

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission’s own motion,)	
to commence a collaborative to consider issues)	
related to implementation of effective new)	
technologies and business models.)	Case No. U-20898
_____)	

At the January 19, 2023 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER

In the October 17, 2019 order in Case No. U-20645, the Commission established the MI Power Grid (MPG) initiative in partnership with Governor Gretchen Whitmer (October 17 order). MPG is a focused, multi-year stakeholder initiative to maximize the benefits of the transition to clean, distributed energy resources (DERs) for Michigan residents and businesses. In the October 17 order, addressing the issue of integrating emerging technologies, the Commission indicated that “[e]nsuring timely and fair grid access and appropriate information exchange to support customer-oriented solutions and reliable system operations” would be a focus of the initiative and directed that one of the corresponding MPG work areas would be new technologies and business models. October 17 order, p. 7. In the October 29, 2020 order in Case No. U-20898, the Commission launched the New Technologies and Business Models workgroup as part of Phase

II of MPG, and provided guidance to the Commission Staff (Staff) and stakeholders on the Commission's objectives and expectations for this effort. Thereafter, the Staff convened numerous stakeholder sessions, distributed surveys, received written comments, and provided draft reports. On December 1, 2021, the Staff filed the "MI Power Grid: New Technologies, Business Models, and Staff Recommendations Report" (Staff Report) in this docket. The Staff Report concludes with nine recommendations.

On July 27, 2022, the Commission issued an order (July 27 order) addressing the nine recommendations. In the July 27 order, pp. 12-13, the Commission considered issues regarding behind the meter (BTM) solar and storage resources and put the following nine queries out for comment:

1. Whether or not third-party community solar fits in the current regulatory framework;
2. The legal and regulatory barriers for a third party to sign customers up, charge a per kWh [kilowatt-hour] subscription fee, [or] pay a per kWh subscription credit outside of the utility framework;
3. The current legal and regulatory structure for utilities to own solar generation behind the customer's meter;
4. Legal prohibitions preventing a utility from owning and rate-basing technologies located behind the customer's meter;
5. The risk or liability associated with putting batteries behind the customer meter;
6. Is there a role for performance-based metrics around the development of alternative business models relating to DERs in terms of interconnection and utilization;
7. What are the pros and cons of both utility and non-utility ownership and development of microgrids connected with alternative business models;
8. Is there a role for pilots that would be comparable to utility pilots or tariffs but would be offered by a third party? Such a pilot could be facilitated by the utility or a collection of smaller utilities and the third party could be selected through a competitive process; and
9. Should utilities be able to own solar generation and batteries behind the customer's meter.

The Commission received responsive comments from the Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively, the Clean Energy Organizations or CEOs); the Michigan Energy Innovation Business Council and Advanced Energy Economy (together, EIBC/AEE); sonnen, Inc. (sonnen); the Michigan Electric and Gas Association (MEGA); DTE Electric Company (DTE Electric); and Consumers Energy Company (Consumers). This order summarizes the comments and seeks additional input from interested persons.

Comments

Question 1: Whether or not third-party community solar fits in the current regulatory framework.

The CEOs respond in the affirmative, asserting that third-party community solar fits within the current regulatory framework due to the Commission’s broad powers to set just and reasonable rates. CEOs’ comments, p. 7.

EIBC/AEE state that their comments are an evaluation of the Staff’s community solar proposal offered in testimony from Julie K. Baldwin in Case No. U-21224, p. 6, which EIBC/AEE describe as “intended to mimic the benefits of the distributed generation (“DG”) program for customers without access to that program.” EIBC/AEE’s comments, p. 1 and Exhibit A; *see*, Case No. U-21224, 4 Tr 4274-4283. EIBC/AEE state that the Staff’s proposal fits within the existing regulatory framework because:

[i]t does not involve direct retail sales of power from a non-utility or from an alternative electric supplier in excess of the choice cap (see MCL 460.10a), and it does not involve non-utility ownership of distribution infrastructure or metering equipment (see MCL 460.10q(4)). Further, the subscriber payment structure (including if it were structured as a kWh-based subscription fee) would not represent payment for retail end-use energy. Rather it would be based on payment for certain rights associated with ownership of a share of a community solar project—chiefly, the right to receive financial benefits from the sale of energy and capacity from the project to the utility. At most, a kWh-based charge would serve

merely as a proxy for the degree to which those rights are subscribed to by the participating customer.

EIBC/AEE's comments, p. 2. EIBC/AEE add that the Commission would approve tariffs for outflow and distribution credits.

Sonnen states that it lacks expertise in the Michigan regulatory framework or in traditional community solar programs, but has expertise in BTM battery storage virtual power plant projects. Sonnen states that some projects the company has worked on have required third-party mechanisms to ensure equitable access to the energy. Sonnen's comments, p. 1 (applying natural pagination).

MEGA states that:

[t]hird-party solar that operates in parallel with utility systems to serve retail customer load, except for behind the meter, is not lawful in Michigan unless the third-party contracts with a distribution utility. If it does not, third-party community solar constitutes engaging in the act of regulated sale of electricity under MCL 460.551 and MCL 460.552. Furthermore, the third-party, if it does not contract with a distribution utility, will be operating as a utility and would need a certificate to function as such pursuant to MCL 460.501 et seq. and MCL 460.3411 [sic: Mich Admin Code, R 460.3411]. That being said, MEGA members are supportive of voluntary community solar programming working with the utility to assist customers [to] access renewable energy.

MEGA's comments, p. 2.

DTE Electric comments that it cannot provide a meaningful answer without knowing the details of the particular program. DTE Electric's comments, p. 3.

Consumers states that third-party community solar "is inconsistent with Michigan's regulatory construct and raises concerns about subsidization and program caps," and that Consumers "can administer programs that provide more customer access in a more equitable way through the expansion and enhancement of the utility voluntary green pricing ('VGP') program." Consumers' comments, p. 5. However, the company also states that:

[t]here is no rule or law preventing third-party community solar projects from operating independent of regulatory influence. Third parties are free to develop and administer community solar projects to serve a community or group. For example, a third party could charge a per kWh subscription fee and issue a per kWh subscription credit to subscribers – all outside of the utility framework. These developers would also have ready access to wholesale energy markets to sell excess generation from community solar projects. There is no reason to force third-party community solar into the current regulatory framework.

Id. Consumers comments that it is not clear that third-party community solar provides benefits that utility-owned community solar does not, and notes that the whole construct is still new. The company states that there would be administrative costs associated with a utility integrating third-party community solar into the grid and those costs would likely be rate-based, thus potentially shifting the market risk to the utility and its ratepayers. Consumers states that such programs sometimes require the utility to pay above-market prices to subscribers and expresses concern that such programs are simply a way to evade the statutory caps on DG and choice load.

Question 2: The legal and regulatory barriers for a third party to sign customers up, charge a per kWh subscription fee, [or] pay a per kWh subscription credit outside of the utility framework.

The CEOs respond that, under certain circumstances, this may become a securities issue if a customer is participating as an investor in a merchant power plant. In general, the CEOs state that community solar projects should be connected to the customer’s energy usage and utility bill, and utility cooperation with third-party developers “as an off-taker of the energy and capacity from third-party-owned systems and to credit subscribers on their bills would be a valuable and customer-friendly way to advance third-party community solar.” CEOs’ comments, pp. 7-8.

Sonnen states that it can “provide benchmark examples of project developer/property owners playing this role or part of this role.” Sonnen’s comments, p. 2.

MEGA states that such transactions are not lawful. MEGA’s comments, p. 2.

Question 3: The current legal and regulatory structure for utilities to own solar generation behind the customer's meter.

The CEOs state that they agree with EIBC/AEE. They state that:

utility ownership of customer-sited resources presents serious risks to the development of a healthy, competitive market for new, innovative DER technologies. Public utility regulation should extend only so far as necessary to protect the consuming public, and should not intrude on competitive market services. Thus, the Commission should allow utilities to participate in behind-the-meter DER markets only where necessary and justified by traditional utility principles, such as instances where market failures exist.

CEOs' comments, p. 8.

Sonnen states that "the combination of both Rate structure innovation and Grid Service incentives has proven the most expedient and effective of all structures" for a utility BTM battery storage program where the utility does not take ownership of the physical assets. Sonnen's comments, p. 2.

MEGA states that Michigan law does not prohibit utilities from owning BTM solar generation and that recovery for such assets should occur in a rate case. MEGA's comments, p. 2.

DTE Electric opines that utility ownership should be an option, and that the company is not aware of any state law which prohibits utilities from owning and rate-basing BTM resources. DTE Electric's comments, p. 4. DTE Electric states that the Commission has found utility ownership of certain BTM resources to be reasonable and prudent, citing the December 11, 2015 order in Case No. U-17767 and the February 20, 2020 order in Case No. U-20471 as examples where the Commission approved residential interruptible air conditioning programs. DTE Electric adds that some customers may prefer utility-owned BTM offerings because of the utility's regulated status, and posits that some segments of the market such as low-income customers may attract investment only from utilities.

Consumers states that it wants to preserve its right to own some BTM projects and that the Commission's orders thus far on this subject have been vague. The company recommends that the Commission provide some guidance and regulatory certainty so that the utility may pursue consideration of BTM projects. Consumers asserts that utility ownership of BTM DERs is not anti-competitive and that customers should be allowed to choose whether to purchase BTM DERs from the utility or a third party. Consumers' comments, p. 8. Consumers also notes that the Commission has rejected the company's BTM proposals (including Bring Your Own Brightfield and the Home Battery Pilot) but asserts that these programs illustrate the benefits that may accrue from utility-owned BTM DERs. Consumers contends that utility ownership has the advantage of requiring the program to be cost-based thus ensuring that fair prices are charged, and has the additional advantage of offering economies of scale. *Id.*, p. 9. Consumers states that BTM DER projects were approved in the June 9, 2021 order in Case Nos. U-20713 *et al*, and in the July 27, 2022 order in Case No. U-21134 (both under the anchor tenant approach for community solar).

Question 4: Legal prohibitions preventing a utility from owning and rate-basing technologies located behind the customer's meter.

MEGA states that Michigan has no prohibition against such a transaction. MEGA notes that MEGA members build, own, and operate such assets in other jurisdictions, where they are paid for through a fixed monthly charge and the assets are placed in rate base. MEGA's comments, p. 3.

Question 5: The risk or liability associated with putting batteries behind the customer meter.

The CEOs opine that customer-sited DERs that operate appropriately with certified equipment and in accordance with a valid interconnection agreement pose no risk to the utility. CEOs' comments, p. 9.

EIBC/AEE state that regulated utilities should not own BTM batteries or other DERs, and the Commission may act to limit the liability of utilities that may arise from the placement and operation of BTM batteries by including language in their tariffs limiting such liability, as has been done already for certain causes of service interruptions. They note that liabilities regarding battery installation or performance should be governed by contracts with, or guarantees provided by, other parties. As far as evaluation of storage during the interconnection screening process, EIBC/AEE recommend use of the 2019 Model Interconnection Rules from the Interstate Renewable Energy Council. EIBC/AEE's comments, p. 5.

Sonnen states that the risk or liability for either the third party or the homeowner is extremely low, and that a model relying on utility ownership has not come to fruition. Sonnen's comments, p. 2.

MEGA states that, assuming the battery is properly installed, the risk is similar to the risk faced by the utility when it approves an interconnection application. MEGA's comments, p. 3. MEGA suggests that the Commission consider requiring customers with BTM storage to obtain insurance coverage.

Question 6: Is there a role for performance-based metrics around the development of alternative business models relating to DERs in terms of interconnection and utilization.

The CEOs respond in the affirmative, noting that they have participated in proposing appropriate metrics for performance based regulation (PBR) in Illinois. CEOs' comments, p. 9.

Referring to them as performance incentive mechanisms (PIMs), EIBC/AEE support the use of these metrics which usually have associated financial incentives. EIBC/AEE state that the cost of service-based business model which is in use in Michigan "sets up a natural tension as the BTM DER market grows," because under that model "capital investment and the associated return on equity is the primary driver of utility profits." EIBC/AEE's comments, p. 6. They opine that as

the DER market grows utility capital investments may shrink, but they state that it would not be appropriate for monopoly utilities to engage in the DER market. They state that PIMs have the potential to help correct the current bias in favor of capital spending.

EIBC/AEE describe the characteristics of an effective PIM. They state that capital investment itself should not be the subject of the PIM, and PIMs should be used to incentivize utilities to become innovative in the areas of interconnection timeliness, peak load reduction, emissions reduction, and improved reliability, in ways that will provide net benefits to customers.

EIBC/AEE recommend that the Commission create a structured process involving stakeholders towards this effort and cites Nevada and Hawaii as good examples for this process, and Hawaii and New York as good examples for performance-based frameworks. They state that certain rules and procedures need to be “updated to reduce current barriers to DER market development.” *Id.*, p. 10.

Sonnen also states that there is a role for these metrics, and offers to discuss with the Commission the specific performance-based metrics that have been used in the United States, Europe, and Australia to enable multiple business models for DERs. Sonnen’s comments, p. 2.

MEGA states that PBR can be a way to strengthen relationships with customers, but the objectives should provide “mutual benefits for both customers and utilities.” MEGA’s comments, p. 4.

DTE Electric states that it is providing its comments on this topic in Case No. U-20147. DTE Electric’s comments, p. 5.

Question 7: What are the pros and cons of both utility and non-utility ownership and development of microgrids connected with alternative business models.

EIBC/AEE state that:

[e]ssentially, a microgrid is any property or group of properties that have 1) distributed generation and loads and 2) that are connected to the grid and that can island from the grid. A microgrid will often include distributed generation, storage, and system controls that allow it to function and provide power independent of the broader electric grid. A microgrid can include a single facility or multiple facilities.

EIBC/AEE's comments, p. 10. They aver that microgrids can provide many benefits, including lower costs, increased reliability, resilience, capacity, and reduced environmental impacts. They assert that ownership of microgrids should follow the same regulatory and statutory approach that is used for individual DERs; that is, that microgrids that are solely BTM should not be utility-owned. However, EIBC/AEE posit that the Commission may want to consider whether there should be microgrid-specific tariffs, due to their potential size.

EIBC/AEE further state that, under current Michigan law, microgrids that cross property boundaries and thus have multiple owners may be owned only by utilities, with the exception of MCL 460.10a(4)(a) which allows contiguous industrial properties to obtain self-service power. EIBC/AEE's comments, p. 11. They state that "a hospital, fire station, or another critical facility in Michigan is currently limited in its ability to develop a microgrid due to three key factors: 1) a lack of well-defined standards and procedures, 2) onerous fee structures, and 3) geographical constraints." *Id.* They note that there is currently no interconnection process or standard safety protocols for microgrids. EIBC/AEE further argue that current rate structures will not adequately compensate a microgrid, and the requirement that the microgrid exist on an individual property is overly limiting.

Sonnen states that it has not come across a successful utility-ownership model, but adds that, at this early stage of the energy transition "[u]tility control of Customer Owned or Third-Party Owned Distributed Energy Storage Resources is a far 'easier putt,' leading to rapid customer

adoption and substantial interest from capital markets to invest in Third-Party Owned models, in order to serve those who cannot afford the purchase of these assets.” Sonnen’s comments, p. 3.

MEGA states that “[t]hird-party ownership of microgrid systems on behalf of customers, coupled with onsite generation equipment, is not allowed under Michigan law unless it is behind the meter or involves a PPA [power purchase agreement] with the utility.” MEGA’s comments, p. 5. MEGA adds that utility-owned microgrids provide value and reduce upfront costs, and that it is important for the third party to involve the utility in project development.

DTE Electric states that, without more information on the specific microgrid, it is difficult to provide an answer. The utility notes that microgrids can be complex and will often need an interconnection agreement. DTE Electric notes that, for multi-premise microgrids, cost allocation may be challenging and the legal framework does not encourage the construction of multiple distribution systems. DTE Electric’s comments, p. 7.

Consumers expresses several concerns with third-party ownership of microgrids and other DERs, in the areas of consumer protection, cost, reliability, and the conflict with Michigan law. Consumers notes that third parties are unregulated and thus their DERs may cost more and yet still require utility support with administration and interconnection, which may amount to subsidization by the utility. The company states that such DERs rely on the utility as a backup so the utility must continue to build, operate, and maintain its system to accommodate DER projects developed by third parties, ultimately burdening ratepayers. Consumers’ comments, p. 11. Consumers asserts that third-party-owned microgrids are in direct conflict with Michigan administrative rules, because it is not clear whether microgrids fit into the definition of “premises” under Mich Admin Code, R 460.3102(k) (Rule 102(k)) or whether they are prohibited under Mich Admin Code, R

460.3411(2) (Rule 411) which prevents customers from migrating between utilities. Consumers' comments, pp. 11-12.

Consumers further comments that a third-party-owned microgrid using the utility's distribution system could violate the 10% choice cap provided in MCL 460.10a(1)(a) unless there is room under the cap, and states that such microgrids should be classified as retail open access service. Additionally, Consumers states, "if a microgrid consists of independently owned distribution lines used to deliver power from a generation source to a remote end user, the owner would be considered a utility under several statutory provisions, see, e.g., MCL 460.10q(4), 460.501, 460.551, 460.552, without a proper certificate or regulatory approval as required by statute." Consumers' comments, p. 12. Noting that MCL 460.10q(4) does not prohibit self-service power, Consumers opines that "if the microgrid is owned by anyone other than the parties that it serves, it is a 'utility' - not a 'nonutility' - and the distribution system is not a private distribution system for self-service, but a public one. See MCL 460.10a(4)." Consumers' comments, p. 13, n. 1. Consumers concludes that under any definition of "microgrid" a non-utility-owned microgrid would violate either the rules or the statutes, or both.

Question 8: Is there a role for pilots that would be comparable to utility pilots or tariffs but would be offered by a third party? Such a pilot could be facilitated by the utility or a collection of smaller utilities and the third party could be selected through a competitive process.

EIBC/AEE respond in the affirmative and offer that third-party pilots should not simply be add-ons to a utility pilot. EIBC/AEE state that third parties, which are often selected via competitive bidding, already implement many utility pilots. They recommend that third-party pilots be structured as a collaboration with the utility and that the Commission develop "an official pathway for third parties to propose pilot programs to be implemented by the utility and third

party.” EIBC/AEE’s comments, p. 12. They offer New York and Connecticut as examples of states with well-structured programs.

Sonnen also responds in the affirmative, stating that third-party investors are eager to build such programs. Sonnen’s comments, p. 3.

MEGA states that, because they are unregulated, third parties should not be able to conduct pilot programs, but utilities should be able to continue to hire third parties through a competitive bid process to perform certain pilot functions. MEGA’s comments, p. 6.

DTE Electric states that “providing non-utilities with the option of offering utility tariffs” would conflict with Michigan’s choice laws. The company again states that some aspects of the question are unclear, but that it would not be appropriate for third parties to test new utility rates or pricing structures. DTE Electric’s comments, p. 8.

Consumers comments that funds provided by customers should be used only for company programs, and states that the utility can take the learnings from a pilot and turn them into savings for customers. Consumers also notes that its pilots are subject to the approval of the Commission, and asserts that a third party has no obligation to apply learnings, offer cost savings, or be subjected to oversight. Consumers’ comments, pp. 13-14. The company also argues that any duplication of pilot programs, such as through parallel pilots, is more costly for customers.

Question 9: Should utilities be able to own solar generation and batteries behind the customer’s meter.

The CEOs respond that they believe that utilities should not be allowed to own or operate BTM DERs “unless justified by traditional principles of utility regulation.” CEOs’ comments, p. 10. They refer to the testimony of William D. Kenworthy that they presented in Case No. U-20471 (a 2019 integrated resource plan proceeding for DTE Electric) for a set of principles that should govern utility-owned BTM DERs (which they shorten to UBD). They propose the

following eight principles to apply when considering whether utilities should be able to own BTM DERs:

1. UBD should provide equitable access to clean energy for all customers;
2. UBD should not undermine competitive distributed or wholesale generation markets;
3. UBD should provide customer economic benefits;
4. UBD should meet customer demand for clean energy and help customers to achieve sustainability goals;
5. UBD should help the utility achieve its own carbon reduction and sustainability goals;
6. UBD should provide additionality;
7. UBD should provide benefits to the grid; and
8. Regulators should closely monitor UBD programs to ensure they deliver promised benefits.

CEOs' comments, pp. 11-12. The CEOs state that utility investments in UBD "should be limited to markets that are not being served by the competitive markets already," and offer that UBDs should not be available in the commercial and industrial market but should be focused on "market segments which lack the competitive offering requisite to fully harness DER added value." *Id.*, pp. 13-14.

EIBC/AEE contend that the Commission may not extend its regulatory powers into a competitive market in the absence of clear legislative authority, and that, were it to do so, the Commission would be undermining the competitive BTM DER industry. EIBC/AEE's comments, pp. 13-14. EIBC/AEE list the numerous competitive advantages that a monopoly utility would have within the competitive market, including the guaranteed rate of return on its investments and the ability to rate base those investments, a captive customer base, and access to lower cost capital.

EIBC/AEE note that the legislature has historically made specific provision for utilities to participate in unregulated markets, such as in MCL 460.10ee, which allows utilities to enter into the market for value-added products and services. EIBC/AEE question whether such a move could lead to anti-trust concerns, and whether a utility could justify spreading the cost of such investments among all customers rather than just the customer using the BTM DER. If the Commission disagrees, EIBC/AEE offer “the prudent example of the New York Public Service Commission” which “imposed a general policy of utility exclusion from BTM DER markets but permitted certain focused and limited exceptions to that rule” which are intended to facilitate the unregulated market. EIBC/AEE’s comments, p. 16. In sum, EIBC/AEE state that there is currently no statutory or regulatory structure in Michigan that allows utilities to own BTM solar generation, and the Commission lacks the authority to unilaterally create a structure that would allow utilities to own and rate base BTM technologies. To the extent that the Commission disagrees with this analysis, they assert that utility participation should be limited to areas where competitive markets have failed.

Sonnen states that “it seems quite logical that, at some point, Utility owned behind-the-meter solar + battery ‘Nodes’ will become an important component of the decentralized, digitalized and decarbonized ‘bi-directional’ grid of the future.” Sonnen’s comments, p. 3. However, sonnen adds that Michigan has “virtually no residential energy storage presence” and thus could benefit from simply trying innovative rate structures and utility battery incentives. *Id.*

MEGA states that utilities should be able to own BTM solar generation and batteries, and that some other states already have such programs. MEGA adds that its members would be open to conducting pilot programs to “evaluate the feasibility of Michigan utilities owning solar and or storage assets” BTM. MEGA’s comments, p. 7.

Discussion

The Commission thanks the commenters for their insights and turns its focus to some of the specific legal barriers highlighted by the commenters. To that end, the Commission notes that the following statutory and regulatory provisions play a role in determining the answers to some of the issues presented by BTM resources:

MCL 460.10q(4) provides:

Only investor-owned, cooperative, or municipal electric utilities shall own, construct, or operate electric distribution facilities or electric meter equipment used in the distribution of electricity in this state. This subsection does not prohibit a self-service power provider from owning, constructing, or operating electric distribution facilities or electric metering equipment for the sole purpose of providing or utilizing self-service power. This act does not affect the current rights, if any, of a nonutility to construct or operate a private distribution system on private property or private easements. This does not preclude crossing of public rights-of-way.

MCL 460.10a(4) provides:

This act does not prohibit or limit the right of a person to obtain self-service power and does not impose a transition, implementation, exit fee, or any other similar charge on self-service power. A person using self-service power is not an electric supplier, electric utility, or a person conducting an electric utility business. As used in this subsection, “self-service power” means any of the following:

(a) Electricity generated and consumed at an industrial site or contiguous industrial site or single commercial establishment or single residence without the use of an electric utility’s transmission and distribution system. . . .

(d) A commercial or industrial facility or single residence that meets the requirements of subdivision (a) . . . meets this definition whether or not the generation facility is owned by an entity different from the owner of the commercial or industrial site or single residence.

MCL 460.501 provides:

The term “public utility”, when used in this act, means persons and corporations, other than municipal corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for producing, generating, transmitting, delivering or furnishing gas or electricity for the production of light, heat or power to or for the public for compensation.

MCL 460.502 provides:

No public utility shall hereafter begin the construction or operation of any public utility plant or system thereof nor shall it render any service for the purpose of transacting or carrying on a local business either directly, or indirectly, by serving any other utility or agency so engaged in such local business, in any municipality in this state where any other utility or agency is then engaged in such local business and rendering the same sort of service, or where such municipality is receiving service of the same sort, until such public utility shall first obtain from the commission a certificate that public convenience and necessity requires or will require such construction, operation, service, or extension.

MCL 460.551 provides:

When electricity is generated or developed by steam, water or other power, within 1 county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of the same in or on the public highways, streets and places, the rate of charge to be made to the consumer for the electricity so transmitted and distributed and the rules and conditions of service under which said electricity shall be transmitted and distributed shall be subject to regulation as in this act provided.

MCL 460.552 provides:

The Michigan public utilities commission, hereinafter referred to as “the commission” shall have control and supervision of the business of transmitting and supplying electricity as mentioned in the first section of this act and no public utility supplying electricity shall put into force any rate or charge for the same without first petitioning said commission for authority to initiate or put into force such rate or charge and securing the affirmative action of the commission approving said rate or charge.

Finally, Rule 102(k) provides that “‘Premises’ means an undivided piece of land that is not separated by public roads, streets, or alleys,” and Rule 411(1)(a) provides that “‘Customer’ means the buildings and facilities served rather than the individual, association, partnership, or corporation served.” Rule 411(2) provides that “Existing customers shall not transfer from one utility to another.” Rule 411(11) provides that “The first utility serving a customer pursuant to these rules is entitled to serve the entire electric load on the premises of that customer even if another utility is closer to a portion of the customer’s load.”

Against this legal background, the Commission requests that commenters address the following questions:

1. Does the current legal framework prohibit third parties from (or allow for) directly charging customers on a volumetric basis for BTM DERs? What if the charge is non-volumetric?
2. Does the current legal framework allow or prohibit third-party ownership of a community solar or community solar plus storage project? Does the answer change if the participants own the solar panels that are used for the generation?
3. Would a third party offering volumetric sales directly to a customer from a BTM DER need to register as a utility?
4. Does utility ownership of BTM DERs offer adequate customer protections? Are the same or similar protections available to customers who purchase BTM DERs from third parties or customers utilizing BTM DERs owned by third parties?

The Commission is particularly interested in areas of ambiguity and the policy implications associated with different ownership scenarios, and commenters are encouraged to identify any other relevant legal prohibitions or other considerations beyond those listed above and/or in the July 27 order of which the Commission should be aware, that may impact efforts to further the expansion of BTM DERs in Michigan. The Commission intends to provide further guidance on this topic after review of the comments.

Any person may submit written comments in response to the listed questions. The comments should reference Case No. U-20898 and should be received no later than 5:00 p.m. (Eastern time) on February 17, 2023. Address mailed comments to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to mpscdockets@michigan.gov. Any person requiring assistance prior to filing may contact the Staff at (517) 284-8090 or by e-mail at mpscdockets@michigan.gov. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure; and all comments will be filed in Case No. U-20898.

THEREFORE, IT IS ORDERED that any person may submit comments on the questions listed in this order addressing the development of alternative business models. The comments should reference Case No. U-20898 and should be received no later than 5:00 p.m. (Eastern time) on February 17, 2023.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of January 19, 2023.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

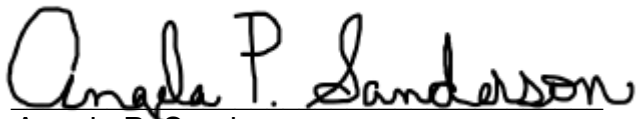
Case No. U-20898

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on January 19, 2023 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 19th day of January 2023.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

GEMOTION DISTRIBUTION SERVICE LIST

kadarkwa@itctransco.com	ITC
sejackinchuk@varnumlaw.com	Energy Michigan
cwilson@cloverland.com	Cloverland
mheise@cloverland.com	Cloverland
vobmgr@UP.NET	Village of Baraga
braukerL@MICHIGAN.GOV	Linda Brauker
info@VILLAGEOFCLINTON.ORG	Village of Clinton
coneill@homeworks.org	Tri-County Electric Co-Op
psimmer@HOMEWORKS.ORG	Tri-County Electric Co-Op
frucheyb@DTEENERGY.COM	Citizens Gas Fuel Company
mpsc.filings@CMSENERGY.COM	Consumers Energy Company
kay8643990@YAHOO.COM	Superior Energy Company
vickie.nugent@wecenergygroup.com	Upper Michigan Energy Resources Corporation
jlarsen@upppo.com	Upper Peninsula Power Company
estocking@upppo.com	Upper Peninsula Power Company
dave.allen@TEAMMIDWEST.COM	Midwest Energy Coop
bob.hance@teammidwest.com	Midwest Energy Coop
tharrell@ALGERDELTA.COM	Alger Delta Cooperative
tanderson@cherrylandelectric.coop	Cherryland Electric Cooperative
slamp@glenergy.com	Great Lakes Energy Cooperative
sculver@glenergy.com	Great Lakes Energy Cooperative
kmarklein@STEPHENSON-MI.COM	Stephenson Utilities Department
debbie@ONTOREA.COM	Ontonagon County Rural Elec
MVanschoten@pieg.com	Presque Isle Electric & Gas Cooperative, INC
dbraun@TECMI.COOP	Thumb Electric
rbishop@BISHOPENERGY.COM	Bishop Energy
mkuchera@AEPENERGY.COM	AEP Energy
todd.mortimer@CMSENERGY.COM	CMS Energy
igoodman@commerceenergy.com	Just Energy Solutions
david.fein@CONSTELLATION.COM	Constellation Energy
kate.stanley@CONSTELLATION.COM	Constellation Energy
kate.fleche@CONSTELLATION.COM	Constellation New Energy
mpscfilings@DTEENERGY.COM	DTE Energy
bgorman@FIRSTENERGYCORP.COM	First Energy
rarchiba@FOSTEROIL.COM	My Choice Energy
greg.bass@calpinesolutions.com	Calpine Energy Solutions
rabaey@SES4ENERGY.COM	Santana Energy
cborr@WPSCI.COM	Spartan Renewable Energy, Inc. (Wolverine Power Marketing Corp)
gpirkola@escanaba.org	City of Escanaba
crystalfallsmgr@HOTMAIL.COM	City of Crystal Falls
felicel@MICHIGAN.GOV	Lisa Felice
mmann@USGANDE.COM	Michigan Gas & Electric
mpolega@GLADSTONEMI.COM	City of Gladstone
dan@megautilities.org	Integrays Group
lrgustafson@CMSENERGY.COM	Lisa Gustafson

GEMOTION DISTRIBUTION SERVICE LIST

daustin@IGSENERGY.COM	Interstate Gas Supply Inc
krichel@DLIB.INFO	Thomas Krichel
cityelectric@BAYCITYMI.ORG	Bay City Electric Light & Power
jreynolds@MBLP.ORG	Marquette Board of Light & Power
bschlansker@PREMIERENERGYLLC.COM	Premier Energy Marketing LLC
ttarkiewicz@CITYOFMARSHALL.COM	City of Marshall
d.motley@COMCAST.NET	Doug Motley
mpauley@GRANGERNET.COM	Marc Pauley
ElectricDept@PORTLAND-MICHIGAN.ORG	City of Portland
kd@alpenapower.com	Alpena Power
dbodine@LIBERTYPOWERCORP.COM	Liberty Power
leew@WVPA.COM	Wabash Valley Power
tking@WPSCI.COM	Wolverine Power
ham557@GMAIL.COM	Lowell S.
BusinessOffice@REALGY.COM	Realgy Energy Services
jeinstein@volunteerenergy.com	Volunteer Energy Services
jhammel@hillsdalebpu.com	Hillsdale Board of Public Utilities
mrzwiers@INTEGRYSGROUP.COM	Michigan Gas Utilities/Upper Penn Power/Wisconsin
Neal.fitch@nrg.com	Direct Energy
Kara.briggs@nrg.com	Direct Energy
Ryan.harwell@nrg.com	Direct Energy
johnbistranin@realgy.com	Realgy Corp.
kabraham@mpower.org	Katie Abraham, MMEA
mgobrien@aep.com	Indiana Michigan Power Company
mvorabouth@ses4energy.com	Santana Energy
suzy@megautilities.org	MEGA
dan@megautilities.org	MEGA
general@itctransco.com	ITC Holdings
lpape@dickinsonwright.com	Dickinson Wright
Deborah.e.erwin@xcelenergy.com	Xcel Energy
mmpeck@fischerfranklin.com	Matthew Peck
CANDACE.GONZALES@cmsenergy.com	Consumers Energy
JHDillavou@midamericanenergyservices.com	MidAmerican Energy Services, LLC
JCAItmayer@midamericanenergyservices.com	MidAmerican Energy Services, LLC
LMLann@midamericanenergyservices.com	MidAmerican Energy Services, LLC
karl.j.hoesly@xcelenergy.com	Northern States Power
kerri.wade@teammidwest.com	Midwest Energy Coop
Marie-Rose.Gatete@teammidwest.com	Midwest Energy Coop
meghan.tarver@teammidwest.com	Midwest Energy Coop
sarah.jorgensen@cmsenergy.com	Consumers Energy
Michael.torrey@cmsenergy.com	Consumers Energy
adella.crozier@dteenergy.com	DTE Energy
karen.vucinaj@dteenergy.com	DTE Energy
Michelle.Schlosser@xcelenergy.com	Xcel Energy

GEMOTION DISTRIBUTION SERVICE LIST

dburks@glenergy.com

kabraham@mpower.org

shannon.burzycki@wecenergygroup.com

kermann@atcllc.com

acotter@atcllc.com

phil@allendaleheating.com

tlundgren@potomaclaw.com

lchappelle@potomaclaw.com

Amanda@misostates.org

customerservice@eligoenergy.com

info@dillonpower.com

cherie.fuller@bp.com

customercare@plymouthenergy.com

rfawaz@energyintl.com

customerservice@nordicenergy-us.com

regulatory@texasretailenergy.com

ftravaglione@energyharbor.com

Great Lakes Energy

Michigan Public Power Agency

Michigan Gas Utilities Corporation

American Transmission Company

American Transmission Company

Phil Forner

Timothy Lundgren

Laura Chappelle

Amanda Wood

Eligo Energy MI, LLC

Dillon Power, LLC

bp Energy Retail Company, LLC

ENGIE Gas & Power f/k/a Plymouth Energy

Energy International Power Marketing dba PowerOne

Nordic Energy Services, LLC

Texas Retail Energy, LLC

Energy Harbor