from an unsolicited bid submission from Geronimo. Consumers contends that the contract meets the criteria under MCL 460.1033(ii), which permits the company to enter into an unsolicited contract if it determines that the proposal provides opportunities that may not otherwise be available or commercially practical. Consumers notes that it received two additional unsolicited offers, but concluded that the Apple Blossom project provided the best opportunity for customers. Consumers further asserts that the contract price for Apple Blossom is lower than the company's other REPAs, as well as its average power supply cost price, in part, because Geronimo is expected to take advantage of the federal Production Tax Credit (PTC).¹

Consumers notes that the acquisition of Apple Blossom is consistent with its approved renewable energy plan (REP) in Case No. U-17301, and its proposed REP, as supplemented, in Case No. U-17792, both of which project an additional 100 MW company-owned wind farm. Finally, Consumers proposes to apply the most recent transfer price schedule, which was approved in the June 30, 2015 order in Case No. U-17631.

Consumers filed copies of the REPA with certain portions redacted to protect confidential information that might negatively affect the competitive market. However, Consumers offered the Commission Staff (Staff) an opportunity to review an unredacted version of the document. Based on its review of the REPA, the Staff recommends that the Commission approve the transaction. Specifically, the Staff confirms that the levelized cost of the REPA is significantly below the cost of other agreements in Consumers' renewable portfolio.

¹ In December 2014, The Tax Increase Prevention Act of 2014 extended the expiration date for this tax credit to December 31, 2014. Projects that are not under construction prior to January 1, 2015, are ineligible for this credit. In March 2015, IRS Notice 2015-25 extended the Continuous Construction Test and Continuous Efforts Test (used to determine if a project commencing construction before the end of 2014 is eligible for the PTC) by 1 year to January 1, 2017.

On October 20, 2015, Michigan Environmental Council (MEC) filed objections to the approval of the REPA. MEC claims that the application lacks key information such as the price and general terms of two other unsolicited proposals that Consumers declined in favor of the REPA. MEC further argues that levelized cost data, which it contends has been included in all other applications for approval of renewable energy contracts from both DTE Electric Company (DTE Electric) and Consumers, is redacted here. MEC maintains that this information is essential for determining whether the application should be approved. In support, MEC provides a list of contracts where levelized cost information was made available in the application. MEC therefore requests that the Commission reject the application, without prejudice, and allow Consumers to refile the REPA with additional, essential information included.

On October 26, 2015, Consumers filed a response to MEC's objections, in which the company states that, because of the contract payment structure, if it were to provide the levelized price, it would essentially disclose the contract price. Consumers further observes that the Commission has long recognized the need to balance the public's interest in disclosure with the protection of commercially sensitive information. Consumers then points to its own list of dockets and contracts where certain provisions were redacted. Consumers notes that these other contracts, where the levelized price was disclosed, had multiple components to the total compensation, and many of these components were redacted. As such, confidentiality could still be maintained even though the levelized price was made publicly available. In the case of the REPA, there is only one cost component, thus, disclosure of the levelized cost would necessarily implicate confidential information in a competitive environment.

With respect to disclosures concerning the other unsolicited proposals, Consumers argues that there is nothing in Act 295, or in the Commission's orders, that requires the company to disclose

prices or terms from unsolicited bids that were not accepted. Consumers contends that the terms of these other proposals are irrelevant to the Commission's determination whether the REPA should be approved. Consumers adds, "By requiring disclosure of the terms from these proposals, Consumers Energy could be at a competitive disadvantage by providing competitive information in a public forum. This could prevent further negotiations or additional proposals from these developers, and others, in the future." Consumers' response, p. 9. Consumers therefore urges the Commission to reject MEC's objections and approve the REPA.

Discussion

MCL 460.1033 provides in part:

(1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:

* * *

(b) At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy. A renewable energy contract or contract for the purchase of renewable energy credits under this subdivision shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. However, an electric provider may consider unsolicited proposals presented to it outside of a competitive bid process by a renewable energy system developer that is not affiliated with the electric provider. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. The contract is subject to review and approval by the commission under section 21.

* * *

(3) An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan. The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the

unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.

MCL 460.1037 provides in part:

If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term.

As required by Section 37 of Act 295, the Commission has considered the REPA and finds that the contract provides reasonable and prudent conditions, and, because the contract is well below the current transfer price, there is no concern that the retail rate impacts under Section 45 will be implicated, let alone exceeded.

The Commission also agrees with Consumers that, especially in light of the status of the PTC, there are opportunities for the company to enter into competitively-priced contracts that are highly beneficial to customers. Moreover, the Staff reviewed the unredacted REPA and determined that the agreement provides opportunities that may not otherwise be available or commercially practical. The Commission is further persuaded that by including REPA cost data publicly in the application or in the Commission's order, the company would be disclosing commercially sensitive information that could affect future contract pricing.

In its application, Consumers states that the term of the REPA is 15 years. Consumers requests that the Commission approve the REPA and provide assurance that the full costs of the will be recoverable through the combined application of the Transfer Price mechanism and application of the renewable energy surcharges.

In summary, the Commission finds that the Apple Blossom REPA provides reasonable and prudent terms and conditions, and is in compliance with Consumers' most recently-approved

renewable energy plan, as well as its proposed plan. *Ex parte* review and approval is appropriate, because the changes will not affect rates or rate schedules resulting in an increase in the cost of service to customers.

THEREFORE, IT IS ORDERED that:

A. Consumers Energy Company's request for approval of a renewable energy contract with Geronimo Huron Wind, LLC, for 100 megawatts of renewable energy, capacity and renewable energy credits from the Apple Blossom Wind Farm is granted as in compliance with the requirements of 2008 PA 295.

B. The Commission approves the use of the transfer price schedule approved in Consumers Energy Company's June 30, 2015 order in Case No. U-17631 for the renewable energy contract with Geronimo Huron Wind, LLC.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any person desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Sally A. Talberg, Commissioner

Norman J. Saari, Commissioner

By its action of November 19, 2015.

Mary Jo Kunkle, Executive Secretary