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JOHN M. DEMPSEY
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November 12, 2009

Via E-Docket

Ms. Mary Jo. Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, MI 48911

**Re: In the matter of the application of Upper Peninsula Power Company for approval of a power supply cost recovery plan and authorization of monthly power supply cost recovery factors for the calendar year 2010 and other related approvals.
MPSC Case No. U-16031**

Dear Ms. Kunkle:

Enclosed for filing in the above-referenced case is the *Petition to Intervene of White Pine Electric Power, LLC, Appearance of John M. Dempsey, and Proof of Service.*

If you have any questions, please contact me.

Very truly yours,

John M. Dempsey

JMD:jkt
Enclosures

LANSING 37847-1 432560

C o u n s e l l o r s A t L a w

DETROIT BLOOMFIELD HILLS LANSING GRAND RAPIDS ANN ARBOR
WASHINGTON, D.C.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Upper)
Peninsula Power Company for approval)
of a power supply cost recovery plan and)
authorization of monthly power supply)
cost recovery factors for the calendar)
year 2010 and other related approvals.)
_____)

Case No. U-16031

PETITION TO INTERVENE OF
WHITE PINE ELECTRIC POWER LLC

White Pine Electric Power LLC ("White Pine"), by its counsel, respectfully files this Petition to Intervene pursuant to Rule 201 of the Commission's Rules of Practice and Procedure (1991 AACRS, R 460.17201)¹ and the Administrative Procedures Act, MCL 24.201, et seq. In support of its Petition, White Pine states:

1. White Pine is a Delaware limited liability company engaged, among other things, in operating a 40 MW coal-fired power plant consisting of two generating units near the town of White Pine in Michigan's Upper Peninsula. White Pine has been authorized to connect its generating facilities in parallel with the American Transmission Company's ("ATC") electrical system pursuant to a Generation-Transmission Interconnection Agreement with ATC and the Midwest Transmission Independent System Operator ("MISO").

2. White Pine and the applicant in this case, Upper Peninsula Power Company ("UPPCo"), are parties to a Power Purchase Agreement ("PPA") dated December 27, 2004 (with

¹ Rule 201(1) states that "[a] person who is not a complainant, respondent, protestant, applicant, or staff, as defined in these rules, and who claims an interest in a proceeding may petition for leave to intervene."

amendments). Under the PPA and amendments, White Pine is obligated to furnish both capacity and energy associated with and produced by its facilities to UPPCo.

3. The PPA was the subject of an application filed by UPPCo in Case No. U-14408 seeking "approval, pursuant to Sec. 6j(13)(b) of 1982 PA 304, of capacity charges in excess of six months associated with the White Pine Electric Power LLC and Wisconsin Public Service Corporation power purchase agreements." In its order of June 30, 2005 in that docket, the Commission made specific findings that the charges associated with the PPA were approved, and that it was prudent for UPPCo to have entered into the PPA. Consequently, the Commission approved a settlement agreement between UPPCo and Staff and accepted the PPA for filing. The settlement agreement – with Staff as signatory – states that the PPA charges "are reasonable and prudent."

4. Pursuant to the Commission-approved PPA, White Pine has provided over 20 full-time and approximately 10 part-time jobs to residents of the Upper Peninsula. It has paid approximately \$150,000 of property taxes in Carp Lake Township. It supplies process steam to the White Pine Copper Refinery as part of its operations, and it supplies the raw water for the Ontonagon water district to use in supplying drinking water for the communities of White Pine and Ontonagon. It makes other contributions via the payment of taxes and fees that support the Michigan economy as part of operating and maintaining the facilities covered by the PPA. The outcome of this case and any determination by the Commission that will affect the manner in which White Pine is or is not dispatched may also have adverse consequences to others who benefit indirectly from the PPA, such as the Economic Development Corporation of and the City of Ontonagon, which receive tonnage fees for coal burned by White Pine, which is brought into the harbor at Ontonagon, and U.S. Army Corp of Engineers services to keep open the harbor.

5. On September 30, 2009, UPPCo filed an application in this docket for approval of a power supply cost recovery plan and authorization of monthly power supply cost recovery factors for the calendar year 2010 "[p]ursuant to Section 6j of 1982 Public Act 304, MCL 460.6j, as amended." (Application, ¶ 3)

6. Both the instant application and the parties' ongoing conduct under the PPA invoke the Commission's jurisdiction and authority under MCL 460.6j ("Act 304").

7. UPPCo's filing makes numerous references to the PPA and to White Pine. See, e.g., Smies Testimony, pp. 16-19. These statements in UPPCo's filing directly intersect with White Pine's interests under the PPA.

8. White Pine is also a customer of UPPCo and takes electric services from UPPCo under tariff.

9. White Pine was admitted as a party to UPPCo's last PSCR case, Case No. U-15661. White Pine's admission was granted as a customer by the presiding Administrative Law Judge (Transcript of November 18, 2008 Prehearing, p. 11) after Staff made no objection to intervention on that basis (p. 9), as did UPPCo (Id.).

10. Both as a party to the PPA and as a customer, White Pine's interests fall within the zone of interests sought to be protected in this case. As a source of energy supply to UPPCo under the PPA, and as a customer of UPPCo that is affected by its tariffs, White Pine has a substantial interest in the relief sought by the Application. White Pine has standing to intervene of right because the Application addresses several issues, the resolution of which may cause injury in fact to White Pine.

11. Commission review of and action on UPPCo's Application and accompanying testimony and exhibits also may cause injury in fact to White Pine because of the following:

a. First, the Application presents UPPCo's evaluations and conclusions as to the reasonableness and prudence of the forecasted costs of various power sources. The Application also includes a five year forecast of the power supply cost requirements of UPPCo's customers, anticipated sources of supply, and projections of power supply costs. These forecasts and conclusions include purchases from White Pine under the parties' PPA.

b. Second, pursuant to the PPA, UPPCo is entitled to dispatch White Pine as part of the utility's operations and, as a result, payments to White Pine will be affected, depending on how UPPCo manages its operations and how the Commission disposes of the Application.

c. Third, UPPCo's PSCR implementation request and its ability to recover the costs of power supply is critical to UPPCo's financial health. UPPCo's continued performance under the PPA will be affected by the outcome of this case.

12. White Pine's interests, then, clearly fall within the zone of interests affected by this case. The disposition of this action, without the intervention of White Pine, will impair or impede White Pine's ability to protect those interests.

13. White Pine is a "party," as defined in the Administrative Procedures Act, since it is "a person ... properly seeking and entitled of right to be admitted, as a party in a contested case." MCL 24.205(5). Accordingly, White Pine has statutory rights to receive, *inter alia*, "an opportunity for a hearing" (MCL 24.271(1)) and "an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact" (MCL 24.271(3)). UPPCo's Application necessitates the convening of a contested case under Act 304, specifically under MCL 460.6j(5).

14. White Pine also meets the Commission's criteria for the grant of permissive intervention. White Pine has a unique perspective on the issues to be decided in this case, has the ability to answer questions of fact that arise in this case, and is in an excellent position to provide pertinent evidence during the proceedings. Further, White Pine's intervention in this action will not unduly delay the proceeding.

15. Ample precedent exists to grant White Pine's Petition. Intervention has been granted to independent power producers in numerous Act 304 proceedings, including Case Nos. U-13917, U-14274, U-14701, U-15001, U-15415, and U-15661. Furthermore, independent power producers and qualifying facilities have been parties to Commission proceedings in U-7990, U-8062, U-8562, U-8639, U-8785, U-8833, U-8849, U-8871, U-8876, U-8878, U-8879, U-9020, U-9021, U-9022, U-9031, U-9032, U-9033, U-9034, U-9035, U-9036, U-9037, U-9038, U-9041, U-9043, U-9044, U-9045, U-9046, U-9047, U-9048, U-9049, U-9050, U-9051, U-9052, U-9053, U-9054, U-9055, U-9056, U-9057, U-9058, U-9059, U-9061, U-9062, U-9063, U-9064, U-9065, U-9066, U-9067, U-9068, U-9069, U-9070, U-9071, U-9072, U-15320, and others.

16. White Pine intends to take the position that any order in this proceeding must be in accordance with the purpose of and the terms and conditions set forth in Act 304 and prior Commission orders and White Pine's rights under the PPA.

17. White Pine reserves the right to take positions on any other issues that become relevant during the course of this proceeding.

18. Upon being granted intervenor status in this case, White Pine requests that all notices and pleadings be served upon the following:

John M. Dempsey (P30987)
Dickinson Wright PLLC
301 E. Liberty, Suite 500
Ann Arbor, MI 48104
jdempsey@dickinsonwright.com

WHEREFORE, White Pine Electric Power LLC requests that this Petition to Intervene be granted, and that White Pine be afforded the full status of a party to this case.

Respectfully submitted,

DICKINSON WRIGHT PLLC
Counsel for White Pine Electric Power LLC

By: _____
John M. Dempsey (P30987)
301 E. Liberty, Suite 500
Ann Arbor, MI 48104
(734) 623-7075

Dated: November 12, 2009

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: Upper Peninsula Power Company Docket No. U-16031

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

1. (Name)	<u>White Pine Electric Power LLC</u>
2. (Name)	<u></u>
3. (Name)	<u></u>
4. (Name)	<u></u>
5. (Name)	<u></u>
6. (Name)	<u></u>
7. (Name)	<u></u>

Name John M. Dempsey

Address Dickinson Wright PLLC

301 E. Liberty, Suite 500

City Ann Arbor State MI

Zip 48104 Phone (734) 623-1619

Email jdempsey@dickinsonwright.com

Date 11/12/2009

Signature:

I am not an attorney

I am an attorney whose:

Michigan Bar # is P- 30987

Bar # is:
(state)

STATE OF MICHIGAN

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_____)

Case No. U-16031

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

Jacqueline K. Tinney, being first duly sworn, deposes and says that she is employed at Dickinson Wright PLLC, and that on November 12, 2009, she caused a copy of the *Petition to Intervene of White Pine Electric Power LLC* and *Appearance of John M. Dempsey* to be served upon the parties listed below via email.

Jacqueline K. Tinney

Subscribed and sworn to before me,
a Notary Public in and for said County,
this 12th day of November, 2009.

Judith J. Martin, Notary Public
Washtenaw County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires: 6/13/14

Service List
MPSC Case No. U-16031

Administrative Law Judge Hon. Sharon L. Feldman feldman2@michigan.gov	Calumet Electronics Corporation Michael J. Brown mbrown@cebhlaw.com
Michigan Technological University Joseph J. Baumann Albert Ernst jbaumann@dykema.com aernst@dykema.com	Smurfit-Stone Container Corporation Peter S. Sheldon Todd Svanda psheldon@dickinsonwright.com tsvanda@dickinsonwright.com
Upper Peninsula Power Company Sherri A. Wellman Kelly Martorano wellmans@millercanfield.com martoranok@millercanfield.com	MPSC Staff Vincent Leone leonev@michigan.gov

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