

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Complaint of)
Greenwood Solar LLC against)
DTE Electric Company concerning) Case No. U-20156
violations of the Public Utility Regulatory)
Policies Act of 1978, MCL 460.6v, and)
related Commission orders.)

**RESPONDENT DTE ELECTRIC COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES TO THE
COMPLAINT OF GREENWOOD SOLAR, LLC**

Respondent, DTE Electric Company (“DTE Electric,” the “Company” or “Respondent”), through its Legal Department and its attorneys, Fahey Schultz Burzych Rhodes PLC, pursuant to the Michigan Public Service Commission (“MPSC” or “Commission”) Rules of Practice and Procedure, R 792.10401, *et seq.*, files its Answer and Affirmative Defenses to the Complaint dated April 17, 2018 (the “Complaint”) that Greenwood Solar, LLC (“Greenwood” or “Complainant”) filed in this case. Respondent will address the Complainant’s allegations generally in series as they are set forth in the Complaint. Respondent’s failure to specifically address any individual allegation shall operate as a denial.

In response to the initial un-numbered paragraph of the Complaint, Respondent submits that that the legal conclusions do not require an answer. To the extent that a further answer may be required, Respondent denies the allegations, including that it has violated “*MCL 460.6v*” or failed to comply with “*State and federal law and Commission orders by negotiating in good faith a sale of capacity and energy from Greenwood Solar to DTE under a Purchase Power Agreement (‘PPA’) pursuant to the requirements of PURPA and MCL 460.6v.*” The cited statutory provisions speak for themselves. Respondent affirmatively submits that other law also applies to the

Respondent's relationship with Complainant. Respondent admits that Complainant filed the above-referenced Complaint requesting relief, but denies that the Complaint has merit and states that it should be dismissed in its entirety and with prejudice as indicated in the answers and affirmative defenses below, which are incorporated by reference. Respondent further denies any allegation of wrongdoing or other impropriety by Respondent as untrue, incorporates its additional answers and affirmative defenses, and otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

1. In response to numbered paragraph 1, Respondent states that the legal conclusions require no answer, and Respondent is without sufficient knowledge or information upon which to form a belief as to the truth of the factual allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

2. In response to numbered paragraph 2, Respondent admits the factual allegations regarding its office location, and submits that the legal conclusions require no answer.

3. In response to numbered paragraph 3, Respondent states that the legal conclusions require no answer, and Respondent is without sufficient knowledge or information upon which to form a belief as to the truth of the factual allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

4. In response to numbered paragraph 4, Respondent admits only that the quoted language is contained in the referenced document, both of which speak for themselves, and denies any inconsistent allegations as inaccurate.

5. In response to numbered paragraph 5, Respondent admits only that the quoted language is contained in the referenced document, both of which speak for themselves, and denies any inconsistent allegations as inaccurate.

6. In response to numbered paragraph 6, Respondent states that MCL 460.6v speaks for itself, and denies that Respondent did not comply with it.

7. In response to numbered paragraph 7, Respondent states that the jurisdictional allegation is a legal conclusion that requires no answer, and denies as inaccurate the suggestion that “this dispute” states a viable claim, incorporating its additional responses and affirmative defenses.

8. In response to numbered paragraph 8, Respondent incorporates its response to numbered paragraph 7, adding that the referenced statute speaks for itself.

9. In response to numbered paragraph 9, Respondent states that the referenced document and cited rule speak for themselves, and the legal conclusions require no answer. Respondent further notes that the document on its face sets forth arguments prepared by Complainant’s legal counsel, and that (for example and without limitation) the assertion regarding a “legally enforceable obligation” is inaccurate, as reflected (again for example and without limitation) by the Commission’s February 22, 2018 Order and Opportunity for Comment in Case No. U-20095, and the March 19, 2018 Comments of DTE Electric Company in Case No. U-20095, which are incorporated by reference. Regarding Complainant’s reliance on 18 CFR 292.303, Respondent further notes that the Court of Appeals recognized: “While 187 CFR 292.303(a) requires an electric utility to purchase energy and capacity made available from a QF, 18 CFR 292.304(a)(2) limits the payment for such purchases to the avoided costs. Therefore, **if a utility has no need for capacity, then even though it may pay an avoided energy cost to the QF, its**

avoided capacity cost will be zero, and it will not be required to make any capacity cost payments to the QF.” *Consumers Power Co, v Public Service Comm*, 189 Mich App 151, 159; 472 NW2d 77 (1991). (emphasis added) Answering further, Respondent denies that Complainant “*has satisfied all requirements for establishing a legally enforceable obligation under PURPA*” and Respondent denies that a legally enforceable obligation exists between Complainant and Respondent.

10. In response to numbered paragraph 10, Respondent states that the referenced document speaks for itself, and that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations regarding the timing or other circumstances regarding how Complainant may have received it and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

11. In response to numbered paragraph 11, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

12. In response to numbered paragraph 12, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent further states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Answering further, Respondent denies that Complainant “*has satisfied all requirements for establishing a legally enforceable obligation under PURPA*” and Respondent denies that a legally enforceable obligation exists between Complainant and Respondent.

13. In response to numbered paragraph 13, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent further states that the legal conclusions require no answer, and denies any allegation of wrongdoing

or other impropriety by Respondent as untrue. Answering further, Respondent denies that Complainant “*has satisfied all requirements for establishing a legally enforceable obligation under PURPA*” and Respondent denies that a legally enforceable obligation exists between Complainant and Respondent.

14. In response to numbered paragraph 14, Respondent admits only that on February 6, 2018, Michelle LaRue, who is DTE Electric’s Manager of Contracts and Compliance, Generation Optimization, informed Denise Hugo, who on information and belief is Geronimo Energy’s Director, Origination, that DTE Electric received Geronimo Energy’s draft Power Purchase Agreement. Answering further, Michelle LaRue also informed Denise Hugo that DTE Electric did not agree with Geronimo Energy’s assertion that DTE Electric was obligated to purchase capacity when DTE Electric currently has no need for capacity, and that DTE Electric did not agree that Geronimo Energy’s proposed price was DTE Electric’s avoided cost. Michelle LaRue also informed Denise Hugo that until both the Engineering Review and Distribution Study for the Greenwood Solar project were completed, there exists insufficient evidence that the project is viable, and therefore DTE Electric will further respond with a draft power purchase agreement once the Engineering Review and subsequent Distribution Study were complete, paid for by Complainant, and the project is deemed viable.

15. In response to numbered paragraph 15, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent further asserts that the document on its face sets forth legal arguments prepared by or with the assistance of Complainant’s litigation counsel, and denies that those arguments either accurately characterize Respondent’s actions or the applicable law, as explained for example and without limitation, in Respondent’s March 21, 2018 letter, which is attached as Attachment E to the

Complaint, and incorporated by reference. Respondent further states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

16. In response to numbered paragraph 16, Respondent incorporates its responses to numbered paragraphs 14 and 15, states that the legal conclusion requires no answer, and denies Complainant's allegations and characterization as inaccurate. For example, and without limitation, DTE Electric did not seek to "delay . . . discussions." Instead, Greenwood's proposed solar project was not demonstrably viable, and exchanges of power purchase agreements in advance of Engineering Review and Distribution Study and receipt of payment for those services would be wasteful. The Company also did not assert that it would have a "standard form" of a power purchase agreement. Instead, due to the contemplated size of the proposed Greenwood project, there would be a negotiated agreement starting with DTE Electric's template power purchase agreement, which was still under development. Respondent further denies any allegation of wrongdoing or other impropriety by Respondent as untrue, and otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

17. In response to numbered paragraph 17, Respondent incorporates its responses to numbered paragraphs 9, 14, 15 and 16.

18. In response to numbered paragraph 18, Respondent incorporates its responses to numbered paragraphs 9, 14, 15, 16 and 17.

19. In response to numbered paragraph 19, Respondent incorporates its responses to numbered paragraphs 9, 14, 15, 16, 17 and 18.

20. In response to numbered paragraph 20, Respondent incorporates its responses to numbered paragraphs 9, 14, 15, 16, 17, 18 and 19.

21. In response to numbered paragraph 21, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

22. In response to numbered paragraph 22, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

23. In response to numbered paragraph 23, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent further asserts that the document on its face sets forth legal arguments prepared by Complainant's litigation counsel, and denies that those arguments either accurately characterize Respondent's actions or the applicable law. For example, and without limitation, Greenwood's assertion of "refusal to negotiate" is contrary to DTE Electric's plain statement that: "Any PURPA PPA will be negotiated consistent with PURPA" (March 21, 2018 letter, attached as Attachment E to the Complaint), and Greenwood's demand for a capacity power purchase agreement is contrary to DTE Electric's plain statement "DTE Electric payments to QFs under a PURPA PPA would be for energy-only consistent with Rider Nos. 5 and 6" (*Id.*). Respondent further incorporates its response to numbered paragraph 9, states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

24. In response to numbered paragraph 24, Respondent incorporates its response to numbered paragraph 23, and admits that Complainant's letter dated March 26, 2018 demanded an "agreement" (not merely a response) from DTE Electric in four (4) days (by March 30), or Complainant intended to file complaint. DTE Electric further states that it previously responded

sufficiently to Greenwood, both verbally and in writing as indicated in part above, regarding the timing and substance of any power purchase agreement, and no further response was warranted.

25. In response to numbered paragraph 25, Respondent incorporates its response to numbered paragraph 9, states that the legal conclusions require no answer, states that the quoted language and referenced sources speak for themselves, and denies any inconsistent allegations as inaccurate.

26. In response to numbered paragraph 26, Respondent submits that the legal conclusions require no answer. To the extent that a further response may be required, Respondent admits generally that it is an electric utility with a PURPA waiver from FERC, which waiver speaks for itself.

27. In response to numbered paragraph 27, Respondent states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Respondent further denies that Greenwood Solar “*is*” anything other than a proposed facility, which Complainant initially suggested to have “*an expected in-service date of December 31, 2019*” (December 12, 2017 letter from Complainant’s litigation counsel, attached as Attachment A to Complaint), with continuing uncertain “*viability*” (Complaint, numbered paragraphs 35 and 48).¹

28. In response to numbered paragraph 28, Respondent incorporates its additional responses to numbered paragraphs, particularly paragraphs 9, 14 and 30, states that the legal conclusion requires no answer, denies Complainant’s characterization as inaccurate, further denies

¹ Respondent uses the term “viable” from an engineering perspective, focusing on the feasibility of the proposed project, as indicated for example in the responses to numbered paragraphs 14 and 30. To the extent that Complainant suggests that its contemplated project might not be viable for other reasons (for example, a lack of funding or other requirements) Respondent states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

any allegation of wrongdoing or other impropriety by Respondent as untrue, and otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

29. In response to numbered paragraph 29, Respondent denies the allegations, incorporating its response to numbered paragraph 28.

30. In response to numbered paragraph 30, Respondent incorporates its responses to numbered paragraphs 9, 14, 28 and 29. In summary and without limitation, DTE Electric informed Complainant that until both the Engineering Review and Distribution Study for the Greenwood Solar project were completed, there exists insufficient evidence that the project is viable and therefore DTE Electric will further respond with a draft power purchase agreement once the Engineering Review and subsequent Distribution Study were complete, paid for by Complainant and the project is deemed viable. Complainant misconstrues those studies. The Engineering Review is absolutely necessary to determine the “feasibility of the project,” and the Distribution Study determines the facility/system upgrades that would be needed, and which could be very expensive and take a very long time, and which are paramount to a contemplated project’s viability. It would be a waste of time and resources to exchange power purchase agreements for a project that is not viable.

31. In response to numbered paragraph 31, Respondent incorporates its responses to numbered paragraphs 9, 14, 28, 29, and 30, noting particularly that the assertion that “DTE is able to indefinitely delay the establishment of an agreement” is untrue, since the Engineering Review and Distribution Study are needed to determine whether the project is viable in the first place.

32. In response to numbered paragraph 32, Respondent states that the referenced document speaks for itself and denies that it is relevant here, and incorporates its responses to numbered paragraphs 9, 14, 28, 29, 30 and 31, noting particularly that the allegation that DTE Electric “refus[ed] to negotiate” is untrue; instead, DTE Electric indicated that until both the Engineering Review and Distribution Study for the Greenwood Solar project were completed, there exists insufficient evidence that the project is viable and therefore DTE Electric will further respond with a draft power purchase agreement once the Engineering Review and subsequent Distribution Study were complete, paid for by Complainant and the project is deemed viable. DTE Electric further denies that Complainant is entitled to the requested relief or any other relief; instead, the Complaint should be dismissed in its entirety, and with prejudice.

33. In response to numbered paragraph 33, Respondent incorporates its additional responses to numbered paragraphs, particularly paragraphs 9, 14 and 23, states that the legal conclusions require no answer, denies Complainant’s characterizations as inaccurate, further denies any allegation of wrongdoing or other impropriety by Respondent as untrue, and otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs. Answering further, and notwithstanding the list of proceedings identified by Complainant, DTE Electric maintains that it currently does not forecast a capacity need within the next 10 years and that is the position it intends to support in Case No. U-20095, rulemakings and other proceedings – including the instant proceeding. As the Court of Appeals has recognized: “While 187 CFR 292.303(a) requires an electric utility to purchase energy and capacity made available from a QF, 18 CFR 292.304(a)(2) limits the payment for such purchases to the avoided costs. Therefore, **if a utility has no need for capacity, then even though it may pay an avoided**

energy cost to the QF, its avoided capacity cost will be zero, and it will not be required to make any capacity cost payments to the QF.” *Consumers Power Co, v Public Service Comm*, 189 Mich App 151, 159; 472 NW2d 77 (1991).

34. In response to numbered paragraph 34, Respondent incorporates its prior responses to numbered paragraphs, particularly paragraphs 9, 14, 23, and 33, states that the legal conclusions require no answer, denies Complainant’s characterizations as inaccurate, further denies any allegation of wrongdoing or other impropriety by Respondent as untrue, and otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

35. In response to numbered paragraph 35, Respondent incorporates its responses to numbered paragraphs 9, 14, 23, 32, 33 and 34, states that the legal conclusions require no answer, denies Complainant’s characterizations as inaccurate, denies any allegation of wrongdoing or other impropriety by Respondent as untrue, and further denies that Complainant can lawfully dictate what Respondent must allegedly do regarding a potential facility that may not be “viable.” (see footnote 1).

36. In response to numbered paragraph 36, Respondent denies that Complainant is entitled to the requested relief or any other relief; instead, the Complaint should be dismissed in its entirety and with prejudice as indicated in Respondent’s answers and affirmative defenses, which are incorporated by reference. Simply stated: there is no basis for the Commission to order DTE Electric to take the actions demanded by Complainant for a potential project that has not yet been through both the Engineering Review and Distribution Study phases and thus has uncertain viability (which would be a waste of time and resources); instead, when (and *if*) the project is

determined to be viable, then DTE Electric would proceed as indicated above and further explained in its referenced documents.

37. In response to numbered paragraph 37, Respondent admits only that it indicated to Complainant that if the proposed project were determined to be viable, then DTE would be willing to purchase energy as indicated, for example, in the response to numbered paragraph 23, which is incorporated by reference. Complainant's capacity allegations are inaccurate, and fail to acknowledge timing and other factors relating to any capacity need, as discussed for example in DTE Electric's March 19, 2018 Comments in Case No. U-20095, which are incorporated by reference. Answering further, the Commission has confirmed that "it may further explore issues surrounding how capacity determinations are made for purposes of PURPA in U-20095, rulemakings or other proceedings." (April 27, 2018 Order in Case No. U-18419, p 80). DTE Electric maintains that it currently does not forecast a capacity need within the next 10 years and that is the position it intends to support in Case No. U-20095, rulemakings and other proceedings – including the instant proceeding. Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

38. In response to numbered paragraph 38, Respondent incorporates its response to numbered paragraph 37, and states that its actions in Case No. U-18419 speak for themselves, noting that Complainant's characterization that DTE Electric "was before the Commission seeking approval for a new addition of utility-owned capacity" neglects that the "addition" was driven by the Company's planned retirement of coal-fired generation capacity, and therefore is more accurately viewed as a "replacement." Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

39. In response to numbered paragraph 39, Respondent incorporates its responses to numbered paragraphs 37 and 38, states that its actions in Case No. U-18232 speak for themselves, denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue, noting for example and without limitation that 2016 PA 342 amended 2008 PA 295 by (among other things) establishing a new 15% renewables target. MCL 460.1028(1) now relevantly states: “An electric provider shall achieve a renewable energy credit portfolio as follows: . . . (c) In 2021, a renewable energy credit portfolio of at least 15% . . .”. Respondent further states that Complainant’s characterization of timing and events is inaccurate because, for example and without limitation, it neglects various statutory schemes, MPSC proceedings, and preceding and/or ongoing events.

40. In response to numbered paragraph 40, Respondent incorporates its responses to paragraphs 9, 37 and 38, states that the legal conclusions require no answer, and the referenced documents speak for themselves. Respondent denies that Complainant’s arguments either accurately characterize Respondent’s actions or the applicable law, and further denies any other allegation of wrongdoing or other impropriety by Respondent as untrue.

41. In response to numbered paragraph 41, Respondent incorporates its response to numbered paragraph 40.

42. In response to numbered paragraph 42, Respondent states that the quoted language and referenced document speak for themselves, denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

43. In response to numbered paragraph 43, Respondent states that the quoted language and referenced document speak for themselves, and the legal conclusions require no answer.

44. In response to numbered paragraph 44, Respondent incorporates its prior responses, particularly to numbered paragraphs 7, 9, 32 and 36. Answering further, Complainant does not identify any reason why it could be “necessary” for the Commission to act on the Complaint before issuing a final determination in Case Nos. U-18090 and U-20095, and Respondent denies there is any such necessity. Complainant also does not identify any reason why Case No. U-18090 (a Consumers Energy PURPA proceeding), has any relevance to the instant proceeding involving DTE Electric. In that case, however, the Commission did recognize that it caused a “significant uptick in solar QFs seeking to enter into PPAs,” and acted to at least partially address concerns regarding long-term contracts for unneeded QF capacity (February 22, 2018 Order in Case No. U-18090, pp 6, 13). Thus, in addition to the other defects in Complainant’s positions discussed throughout this answer, Complainant apparently seeks to use this litigation to attempt to “lock in” results for itself as a developer of a potential project, before the Commission has a chance to address PURPA issues in a broader context, and take further corrective action as the Commission may consider appropriate for Michigan utilities and customers.

45. In response to numbered paragraph 45, Respondent incorporates its response to numbered paragraph 44, and denies that Complainant is entitled to the requested relief or any other relief; instead, the Complaint should be dismissed in its entirety, and with prejudice.

46. In response to numbered paragraph 46, Respondent states that the referenced document and Rider 6 speaks for themselves, and denies any inconsistent allegations as inaccurate. Respondent denies that Complainant’s arguments either accurately characterize Respondent’s actions or the applicable law, incorporating its responses to numbered paragraphs 9, 14, 23, 32, 36 and 37. Respondent further states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

47. In response to numbered paragraph 47, Respondent admits only that Rider 6 states, in part: “The rate for facilities having a capacity of over 100 kW will be made under negotiated agreement.” Respondent denies as untrue that it “violated” this provision, or any other requirement, incorporating its responses to numbered paragraphs 9, 14, 23, 32, 36, 37, and 46. In summary and without limitation, Complainant’s indicated desire to build a facility at a location does not mean that the facility can or will be built there. Unless and until the project is determined to be viable, it would be a waste of time and resources to exchange draft power purchase agreements concerning the non-existent output of a project that might never be built.

48. In response to numbered paragraph 48, Respondent acknowledges that Complainant’s potential solar project might not be viable (see footnote 1), but denies any allegation or insinuation of wrongdoing or other impropriety by Respondent as untrue, incorporating its responses to numbered paragraphs 9, 14, 23, 32, 36, 37, 46 and 47. Respondent otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

49. In response to numbered paragraph 49, Respondent states that Rider 6 speaks for itself, denies any allegation or insinuation of wrongdoing or other impropriety by Respondent as untrue, incorporating its responses to numbered paragraph 23, 36, and 45. Again, simply stated: there is no basis for the Commission to order DTE Electric to take the actions demanded by Complainant for a potential project that has not yet been through both the Engineering Review and Distribution Study phase and thus has uncertain viability (which would be a waste of time and resources); instead, when (and *if*) the project is determined to be viable, then DTE Electric would proceed as indicated above and further explained in its referenced documents.

50. In response to numbered paragraph 50, including sub-paragraphs A-C, Respondent denies that Complainant is entitled to the requested relief or any other relief; instead, the Complaint should be dismissed in its entirety and with prejudice, since Respondent's policies and actions fully comply with applicable statutes, rules, and case law.

AFFIRMATIVE DEFENSES

Respondent states the following affirmative defenses, which are alleged in the alternative, upon which it may rely:

1. Complainant has failed to state a claim upon which its requested relief, or any other relief, may be granted.

2. Complainant's conduct renders it estopped from asserting the claims presented in the Complaint, or its claims are otherwise barred by "unclean hands" or Complainant's own conduct. For example, and without limitation, Complainant's communications from the beginning and throughout set forth self-serving arguments prepared by Complainant's legal counsel, which were designed to generate issues and/or claims for litigation, as indicated for example and without limitation, in the responses to numbered paragraphs 9 and 24, which are incorporated by reference.

3. Complainant waived any right to assert the claims presented in the Complaint, or its claims are otherwise barred in whole or in part, by agreement, consent, acquiescence, ratification, course of conduct or performance, promissory estoppel, misrepresentation, release, abandonment, or violation of law.

4. Complainant's claims are barred by the applicable statute(s) of limitations, laches, or undue delay.

5. Any alleged damages are barred as speculative, and contrary to law.

6. Any alleged damages are barred, or subject to offset, due to the failure to mitigate alleged damages, the failure to take precautions against damages, or are not allowable as a matter of law.

7. Respondent acted lawfully pursuant to the applicable tariffs, rules, and regulations of the Commission, as well as pursuant to applicable statutes, controlling documents, and the common law, including without limitation the authorities cited above.

8. Some or all of Complainant's claims fail because of accord and satisfaction, estoppel, mistake, release, mootness, waiver, consent, or ratification.

9. Respondent did not engage in any misconduct, and did not breach any obligation or duty with respect to Complainant.

10. Complainant's legal theories are either not recognized as valid theories under Michigan law, or have no application to the facts of this case.

11. Some or all of Complainant's claims are barred on jurisdictional or jurisprudential grounds as premature, moot, not ripe, and/or not within the Commission's jurisdiction.

12. Complainant waived any right to assert the claims presented in the Complaint, or its claims are otherwise barred in whole or in part, by settlement, agreement, res judicata, collateral estoppel, the law of the case, and/or the applicable tariffs, rules, and regulations of the Commission.

13. There is no issue of material fact, and Respondent is entitled to the dismissal of the Complaint in its entirety and with prejudice.

14. The Complaint does not meet the requirements of a *prima facie* case.

15. Complainant's assertion that Respondent refused to negotiate is inaccurate. Instead, the back-and-forth communications between Complainant and Respondent reflect negotiating –

Complaint just did not like the answers that it received (that further negotiations for a power purchase agreement would be a waste of time and resources in the absence of a viable project, as indicated for example in the response to numbered paragraph 36, which is incorporated by reference), and proceeded to litigation, which appears to have been Complainant's intent from the beginning.

16. The Commission's Electric Interconnection and Net Metering Standards do not apply here because, for example and without limitation, R 460.601a(c) and (n) provides:

“Applicant” means the legally responsible person applying to an electric utility to interconnect a project with the electric utility's distribution system or a person applying for a net metering program. ***An applicant shall be a customer of an electric utility and may be a customer of an alternative electric supplier.*** (Emphasis added).

“Customer” means a person who receives electric service from an electric utility's distribution system or a person who participates in a net metering program through an alternative electric supplier or electric utility.

Complainant is not a “customer” of Respondent. The term “shall” denotes a mandatory duty and excludes the idea of discretion.² Complainant's apparent attempt to fit within the Rule is also misguided because the Commission cannot lawfully deviate from its own rules to reach a different result in a particular case.³

² *Macomb Co Rd Comm'n v Fisher*, 170 Mich App 697, 700; 428 NW2d 744 (1988); *Southfield Twp v Drainage Bd*, 357 Mich 59, 76-77; 97 NW2d 281 (1959) (“the word ‘shall’ is mandatory and imperative and, when used in a command to a public official, it excludes the idea of discretion”).

³ *In re Complaint of Consumers Energy Co*, 255 Mich App 496, 501; 660 NW2d 785 (2002) (Commission misinterpreted and misapplied its own rule in order to reach its desired result). *See also, DeBeaussaert v Shelby Twp*, 122 Mich App 128, 130; 333 NW2d 22 (1982) (“Once an agency has issued rules and regulations to govern its activity, it may not violate them”); *Bohannen v Sheridan-Cadillac Hotel, Inc*, 3 Mich App 81, 82; 141 NW2d 722 (1966) (“When an administrative agency promulgates a rule for the benefit of litigants and then deprives a litigant of this right, it is a violation of both the 1908 and 1963 Michigan Constitutions”).

17. To the extent that Respondent may be viewed as not fully complying with all timelines and other requirements, then a waiver (under R 460.612 or otherwise) should be granted.

18. Complainant has assumed the risk of exercising and implementing its development strategy.

19. Complainant was negligent in exercising and implementing its development strategy.

20. Respondent was not the proximate cause of Complainant's alleged damages and any alleged damages were, in whole or part, caused by others over whom Respondent has no control.

21. If the facts shall so show, any damages sustained by Complainant are the result of the intervening act by others over whom Respondent has no control.

22. If the facts shall so show, any damages sustained by Complainant are the result of the intervening act by others over whom Respondent has no control.

23. If the facts shall so show, Complainant's alleged damages arose, in whole or part from an act of God, being a storm of unusual severity.

24. If the facts shall so show, Respondent will rely upon same for the defense that Complainant's claim is barred by the occurrence of conditions nullifying liability under contract, rule or law.

25. If the facts shall so show, Respondent will rely upon same for the defense that Complainant's claim is barred by no opportunity to cure defect.

26. If the facts shall so show, Respondent will rely upon same for the defense that Respondent was at all times ready and willing to perform or cure defects but was prevented from doing so solely by Complainant.

27. If the facts shall so show, Complainant's alleged damages were caused by a preexisting or unrelated condition, having nothing to do whatsoever with Respondent's actions.

28. Respondent is justified and should be excused with respect to its response to Complainant.

29. If the facts shall so show, Complainant has failed to designate a point of contact with sufficient technical expertise to address any questions regarding a proposed interconnection.

30. Complainant has failed to exhaust its administrative remedies.

31. If the facts shall so show, mootness.

32. If the facts shall so show, impossibility.

33. If the facts shall so show, Complainant's claim is barred by want or failure of consideration.

34. If the facts shall so show, Respondent will assert and rely upon the Statute of Frauds, MCL 566.132.

35. Respondent reserves the right to amend or supplement these Affirmative Defenses as facts are learned through the discovery process or otherwise.

Respectfully submitted,

DTE ELECTRIC COMPANY

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Dated: May 29, 2018

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Complaint of)
Greenwood Solar LLC against)
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related Commission orders.)

Case No. U-20156

CERTIFICATE OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

Adrienne Monahan, being first duly sworn, deposes and says that on May 29, 2018 she served a copy of Respondent DTE Electric Company’s Appearance, and Answer and Affirmative Defenses and a Certificate of Service in the above referenced matter upon the following parties via e-mail.

Adrienne Monahan

Subscribed and sworn to before
me this 29th day of May, 2018.

Michelle L. LeRoy, Notary Public
Ingham County, Michigan
My Commission Expires: 3/6/2023

SERVICE LIST
MPSC CASE NO. U-20156

ADMINISTRATIVE LAW JUDGE

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Administrative Law Judge
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