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February 20, 2009

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, STE 7
Lansing, MI 48909

Re: In the Matter of The Detroit Edison Company's Compliance with Acts 286 & 295
MPSC Case No U-15806

Dear Secretary Kunkle:

Enclosed for filing, please find the following: i) LS Power Associates, L.P.'s Petition to Intervene in the above proceedings; ii) the Appearances of Rodger A. Kershner and Jon D. Kreucher on behalf of LS Power; iii) a certificate of service regarding the same.

Please call if you have any questions.

Very truly yours,

HOWARD & HOWARD ATTORNEYS PLLC

Jon D. Kreucher

cc: Honorable Barbara A. Stump
Parties of Record

Filed Electronically in E-Docket
484423v1

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)

MICHIGAN DEPARTMENT OF LABOR AND ECONOMIC GROWTH
PUBLIC SERVICE COMMISSION

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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

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
Regarding the regulatory reviews, revisions,)
Determinations, and/or approval necessary for)
THE DETROIT EDISON COMPANY to fully)
Comply with Public Acts 286 and 295 of 2008)
_____)

Case No. U-15806

LS POWER ASSOCIATES, L.P.'s PETITION TO INTERVENE

DATED: February 20, 2009

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By: Rodger A. Kershner (P26049)

Jon D. Kreucher (P46133)

39400 Woodward Ave., Suite 101

Bloomfield Hills, MI 48304-5151

(248) 723-0426

Attorneys for:

LS Power Associates, L.P.

**PETITION OF LS POWER ASSOCIATES, L.P.
FOR LEAVE TO INTERVENE**

LS Power Associates, L.P., by its attorneys Howard & Howard Attorneys, P.C., respectfully submits its Petition for Leave to Intervene in the above-captioned proceeding pursuant to Rule 201(1) of the Commission's Rules of Practice and Procedure, 1992 ACS R460.17201(1), and the Administrative Procedures Act, MCL 24.201, *et seq.* For its representations as to its rights and interests, its grounds for the proposed intervention, and the positions that it will take in these proceedings, LS Power Associates, L.P. says:

1. LS Power Associates, L.P. and its affiliated operating companies ("LS Power") is a fully integrated development, investment and asset management group with a proven track record of successful generation projects.

2. LS Power has been involved in the development, construction, or operation of over 20,000 MW of power generation projects throughout the country.

3. LS Power currently owns and is developing a diverse mix of power generation facilities fueled by natural gas, coal and renewable resources, including wind and solar. LS Power recently announced the creation of a dedicated renewables business unit which is pursuing the development, acquisition and ownership of renewable energy projects, including the consideration of such opportunities in Michigan.

4. LS Power recently became a strategic partner in the "LS Power Pilot Plant Initiative," which will forward knowledge in CO₂ sequestration through research at the University of Texas. The goal of the effort is to apply scientific knowledge of CO₂ capture technology so that it can be demonstrated and later applied on a commercial scale at existing coal-fired plants.

5. LS Power is actively engaged in an effort to develop a baseload plant in Midland, Michigan which will produce electricity and steam for local industry and Michigan's needs. The electrical output of the plant will nominally be 750 MW and energy will be sold to wholesale providers, retail providers (*e.g.*, investor owned utilities, electric cooperatives, and municipal utilities) and/or to industrial customers.

6. On October 21, 2008, the Commission issued an Order Opening Docket ("Order") in the above-captioned proceeding which relates to regulatory reviews, revisions, determinations, and/or approvals necessary for The Detroit Edison Company to fully comply with Public Acts 286 and 295 of 2008.

7. Intervention should occur if a party has established a *right* to intervene. A party can establish such a right by either: i) demonstrating that a statute creates the right, or ii) through meeting the two prong test articulated in Data Processing Service Organization, Inc. v. Camp, 397 US 150 (1970).¹

8. Intervention may also occur if there is "some good reason" to *permit* such intervention. ITC, U-14933 at 4 (May 17, 2007). The Commission has previously found "good reason" to exist where the interests of the proposed intervenor would not be protected by the parties to the proceeding,² where a proposed intervenor possesses information that may advance the Commission's consideration of the issues in the proceeding,³ or where important precedent will be set or the case is unique in nature. *See, e.g.*, Cherryland Electric Cooperative, U-13716 at 5 (September 30, 2001).

¹ The Commission regularly applies the Data Processing test when considering issues of intervention. *See, e.g.*, ITC, U-14933 at 4 (May 17, 2007).

² ITC at 4.

³ *See, e.g.*, Consumers Power Company, U-10155 at 7 (December 8, 1992).

9. The Commission regularly notes that a *right* to intervene only serves as the starting point to such an inquiry, as the Commission’s discretion to *permit* intervention is broader than a mere application of the Data Processing test. ITC at 4. “As recognized by prior Commission Orders, the requirements of intervention before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenors’ participation.” Consumers Power Company, U-10155 at 7 (December 8, 1992).

10. Here, LS Power’s intervention exists as a matter of right under Data Processing. Alternatively, the Commission should permit such intervention because LS Power is in a position to offer information that can advance the Commission’s consideration of the issues which are expected to arise in this docket and because no delay would occur from LS Power’s participation.

INTERVENTION AS A MATTER OF RIGHT

11. Intervention as a matter of *right* can be established if a party meets the two prong test of Data Processing. Specifically: i) the proposed intervenor’s interests is arguably within the “zone of interests” to be protected or regulated by a statute and ii) an injury will occur, economic or otherwise. *See, e.g., Michigan Consolidated Gas Co.*, U-10150 at 5 (December 8, 1992).

12. The Order notes that “the descriptions of Acts 286 and 295 in this order do not cover all of the important details contained in the legislation.” Nevertheless, it is clear from the Order and the statutes themselves that the Acts create a wide zone of interests. Among those within the zone of interest of the Acts are:

- A. Those considering the development of “merchant plants;”⁴
- B. Those which seek the Michigan Public Service Commission’s assistance in fostering competition in this state for the provision of electric supply;⁵
- C. Those which seek to provide robust, reliable, and economic generation and access to regional sources of generation and wholesale power markets;⁶
- D. Those which may seek the development of clean and/or renewable energy in the state;⁷
- E. Those which may provide investment in the state for renewable energy.⁸

13. LS Power is engaged in the development of a new baseload generation facility in Midland, Michigan, and is currently exploring renewable energy opportunities throughout the country. Its interests, therefore, are “arguably”⁹ within the “zone of interests” created by the statutes. The first prong of the Data Processing test is, therefore, met.

14. With respect to the “injury” prong of the Data Processing test, it is impossible to fully anticipate the range of injury that LS Power would suffer from Detroit Edison’s failure to fully comply with Acts 286 and 295 because Detroit Edison has not yet filed a proposal to comply with the Order. As noted by the Order, a “multitude and multiplicity of regulatory actions [] must be accomplished to implement Public Acts 286 and 295[.]” *Absent full development of those regulatory actions and a utility’s associated responsibilities and filings, the injury resulting from a utility’s failure to comply cannot be completely measured.* Nevertheless, injuries to LS Power are reasonably anticipated if a utility violates certain

⁴ Act Section 10(2)(c) maintains that a purpose of the Act is to “encourage the development and construction of merchant plants which will diversify the ownership of electric generation in this state.”

⁵ Act 286 at Section 10(2)(b).

⁶ Act 286, at Section 10(2)(f).

⁷ Act 295 at Section 1(2).

⁸ Act 295 at Section 1(2)(c).

⁹ A proposed intervenor must only establish that its interests are “arguably” implicated. *See, ITC* at 4.

aspects of the Acts, because the interests protected are necessarily tied to the utilities' compliance. For example and without limitation, the Acts provide:

- A. That the equivalent of 10% of Detroit Edison's average weather-adjusted retail sales can be purchased from alternative electric suppliers ("AES"), *i.e.*, from parties that may purchase energy wholesale from LS Power (Act 286 Section 10(1)(a)). Faulty reporting by Detroit Edison, therefore, could result in lost sales opportunities for LS Power;
- B. That those customers already purchasing supply from an AES may expand usage beyond the 10% threshold, again creating an opportunity for LS Power that will be lost if Detroit Edison fails to comply with the provisions of Act 286 (Act 286 Section (1)(c));
- C. That a code of conduct be established by the Commission which will prevent cross-subsidization, information sharing, and preferential treatment between a utility's regulated and unregulated services, which is presumably to maintain equity in the event that an affiliate bids for engineering, procurement, and construction services as contemplated by Act 286 Section 6s(4)(c). As an integrated development, investment and asset management group, LS Power's interest would be adversely affected by Detroit Edison's failure to comply with the established code of conduct, as LS Power's ability to fairly compete in bidding processes would be lost;
- D. That renewable energy credits and cleaner energy credits be established, and for the ability for utilities to purchase such credits to satisfy certain

- A. With respect to whether LS Power’s interest would be protected by others, LS Power would potentially be the only participant in this proceeding that is currently pursuing the development of a new baseload plant in Michigan and one that would not result in direct ratepayer impact. LS Power’s investment is the sort of investment that Act 286 is intended to encourage, and the only investment that may be placed entirely at risk in the event that Detroit Edison fails to comply with Act 286.
- B. The Commission’s extensive regulatory responsibilities require it to consider matters which can be illuminated through LS Power’s presence. For example, upon seeking a Certificate of Necessity, Detroit Edison will have complied with the requirements of Act 286 only if it can demonstrate each of the following:
1. That there is a need for additional power (Act 286 at Section 6s(4)(a));
 2. That a proposed electric generating facility is the most reasonable and prudent means of meeting the power need relative to other options (Act 286 at 6s(4)(d)).

LS Power’s extensive experience in the development, ownership and operation of generation throughout the country place it in a unique position to provide insight as to whether these mandates have been met.

- C. Additionally, the Commission is expressly permitted to consider “costs and information related to the costs associated with the power that would be supplied by the existing or proposed electric generating facility or . . .

alternatives to the proposal *raised by intervening parties.*” Act 286 at Section 6s(4)(e). Such information can not be submitted to the Commission for consideration, of course, unless parties in a position to provide such information, like LS Power, are permitted to intervene.

D. Finally, permissive intervention is appropriate in this case because: i) the full scope of the activities to be conducted in this docket are not yet fully defined, but are expected to be substantial and precedential in nature; and ii) without a complete understanding of the matters to be addressed, LS Power’s interests could later be prejudiced if a matter directly implicating its interest is raised but intervention had not previously been permitted.

16. LS Power has participated in other proceedings before this Commission, and most recently intervened in the matter of Consumers Energy Company’s Application for a Balanced Energy Initiative, U-15290. LS Power’s Petition to Intervene in the BEI matter was granted without objection.

17. While interested parties may typically seek to intervene in a proceeding not less than seven (7) days prior to the date set for the initial hearing or prehearing conference in a matter,¹⁴ the Commission’s Order notes that time is of the essence in this proceeding and encourages “interested persons to file interventions in this docket as soon as possible.” Order at pages 7 and 9.

18. At this early stage, LS Power can not state with specificity all positions it may take or relief it may seek on issues arising in this docket because, among other reasons: a) Detroit Edison has not yet filed a proposal to comply with the Order; b) the Order addresses several issues to be considered by the Commission, but does not, at this very early stage of

¹⁴ Commission Rule 201(1).

implementation, offer information as to how the Commission will forward the identified issues; and c) the Order notes that it is not intended to cover all of the important details of the legislation, and that matters yet undefined may be addressed in this or in other dockets. Generally, however, LS Power will assert that all orders issued in this docket must comply with the purpose, terms and conditions as provided in Acts 286 and 295, that any requirements for bidding comply with Commission orders which create a transparent and credible process, and that Detroit Edison must fully comply with all requirements of Acts 286 and 295. LS Power will also seek relief consistent with those positions. LS Power reserves the right to forward all positions and seek such relief as may become relevant to the range of issues which are or which will be included in this proceeding.

WHEREFORE, LS Power Associates, L.P. requests that this Honorable Commission grant its Petition to Intervene and that it be treated as a full party to this proceeding.

DATED: February 20, 2009

Respectfully submitted,
HOWARD & HOWARD ATTORNEYS, P.C.

By: Rodger A. Kershner (P26049)
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Attorneys for:
LS Power Associates, L.P.

MiSTATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion,)
Regarding the regulatory reviews, revisions,)
Determinations, and/or approvals necessary for) Case No. U-15806
THE DETROIT EDISON COMPANY to fully)
Comply with Public Acts 286 and 295 of 2008)
_____)

CERTIFICATE OF SERVICE

Sandra Dillaha hereby certifies that on the 20th day of February, 2009, she served LS Power Associates, L.P.'s Petition to Intervene in the above docket on the persons identified on the attached service list by electronic mail.

Sandra Dillaha

Service List for U 15806

<p>Honorable Barbara A. Stump Administrative Law Judge Michigan Public Service Commission 6545 Mercantile Way Lansing, MI 48911 (517) 241-6060 stumpb1@michigan.gov</p>	<p><u>Michigan Environmental Council</u> Christopher M. Bzdok (P53094) Olson, Bzdok & Howard, P.C. 420 E. Front St. Traverse City, MI 49686 (231) 946-0044 chris@envlaw.com</p> <p>James Clift Michigan Environmental Council 119 Pere Marquette Drive, Suite 2A Lansing, Michigan 48912 james@environmentalcouncil.org</p>
<p><u>Detroit Edison</u> Jon P. Christinidis (P 47352) Bruce R. Maters (P28080) Michael J. Solo (P57092) The Detroit Edison Company 2000 2nd Avenue, 688 WCB 688 Detroit, MI 48226-1279 (313) 235-7706 christinidisj@dteenergy.com matersb@dteenergy.com solom@dteenergy.com mpscfilings@dteenergy.com</p>	<p><u>Constellation NewEnergy, Inc.</u> John M. Dempsey (P30987) Dickinson Wright PLLC 301 E. Liberty, Suite 500 Ann Arbor, MI 48104 (734) 623-1619 jdempsey@dickinsonwright.com Cynthia.A.Fonner@constellation.com</p>
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**Association of Businesses Advocating
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