

124 West Allegan Street, Suite 1000  
Lansing, Michigan 48933  
T (517) 482-5800 F (517) 482-0887  
www.fraserlawfirm.com

Douglas J. Austin	Thaddeus E. Morgan	Jared A. Roberts	Retired
Michael E. Cavanaugh	Brian P. Morley	David J. Houston	Donald A. Hines
Darrell A. Lindman	Jennifer Utter Heston	Melisa M. W. Mysliwicz	John J. Loose
Gary C. Rogers	Marlaine C. Teahan	Shaina R. Reed	
Michael H. Perry	Mark E. Kellogg		Archie C. Fraser (1902-1998)
Thomas J. Waters	Ryan K. Kauffman		Everett R. Trebilcock (1918-2002)
Michael S. Ashton	Paula J. Manderfield	OF COUNSEL	James R. Davis (1918-2005)
H. Kirby Albright	Paul V. McCord	David E. S. Marvin	Ronald R. Pentecost (1932-2008)
Graham K. Crabtree	Brian T. Gallagher	Stephen L. Burlingame	Mark R. Fox (1953-2011)
Michael P. Donnelly	Jonathan T. Walton, Jr.	Mark A. Bush	
Edward J. Castellani	Laura S. Faussié	Brandon W. Zuk	
Jonathan E. Raven	Norbert T. Madison, Jr.	David S. Fry	
Peter D. Houk	Aaron L. Davis	Thomas L. Sparks	
Elizabeth H. Latchana	Paul C. Mallon, Jr.	Max R. Hoffman	Peter L. Dunlap, P.C.

jheston@fraserlawfirm.com  
(517) 377-0802

May 14, 2019

Ms. Kavita Kale, Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917

RE: *Complaint of Cypress Creek QFs*  
MPSC Docket No. U-20516

Dear Ms. Kale:

Enclosed herewith for filing in the above-referenced matter, please find the ***Joint Request of The Cypress Creek QFs For The Commission to Read The Record*** and Certificate of Service of same.

If you have any questions or concerns with the enclosed, please do not hesitate to contact me.

Very truly yours,

**Fraser Trebilcock Davis & Dunlap, P.C.**



Jennifer U. Heston

JUH/ab  
Enclosures  
cc: All parties of record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the joint complaint of )
the CYPRESS CREEK QFs against )
CONSUMERS ENERGY COMPANY ) Case No. U-20516
for unjust, unreasonable and improper )
practices under federal and state law. )

JOINT REQUEST
OF THE CYPRESS CREEK QFs
FOR THE COMMISSION TO READ THE RECORD

NOW COME the Cypress Creek QFs,1 by and through their attorneys, Fraser,
Trebilcock, Davis & Dunlap, P.C., and pursuant to Rule 406(10) of the Rules of Practice and

1 13 Mile Solar, LLC, AMT Solar, LLC, Abhurite Solar, LLC, Adamite Solar, LLC, Adams Solar, LLC, Addle Solar, LLC, Agrelite Solar, LLC, Agroscape Solar, LLC, Alacrity Solar, LLC, Albion North Solar, LLC, Alma Solar, LLC, Alpinist Solar, LLC, Anatole Solar, LLC, Angola Solar, LLC, Arb Solar, LLC, Arcrite Solar, LLC, Arrowhead Solar, LLC, Artisan Solar, LLC, Asparagus Solar, LLC, Atom Solar, LLC, Au Gres Solar, LLC, Aubil Solar, LLC, Aurelius Solar, LLC, Babbitt Solar, LLC, Bamboo Solar, LLC, Banfield Solar, LLC, Barkskin Solar, LLC, Beaverton Solar, LLC, Belgrade Solar, LLC, Bellburns Solar, LLC, Beryllium Solar, LLC, Bibbins Solar, LLC, Big Prairie Solar, LLC, Big Stone Solar, LLC, Bluebird Solar, LLC, Bodega Solar, LLC, Bohne Solar, LLC, Booth Drain Solar, LLC, Borelly Solar, LLC, Bradshaw Solar, LLC, Brandt Solar, LLC, Breckenridge Solar, LLC, Brogan Solar, LLC, Buena Vista Solar, LLC, Bullhead Solar, LLC, Bunny Solar, LLC, Burns Park Solar, LLC, Burr Solar, LLC, Burt Solar, LLC, Byrne Solar, LLC, Cadillac Solar, LLC, Canal Solar, LLC, Capetown Solar, LLC, Captain Solar, LLC, Castleton Solar, LLC, Cayenne Solar, LLC, Cloudbreak Solar, LLC, Cobb Solar, LLC, Coldwater Solar, LLC, Columbia Solar, LLC, Coman Solar, LLC, Congo Solar, LLC, Coolidge Solar, LLC, Copenhagen Solar, LLC, Coronado Solar, LLC, Cowboy Solar, LLC, Custer Solar, LLC, Dantes Solar, LLC, Demings Lake Solar, LLC, Devils Lake Solar, LLC, Dimanche Solar, LLC, Domingo Solar, LLC, Donny Solar, LLC, Douglass Solar, LLC, Dram Solar, LLC, Duffield Solar, LLC, Durban Solar, LLC, El Ray Solar, LLC, Elsie Solar, LLC, Endymion Solar, LLC, Esmarelda Solar, LLC, Fabienne Solar, LLC, Famous Rays Solar, LLC, Ferris Solar, LLC, Fillmore Solar, LLC, Fortunate Sun Solar, LLC, Frehley Solar, LLC, Frontier Solar, LLC, Frontier's Edge Solar, LLC, Fulton Solar, LLC, Geddes 1 Solar, LLC, Geddes 2 Solar, LLC, Gladwin Solar, LLC, Glennie Solar, LLC, Gobi Solar, LLC, Goethe Solar, LLC, Gola Solar, LLC, Goldfinch Solar, LLC, Gordonville Solar, LLC, Gorman Solar, LLC, Granite Solar, LLC, Greasy Jim Solar, LLC, Grimke Solar, LLC, Groucho Solar, LLC, Grover Solar, LLC, Gull Lake Solar, LLC, Hanging Gardens Solar, LLC, Hatchet Solar, LLC, Hazel Solar, LLC, Hendershot Solar, LLC, Hermosa Solar, LLC, Herring Solar, LLC, Hogan Solar, LLC, Honey 1 Solar, LLC, Horton Solar, LLC, Hubbard Lake Solar, LLC, Hyperion Solar, LLC, Ignatius Solar, LLC, Ikeya Solar, LLC, Imaeda Solar, LLC, Incandenza Solar, LLC, Interchange Solar, LLC, Iron Solar, LLC, Jack Francis Solar, LLC, Jackie Solar, LLC, Jacks Lake Solar, LLC, Jeffery Solar, LLC, Jellyfish Solar, LLC, Jimmie Solar, LLC, Jody Solar, LLC, Johnfield Solar, LLC, Jolly Green Solar, LLC, Jordanelle Solar, LLC, Kaline Solar, LLC, Keitel Solar, LLC, Kellen Solar, LLC, Kennan Solar, LLC, Khonsu Solar, LLC, Kinbote Solar, LLC, Kissinger Solar, LLC, Knockhill Solar, LLC, Knowlton Solar, LLC, Kochville Solar, LLC, Kofi Solar, LLC, Kubrick Solar, LLC, Laughing Whitefish Solar, LLC, Lebowski Solar, LLC, Lightfoot Solar, LLC, Lighthouse Solar, LLC, Lineman



Procedure before the Michigan Public Service Commission (“Commission”), R 792.10406(10), hereby request that the Commission read the record in this proceeding and dispense with a Proposal for Decision. In support of this request, the Cypress Creek QFs state as follows:

1. The principle relief sought in this joint complaint proceeding is that the Commission direct Consumers Energy Company, (“Consumers”) to comply with the Commission’s clear directives to enter into power purchase agreements (“PPAs”) with: a) the first 150 MW of qualifying facilities (“QFs”) in its interconnection queue at Consumers’ full avoided capacity and energy cost rates established by the Commission in Case No. U-18090 and b) with all other QFs in Consumers’ interconnection queue at Consumers’ avoided cost rate for energy established by the Commission in Case No. U-18090 and the Midcontinent Independent System Operator, Inc. (“MISO”) Planning Resource Auction (“PRA”) rate for capacity (“Current Energy + PRA Rate”).

---

Solar, LLC, Litchfield Solar, LLC, Littlefield Solar, LLC, Long Lake Solar, LLC, Macbeth Solar, LLC, Mako Solar, LLC, Malbec Solar, LLC, Malibu Solar, LLC, Marty Solar, LLC, Maude Solar, LLC, May Shannon Solar, LLC, McKinley Solar, LLC, Menelaus Solar, LLC, Mia Solar, LLC, Minos Solar, LLC, Mir Solar, LLC, Miracle Max Solar, LLC, Misteguay Solar, LLC, Mitten Solar, LLC, Moonbeam Solar, LLC, Morse Solar, LLC, Mumbai Solar, LLC, Neutron Solar, LLC, Numatism Solar, LLC, Oak Grove Solar, LLC, Oberlin Solar, LLC, Odawa Solar, LLC, Olivier Solar, LLC, Onsted Solar, LLC, Otisville Solar, LLC, Ovid Solar, LLC, Pannonica Solar, LLC, Parma Solar, LLC, Patron Solar, LLC, Pazar Solar, LLC, Peppers Solar, LLC, Petty Solar, LLC, Polk Solar, LLC, Prairie Creek Solar, LLC, Prometheus Solar, LLC, Puck Solar, LLC, Rambling Man Solar, LLC, Reading Solar, LLC, Roethke Solar, LLC, Rosco Solar, LLC, Rosemary Solar, LLC, Rothko Solar, LLC, Ruth Solar, LLC, Salt Lake Solar, LLC, Saltine Solar, LLC, Sand Creek Solar, LLC, Seger Solar, LLC, Shanti Solar, LLC, Sharpe Solar, LLC, Shipsterns Solar, LLC, Sinbad Solar, LLC, Slee Solar, LLC, Snare Solar, LLC, Solis Solar, LLC, Southside Solar, LLC, St. Joseph Solar, LLC, Sticks Solar, LLC, Stockholm Solar, LLC, Stoneheart Solar, LLC, Striker Solar, LLC, Stubbs Solar, LLC, Sunbelievable Solar, LLC, Sunny Acres Solar, LLC, Sunskrit Solar, LLC, Surbrook Solar, LLC, Swan Creek Solar, LLC, Swartz Solar, LLC, Swede Solar, LLC, Taft Solar, LLC, Tangiers Solar, LLC, Tepei Solar, LLC, Thayne Solar, LLC, Thornapple Solar, LLC, Thumper Solar, LLC, Tieman Solar, LLC, Tittabawassee Solar, LLC, Topanga Solar, LLC, Tortuga Solar, LLC, Trammell Solar, LLC, Treasure Solar, LLC, Turtle Solar, LLC, Twin Lake Solar, LLC, Twining Solar, LLC, Typhon Solar, LLC, Uli Solar, LLC, Ulysses Solar, LLC, Union City Solar, LLC, Van Buren Solar, LLC, Victors Solar, LLC, Vincent Solar, LLC, Waldron Solar, LLC, West Hyperion Solar, LLC, Whittum Solar, LLC, Willford Solar, LLC, Wilmore Solar, LLC, Woodlander Solar, LLC, Woodley Solar, LLC, Woodrow Solar, LLC, Zadie Solar, LLC, Zed Solar, LLC, Zeno Solar, LLC, and Zermatt Solar, LLC, (jointly as “Cypress Creek QFs”).

2. The Commission issued these clear directives in its orders dated February 22, 2018 and October 5, 2018 in Case No. U-18090.

3. As described in detail in the joint complaint, Consumers has refused to enter into PPAs with the Cypress Creek QFs in violation of the Commission's orders, the Public Utilities Regulatory Policy Act of 1978 ("PURPA"), and Consumers' standard offer tariff.

4. Consumers' unlawful conduct has already delayed the development of the Cypress Creek QF projects by more than seven months. This has caused, and is continuing to cause, irreparable harm to the Cypress Creek QFs.

5. As an initial matter, because of Consumers' unilateral and unlawful conduct, the Cypress Creek QFs are at risk of not being able to fully utilize the federal Investment Tax Credit ("ITC"), which is critical to the ability of QFs to develop their projects at the very low Current Energy + PRA Rate. The value of the ITC begins to step down in the year 2020, when it drops from 30% to 26% of qualifying capital expenditures. *See* 26 USC § 48(a)(6). To receive the full tax credit, a facility owner needs to place the facility in service, commence continuous construction or make a significant capital investment in 2019 or earlier. *Id.*

6. Absent expedited relief, the Cypress Creek QFs will continue to suffer irreparable harm due to, among other things, the potential reduction in value of the ITC. The Cypress Creek QFs are at risk of being unable to fully utilize tax benefits to which they are entitled under federal law and on which they relied when planning their solar projects. The value of the Cypress Creek QFs' facilities is significantly affected by the extent to which they are able to utilize the ITC. In each case, the Cypress Creek QFs will be irreparably harmed if not able to fully utilize the ITC, as there is no remedy available to the Cypress Creek QFs to recover lost value.

7. The Cypress Creek QFs are also suffering irreparable harm because they are required to continue incurring costs to preserve land rights and to develop their projects without having certainty about the project's PPA revenues.

8. The Cypress Creek QFs are entitled to an immediate determination that they are entitled to contract with Consumers immediately.

9. In a similar complaint filed by sPower Development Company LLC against Consumers, the Commission agreed to read the record. See, MPSC Case No. U-20500. The presiding officer set a case schedule whereby reply briefs will be filed on September 16, 2019. See, MPSC Case No. U-20500, Docket Entry No. 22. The Cypress Creek QFs request a comparable schedule.

**WHEREFORE**, the Cypress Creek QFs respectfully request that this Commission read the record in this proceeding and dispense with a Proposal for Decision and grant such other and further relief as is deemed lawful and appropriate.

Respectfully submitted,

**FRASER TREBILCOCK DAVIS & DUNLAP, P.C.**  
ATTORNEYS FOR THE CYPRESS CREEK QFS



Date: May 14, 2019

By: \_\_\_\_\_

Jennifer Utter Heston (P65202)

Business Address:

124 W. Allegan, Ste 1000

Lansing, MI 48933

Telephone: (517) 482-5800

E-mail: [jheston@fraserlawfirm.com](mailto:jheston@fraserlawfirm.com)



STATE OF MICHIGAN

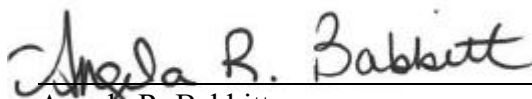
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the joint complaint of )  
the CYPRESS CREEK QFs against )  
CONSUMERS ENERGY COMPANY )  
for unjust, unreasonable and improper )  
practices under federal and state law. )  
\_\_\_\_\_ )

Case No. U-20516

CERTIFICATE OF SERVICE

Angela R. Babbitt hereby certifies that on the 14<sup>th</sup> day of May, 2019, she served the *Joint Request of The Cypress Creek QFs For The Commission to Read The Record* and this Certificate of Service on the persons identified on the attached service list via electronic mail.

  
\_\_\_\_\_  
Angela R. Babbitt

## Service List for U-20516

### **Administrative Law Judge**

Hon. Kandra K. Robbins  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917  
[robbinsk1@michigan.gov](mailto:robbinsk1@michigan.gov)

### **MPSC Director of Regulatory Affairs**

Ryan Wilson  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917  
[wilsonR31@michigan.gov](mailto:wilsonR31@michigan.gov)

### **Counsel for MPSC Staff**

Spencer A. Sattler  
Heather M.S. Durian  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
Lansing, MI 48917  
[sattlers@michigan.gov](mailto:sattlers@michigan.gov)  
[durianh@michigan.gov](mailto:durianh@michigan.gov)

### **Counsel for Consumers Energy Company**

Emerson Hilton  
Michael Rampe  
Robert W. Beach  
One Energy Plaza  
Jackson, MI 49201  
[Emerson.Hilton@cmsenergy.com](mailto:Emerson.Hilton@cmsenergy.com)  
[Michael.Rampe@cmsenergy.com](mailto:Michael.Rampe@cmsenergy.com)  
[Robert.beach@cmsenergy.com](mailto:Robert.beach@cmsenergy.com)  
[Mpsc.filings@cmsenergy.com](mailto:Mpsc.filings@cmsenergy.com)