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 approvals necessary for **THE DETROIT EDISON COMPANY** to fully comply with Public Acts 286 and 295 of 2008.	Case No. **U-16582-PRW** (**e-file paperless**)

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MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S ANSWER TO GERONIMO ENERGY, LLC'S PETITION FOR REHEARING

In its May 17, 2013 Order, the Commission approved the DTE Electric Company's contracts with Pheasant Run Wind, LLC and Pheasant Run Wind II, LLC (subsidiaries of NextEra Energy Resources) to purchase renewable energy and associated renewable energy credits from the Pheasant Run Wind projects. In the same Order, the Commission denied Geronimo Energy, LLC's Petition to Intervene in the case.

In its Petition for Rehearing, Geronimo reiterates previous arguments. The Commission already considered and rejected these arguments in its May Order. Without newly discovered evidence, errors, or unintended consequences, the Order is unassailable.

I. A rehearing petition is not an opportunity to advance the same arguments again.

Rule 403 of the Commission's Rules of Practice and Procedure describes the requirements that a party must meet when petitioning for a rehearing:

> A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. [2013 AC, R 460.17403(1).]

The Commission has strictly interpreted this rule, stating that "[u]nless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing." *In re Cherryland Electric Coop's Application for a Large Resort Service Rate*, MPSC Case No. U-13716, Order, October 14, 2004, p 2. The Commission has further elaborated on multiple occasions that "an application for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision." E.g., *In re Consumers Energy Co's 2004 Power Supply Cost Recovery Plan*, MPSC Case No. U-13917, Order, August 1, 2005, p 4.

II. Geronimo repeats arguments that have already been rejected.

In its Petition for Rehearing, Geronimo repeats several arguments that it made in its Petition to Intervene and its Reply to DTE Electric's Answer and Objection. For example, Geronimo reiterates claims that it suffered an injury in fact: "Geronimo's injury is its inability to participate in the competitive bidding process required by statute." (Geronimo's Pet for Reh'g, p 4.) This mirrors its earlier argument: "[T]he harm alleged is that Geronimo was deprived of the

opportunity to participate in a competitive process required by statute." (Geronimo's Reply to DTE's Answer and Objection, p 2.)

Geronimo also maintains that it qualifies for permissive intervention. In its Petition to Intervene, it said, "Geronimo is in a position to provide important information to the Commission with respect to other available, comparable offers made to DTE – information that DTE has neglected to provide to the Commission." (Geronimo's Pet to Intervene, p 5.) In its Petition for Rehearing, Geronimo persists. It says that it can "provide vital information as a renewable energy supplier" and that it "is the only known entity that can ensure a complete record and rebut erroneous assertions of DTE with respect to the market conditions." (Geronimo's Pet for Reh'g, pp 5–6.)

Further, Geronimo repeats arguments that it could have offered DTE Electric a better price than Pheasant Run offered. In its Petition to Intervene, Geronimo claimed that "the PRW [Pheasant Run Wind] contracts were entered into . . . at significantly higher prices . . . than those proposed by Geronimo for its Apple Blossom project." (Geronimo's Pet to Intervene, pp 2–3.) In its Petition for Rehearing, Geronimo likewise said, "the Affidavit of Mr. Daum, attached to Geronimo's Petition for Leave to Intervene, demonstrates that the PRW PPAs were *not* the lowest price available to DTE." (Geronimo's Pet for Reh'g, p 7.)

Finally, Geronimo repeats arguments that DTE Electric had enough time to solicit and consider competitive bids. In its Petition for Rehearing, Geronimo

contends that DTE was "negotiating with PRW in January, giving more than sufficient time for DTE to have commenced a competitive bid process." (Geronimo's Pet for Reh'g, p 5.) Similarly, in its Petition to Intervene, Geronimo argued, "[U]pon receipt of the unsolicited bid from NextEra in January, 2013 . . . DTE should have, and could have, initiated a competitive bidding process to evaluate all potential renewable energy projects . . . ." (Geronimo's Pet to Intervene, pp 3–4.)

The Commission considered and rejected these arguments before it approved the Pheasant Run contracts. The arguments are no more persuasive today.

III. Geronimo has not demonstrated that the Commission erred or that its May Order resulted in unintended consequences.

Geronimo's Petition fails because it repeats the same arguments that the Commission already rejected. As discussed below, the Petition also fails because it does not identify errors, newly discovered evidence, or unintended consequences that merit reconsideration.

A. The Commission made all necessary determinations.

Geronimo argues that the Commission erred by not making certain determinations required by statute. Specifically, Geronimo accuses the Commission of approving the Pheasant Run contracts before it had determined that there were no other comparable opportunities. (See Geronimo's Petition, p 6.) Geronimo previously faulted DTE Electric for the same alleged mistake. Geronimo said that DTE did not "identify, either in its Application or Answers and Objections, unique

opportunities available under the contract not otherwise available or commercially practical." (Geronimo's Reply to DTE's Answer and Objection, p 3.)

In response to Geronimo, DTE Electric said that the Commission made all determinations required by statute when it approved the contract. According to the Company, "DTE Electric in its application stated that the ability to capture production tax credits, the project meeting a start of construction requirement in 2013, CODs in 2014, and a commitment to Michigan content were the opportunities that DTE Electric did not believe to be 'otherwise available or commercially practicable.'" (DTE's Answer to Geronimo's Pet for Reh'g, p 8.) DTE concluded that by approving DTE's application, the Commission agreed with DTE that the contract provided opportunities that were not otherwise available or commercially practicable. Staff agrees and is confident that the Commission will confirm this in an order denying rehearing.

B. The Commission's Order was sufficient.

Geronimo wants the Commission to include details in its Order that Act 295 does not require. According to Geronimo, "the Commission should have more thoroughly discussed the reasonableness of the pricing of the PRW PPAs in comparison to current market conditions . . . not just in comparison to what the Commission had previously approved." (Geronimo's Pet for Reh'g, p 8.) Nowhere, however, does Act 295 require the Commission to compare the contract price with the current market price for renewable energy. See MCL 460.1037.

The Commission considered Pheasant Run Wind contract's price and term and compared it with other recent contracts. It also considered DTE Electric's option to purchase and debt-related cost recovery. The Commission's review was sufficient.

C. The Commission's Order does not create unintended consequences.

There are no unintended consequences to the Commission's May Order. Geronimo argues that the Commission's Order has the unintended consequence of nullifying Act 295's competitive bidding requirement. (Geronimo's Pet for Reh'g, p 3). But the Order does not nullify the competitive bidding requirement; it adheres to a statutory exception. Act 295 allows an electric provider to consider unsolicited proposals if it determines that the proposal presents opportunities that may not otherwise be available or commercially practical. MCL 460.1033(1)(a). That is exactly the situation here. The Pheasant Run contracts allow DTE Electric to capture production tax credits that may not have been available if it had waited to complete the competitive bidding process.[1]

IV. Conclusion

A rehearing petition is not a second chance to advance losing arguments. For a petitioner to succeed, it must prove that an order is incorrect because of errors,

[1] Production tax credits in the American Taxpayer Relief Act of 2012 have been extended to developers that begin significant construction this year on a renewable energy system. NextEra expects to begin building the Pheasant Run Wind project this year and that it will be in service by the first quarter of next year. (DTE Electric's Application, pp 4–5.)

newly discovered evidence, or unintended consequences. Because Geronimo did not do so, its Petition for Rehearing should be denied.

Respectfully submitted,

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Dated: July 8, 2013
16582/Answer to Geronimo Pet for Rehrg

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(e-file paperless)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

TINA L. BIBBS, being first duly sworn, deposes and says that on **July 8, 2013,** she served a true copy of **THE MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S ANSWER TO GERONIMO ENERGY, LLC'S PETITION FOR REHEARING** upon the following parties **VIA E-MAIL ONLY:**

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TINA L. BIBBS

Subscribed and sworn to before me
this **8th** day of **July, 2013**.

Pamela A. Pung, Notary Public
State of Michigan, County of Clinton
Acting in the County of Ingham
My Commission Expires: 5-7-2018