STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of CYPRESS CREEK RENEWABLES, LLC against DTE ELECTRIC COMPANY for unjust, unreasonable and improper generation interconnection rates, charges and practices.	))))))	Case No. U-20151

RESPONDENT DTE ELECTRIC COMPANY'S
ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT OF
CYPRESS CREEK RENEWABLES, 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 6, 2018 (the "Complaint") that Cypress Creek Renewables, LLC ("Cypress Creek" 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 denies every allegation of wrongdoing or other impropriety by Respondent as untrue, including that it has requested or imposed *"unjust, inaccurate, and improper rates and charges"* or engaged in *"unlawful and unreasonable acts and practices."* Respondent also denies that the Complaint is or was *"necessitated by DTE's ongoing and extensive violations of the Commission's Electric Interconnection and Net Metering Standards, R 460.601a et seq., MCL 460.10e, and the Public Utility Regulatory Policies Act of 1978, Pub L No 95-617, 92 Stat 3117, 16 USC § 2601 et seq.,*

("PURPA"), the effect of which is to impede the development of independent power production in DTE's service area." Respondent further denies that its *"conduct thwarts the goals of PURPA and Michigan's energy policies,"* that Respondent's conduct is *"unlawful and unreasonable"* and that its *"conduct should not be tolerated."* 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.

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. Answering further, upon information and belief Respondent agrees that affiliates of Cypress Creek, and not Cypress Creek itself, has submitted the interconnection applications at issue in this proceeding.

2. In response to numbered paragraph 2, Respondent generally admits the factual allegations, but clarifies that it is an *investor-owned* corporation organized under the laws of the State of Michigan, and submits that the legal conclusions require no answer.

3. The assertions in numbered paragraph 3 are legal conclusions that require no answer. To the extent that a further response may be required, Respondent generally admits the statutory provisions cited by Complainant exist, but leaves Complainant to its proofs with respect to specifically how such statutory provisions affect or apply to Respondent. Respondent affirmatively submits that other law also applies to the Respondent's relationship with Complainant.

4. The assertions in numbered paragraph 4 are legal conclusions that require no answer. To the extent that a further response may be required, Respondent generally admits the statutory provisions and administrative rules cited by Complainant exist, but leaves Complainant to its proofs with respect to specifically how such statutory provisions and administrative rules affect or apply to Respondent. Respondent affirmatively submits that other law also applies to the Respondent's relationship with Complainant.

5. The assertions in numbered paragraph 5 are legal conclusions that require no answer. To the extent that a further response may be required, Respondent generally admits the statutory provisions cited by Complainant exist, but leaves Complainant to its proofs with respect to specifically how such statutory provisions affect or apply to Respondent. Respondent affirmatively submits that other law also applies to the Respondent's relationship with Complainant.

6. The assertions in numbered paragraph 6 are legal conclusions that require no answer.

7. In response to numbered paragraph 7 including footnote 1, 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. 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).

8. The assertions in numbered paragraph 8 are legal conclusions that require no answer. Answering further, while Respondent has certain obligations under PURPA, Respondent denies that DTE Electric has an unqualified obligation to interconnect any generator to DTE Electric's distribution system or that any generator has an unqualified right to interconnect with DTE Electric's distribution system.

9. In response to numbered paragraph 9, Respondent states that MCL 460.1001(1)(2) speaks for itself, and denies that it fully reflects Michigan's energy policies.

10. In response to numbered paragraph 10, Respondent incorporates its answer to numbered paragraph 9.

11. In response to numbered paragraph 11 including footnote 2, Respondent states that the legal conclusion requires no answer, the quoted language and referenced statutes speak for themselves, and denies any inconsistent allegations as inaccurate. Answering further, Respondent states that no plant exists to be interconnected, and Complainant admits that some or all of its proposed projects may not be "viable." Answering further, to the extent that any interconnection or transaction that is the subject of this Complaint is subject to the jurisdiction of the Federal Energy Regulatory Commission MCL 460.10e does not apply.

12. In response to numbered paragraph 12, Respondent admits only that Cypress Creek submitted two interconnection requests to DTE Electric on June 6, 2017, and that Cypress Creek submitted an overwhelming and speculative 141 interconnection requests (including resubmitted requests) associated with 141 separate limited liability corporations in the nine months between June 6, 2017 and March 6, 2018. Respondent denies that November 1, 2017, as listed in the

referenced document, is the sole point in time where communications regarding application completeness and application review results were provided to Complainant and states that communications prior to November 1, 2017 were omitted from the referenced document. Answering further, Respondent denies that the document is accurate, but due to its lack of clarity as to the specific quantity of allegations (i.e., "at least 111 applications), Respondent states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the Complainant's individual allegations. Respondent further submits that the deluge of interconnection requests is due to ongoing proceedings that have threatened a market aberration that would bestow windfall profits on PURPA developers, to the corresponding detriment of Michigan utilities and customers. The Commission recently recognized that it caused a "significant uptick in solar QFs seeking to enter into PPAs," and acted to at least partially protect ratepayers from being locked into long-term contracts for high-priced capacity (February 22, 2018 Order in Case No. U-18090, pp 6, 13).

13. In response to numbered paragraph 13, Respondent incorporates its response to numbered paragraph 12.

14. In response to numbered paragraph 14, Respondent states that the referenced document speaks for itself, but denies that the document or Complainant's characterization is accurate, incorporating its response to numbered paragraph 12. Respondent further denies as untrue that it did not notify Complainant within 10 working days whether its interconnection requests were complete *"for at least 111 applications"* as alleged by Complainant. Furthermore, Respondent denies that the 10 working day rule is applicable to the applications submitted by the Complainant, since the Complainant is not a customer of the utility.

15. In response to numbered paragraph 15, 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 about Complainant's intent and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs. Answering further, Respondent acknowledges Complainant's admission that that some or all of the projects that are the subject of the Complaint may not be *"viable"* and leaves Complainant to its proofs. Respondent specifically denies that Complainant's actions have, in any way, reduced *"the interconnection burden"* on DTE Electric and leaves Complainant to its proofs. Answering further, the information requested by Complainant in Attachment B to the Complaint may disclose sensitive operational data, critical infrastructure data protected under NERC Critical Infrastructure Protection rules, and competitive data which would provide an unjust advantage to Complainant. Respondent is not aware of any requirement to disclose such information.

16. In response to numbered paragraph 16, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Answering further, Respondent is not aware of any requirement to disclose the information referenced in Attachment C to the Complaint.

17. In response to numbered paragraph 17, Respondent states that the referenced document speaks for itself, but denies that the projects requested by Complainant to proceed to engineering review were the first 10 projects submitted to the interconnection queue by Complainant. Additionally, Respondent denies that the $2,500 deposit payment remitted was the required fee for the engineering review. Respondent stated that total charges would be trued up at the end of the engineering review pursuant to the engineering review agreement.

18. In response to numbered paragraph 18, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

19. In response to numbered paragraph 19, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent admits that Complainant submitted 93 interconnection requests in less than five months - between June 6, 2107 and November 1, 2017, but denies that November 1, 2017 was the first notification provided to Complainant regarding completed application reviews.

20. In response to numbered paragraph 20, Respondent states that all 93 projects required engineering review, and incorporates its response to numbered paragraph 17. Answering further, Respondent states that Complainant was informed on October 5, 2017 of the engineering review deposits of $20,000 for projects greater than 550 kW but less than or equal to 2 MW, and deposits of $30,000 for projects greater than 2MW.

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 incorporates its response to numbered paragraph 15 and states that the referenced document speaks for itself, but Respondent is unaware of any requirement to provide the data referenced in Attachment H by the Complainant.

23. In response to numbered paragraph 23, Respondent states that the referenced documents speak for themselves, and denies any inconsistent allegations as inaccurate.

24. In response to numbered paragraph 24, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

25. In response to numbered paragraph 25, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

26. In response to numbered paragraph 26, Respondent states that the referenced document speaks for itself, and denies Complainant's characterization as inaccurate. Respondent further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Respondent incorporates its response to numbered paragraph 15 and answering further is unaware of any requirement to provide the data referenced in Attachment L by the Complainant. Answering further, Respondent acknowledges Complainant's admission that some or all of the projects that are the subject of the Complaint may not be "*viable*" and leaves Complainant to its proofs.

27. In response to numbered paragraph 27, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations about what Complainant may or may not have received from Consumers Energy, whether unidentified projects were "similarly situated," and Complainant's motivation, and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

28. In response to numbered paragraph 28, Respondent admits only that on January 19, 2018, representatives of Complainant and Respondent met at the Commission's offices. Respondent denies that its "interconnection processes" have any "problems" not caused by Complainant's own actions. Answering further, Respondent states that Complainant was again informed that it must pay trued-up actual costs for engineering reviews. Additionally, Respondent states that Complainant was informed that any engineering review results, provided at that time, would be incomplete due to the Complainant's failure to provide inverter harmonic information (after multiple requests) and subject to change resulting from the pending ITC affected system reviews. Respondent leaves Complainant to its proofs with respect to Complainant's additional "concerns," experiences and what Complainant would have considered "resolution." However,

Respondent notes that, to the date of this filing, Respondent has not received the requested harmonic inverter information from Complainant and Complainant has paid the actual cost of an engineering review for only two (2) projects.

29. In response to numbered paragraph 29, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

30. In response to numbered paragraph 30, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate.

31. In response to numbered paragraph 31, Respondent states that the referenced document speaks for itself, and denies any inconsistent allegations as inaccurate. Answering further, Respondent denies that it ever informed Complainant that the total cost of engineering review would be $2,500 per project. Respondent stated that total charges would be trued up at the end of the engineering review.

32. In response to numbered paragraph 32, Respondent states that the referenced document speaks for itself, and denies Complainant's characterization as inaccurate. Respondent further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

33. In response to numbered paragraph 33, Respondent denies any allegation of wrongdoing or other impropriety by Respondent as untrue, and states that engineering review charges have been benchmarked for consistency and reasonableness against utilities in jurisdictions where Complainant has installed projects and presumably paid the required charges.

34. In response to numbered paragraph 34, Respondent denies any allegation of wrongdoing or other impropriety by Respondent as untrue, and states that it provided the results for engineering reviews after receiving payment of the trued-up actual costs from the Complainant

(including Greenwood as referenced in Attachment P), in accordance with the engineering review agreement.

35. In response to numbered paragraph 35, Respondent incorporates its response to numbered paragraph 34 and admits only that it received payment from Complainant as indicated in the referenced document, which speaks for itself, and that Complainant's math is correct, and denies any inconsistent allegations as inaccurate.

36. In response to numbered paragraph 36, Respondent admits that it provided Complainant with the engineering review (referenced Distribution Generation Interconnection Study for DE - 02391 (Greenwood) dated 2/16/18), performed with the information provided by Complainant at that time, which speaks for itself, and denies any inconsistent allegations as inaccurate.

37. In response to numbered paragraph 37, Respondent admits only that it received payment as indicated in the referenced documents, which speak for themselves, and that Complainant's math is correct, and denies any inconsistent allegations as inaccurate.

38. In response to numbered paragraph 38, Respondent admits that it provided Complainant with the engineering review (referenced Distribution Generation Interconnection Study for DE – 02506 (Glasgow) dated 2/27/18), performed with the information provided by Complainant at that time, which speaks for itself, and denies any inconsistent allegations as inaccurate.

39. In response to numbered paragraph 39, Respondent admits only that during a February 28, 2018 telephone conference between Complainant and Respondent, Respondent again informed Complainant that the information provided to Complainant was the consequence of Complainant's failure to provide inverter harmonic information to Respondent that is necessary to

complete an engineering review. Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation or insinuation of wrongdoing or other impropriety by Respondent as untrue.

40. In response to numbered paragraph 40, Respondent admits only that on March 1, 2018, the Respondent communicated to Complainant that the notices received were in follow-up to the utility's request for additional information during a recent conference call and had been sent out to ensure that Respondent had all the information needed to perform complete engineering reviews. Respondent further states that Respondent's request for additional information was necessitated by Complainant communicating its intent to move ninety (90) applications into the engineering review phase. Respondent denies that the change in application status in PowerClerk constituted a reversal of any previous determinations of completeness, and further states that the intent of the application status change was to gather information for the engineering review phase, as communicated to the Complainant prior to March 1, 2018. Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

41. In response to numbered paragraph 41, Respondent admits only that after receiving notice that an affected transmission system had no further concerns on nine (9) projects, Complainant ultimately chose to proceed to engineering review for these nine (9) projects, having paid an engineering review deposit of $2,500 for each of the nine (9) projects. Complainant has paid the full actual cost of an engineering review for only two (2) projects. Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

42. In response to numbered paragraph 42, Respondent denies Complainant's characterization of progress on interconnection applications as inaccurate, incorporating its additional responses to numbered paragraphs and affirmative defenses, and further denies as inaccurate the apparent reference to Respondent's actions in Case No. U-18419, which speak for themselves. Respondent further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

43. In response to numbered paragraph 43, Respondent admits that on June 30, 2018, it filed a Notice of Intent to File an Application for Approval of Certificates of Necessity in Case No. U-18419, which speaks for itself, and notes that Complainant's characterization that DTE Electric "was seeking authorization under MCL 460.6s for the addition of a 1,100 MW natural gas combined cycle generating facility to DTE's generating fleet" 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." Further, the Commission recognized the 1,100 MW NGCC as the most appropriate technology by granting a Certificate of Need on April 27, 2018. Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

44. In response to numbered paragraph 44, Respondent admits that on July 31, 2018, it filed an Application in Case No. U-18419, which speaks for itself. Answering further, Respondent incorporates its response to numbered paragraph 43.

45. In response to numbered paragraph 45, Respondent states that its actions in Case No. U-18419 and the referenced document speak for themselves, incorporating its responses to numbered paragraphs 43 and 44. 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. Respondent 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 the referenced document and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

46. In response to numbered paragraph 46, Respondent states that the referenced testimony of DTE Electric witness Mr. Bloch speaks for itself, and that it is accurately (but incompletely) quoted, and denies any allegation of wrongdoing or other impropriety by Respondent from the selective quotation as untrue. Respondent further notes that Mr. Bloch's quoted testimony is consistent with the Court of Appeals' recognition: "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).

47. In response to numbered paragraph 47, Respondent incorporates its responses to numbered paragraphs 43, 44, 45 and 46; and admits that on March 5, 2018, it filed an Application for Approval of the Polaris Wind Park Build-Transfer Contract and Related Relief in Case No. U-18111, which Application speaks for itself. Respondent denies any inconsistent allegations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. 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. Again, for example and without limitation: On September 23, 2016, the Commission issued an Order in Case No. U-18111 that approved DTE Electric's current Amended Renewable Energy Plan ("REP"), and the Commission approved the Application pursuant to an April 12, 2018 Order in Case No. U-18111, which speaks for itself, and orders at page 5: "that the build-transfer contract with Polaris Wind Energy, LLC, is approved as in compliance with Public Act 295 of 2008 and consistent with DTE Electric's approved renewable energy plan."

48. In response to numbered paragraph 48, Respondent admits that on March 29, 2018, it filed an Application for Approval of DTE Electric Company's Renewable Energy Plan in Case No. U-18232, which Application speaks for itself, and denies any inconsistent allegations as inaccurate. Respondent 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% . . .."

49. In response to numbered paragraph 49, Respondent admits that Complainant makes allegations, but denies that the allegations have merit, and 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 about Complainant's "information and belief" and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

50. In response to numbered paragraph 50, Respondent states that the legal conclusions require no answer, and the referenced rule speaks for itself. To the extent that a further answer may be required, Respondent denies Complainant's suggestion that Rule 20 of the Commission's Electric Interconnection and Net Metering Standards, R 460.620, is applicable here (or that any of those Rules 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 DTE Electric. The term "shall" denotes a mandatory duty and excludes the idea of discretion.[1] Complainant's apparent attempt to fit within the Rule is

[1] *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").

also misguided because the Commission cannot lawfully deviate from its own rules to reach a different result in a particular case.[2]

51. In response to numbered paragraph 51, Respondent states that the quoted language and referenced rule speak for themselves regarding notification of an "applicant," incorporating its response to numbered paragraph 50.

52. In response to numbered paragraph 52, Respondent incorporates its responses to numbered paragraphs 12 and 50.

53. In response to numbered paragraph 53, Respondent denies the allegation regarding "required notice," incorporating its response to paragraph 50, and further denies that it did not provide timely responses, incorporating its response to numbered paragraphs 12 and 14.

54. In response to numbered paragraph 54, Respondent incorporates its responses to numbered paragraphs 12, 14 and 50 - 53, states that the legal conclusion requires no answer, denies Complainant's characterization as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

55. In response to numbered paragraph 55, Respondent incorporates its responses to numbered paragraphs 12, 14 and 50 - 54, denies Complainant's characterizations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Complainant also lacks standing to raise claims on behalf of third parties ("other renewable energy

[2] *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").

generators"), particularly where (as here) any claimant is hypothetical and non-existent.[3] Respondent otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations about potential future project development efforts and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

56. In response to numbered paragraph 56, Respondent incorporates its responses to numbered paragraphs 50 and 51.

57. In response to numbered paragraph 57, Respondent incorporates its responses to numbered paragraphs 40 and 50.

58. In response to numbered paragraph 58, Respondent incorporates its responses to numbered paragraphs 40, 50 and 57. Respondent further states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

59. In response to numbered paragraph 59, Respondent incorporates its responses to paragraphs 40, 50, and 55 -58, denies Complainant's characterization as inaccurate, and further denies any allegation or insinuation of wrongdoing or other impropriety by Respondent as untrue. Complainant also lacks standing to raise claims on behalf of third parties ("other renewable energy developers"), particularly where (as here) any claimant is hypothetical and non-existent.[4] Respondent otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations about potential future project development efforts and/or events and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

[3] *People v Rocha,* 110 Mich App 1, 16-18; 312 NW2d 657 (1981).

[4] *People v Rocha,* 110 Mich App 1, 16-18; 312 NW2d 657 (1981).

60. In response to numbered paragraph 60, Respondent incorporates its response to numbered paragraph 50, and further states that the cited rule speaks for itself, and the legal conclusions require no answer.

61. In response to numbered paragraph 61, Respondent incorporates its responses to numbered paragraphs 50 and 60, and further states that the legal conclusions require no answer and the quoted language and referenced rule speak for themselves, and denies any inconsistent allegations as inaccurate.

62. In response to numbered paragraph 62, Respondent incorporates its responses to numbered paragraphs 50, 51, 56, 60 and 61, states that the legal conclusions require no answer, and denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Respondent further states, in summary and without limitation, that Complainant's suggestion that *"an interconnection is complete when filed"* is an inaccurate presumption, and the further proposition that Respondent then has *"a total of 20 working days"* is unfounded and an oversimplification. Instead (assuming for argument's sake that the cited rules are applicable), an application is complete when it is complete; thus, Respondent would simply notify complainant of an incomplete application, and not proceed further until the time (if ever) that the application became complete, including Respondent's receipt of necessary payment. Thereafter, an electric utility has 10 working days to complete its application review.

63. In response to numbered paragraph 63, Respondent denies the allegations as irrelevant and untrue, incorporating its responses to numbered paragraphs 12, 14, 50 and 53, denies Complainant's characterization as inaccurate and further states to the extent that Respondent may be viewed as not fully complying with all timelines and other requirements, then a waiver should

be granted (under R 460.612 or otherwise) due to the overwhelming number of interconnection requests and other time-consuming and burdensome activities by Complainant.

64. In response to numbered paragraph 64, Respondent incorporates its prior responses to numbered paragraphs 12, 14, 50, and 60-63, states that the legal conclusion requires no answer, denies Complainant's characterization as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

65. In response to numbered paragraph 65, Respondent incorporates its prior responses to numbered paragraphs 60-64, states that the legal conclusion requires no answer, denies Complainant's characterization as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Complainant also lacks standing to raise claims on behalf of third parties ("other renewable energy developers"), particularly where (as here) any claimant is hypothetical and non-existent.[5] Respondent otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations about potential future project development efforts and/or events and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

66. In response to numbered paragraph 66, Respondent incorporates its response to numbered paragraph 50, and further states that the cited rule speaks for itself, and that the legal conclusions require no answer.

67. In response to numbered paragraph 67, Respondent incorporates its responses to numbered paragraphs 50 and 66, and further states that the legal conclusions require no answer and the cited rule speaks for itself, and denies any inconsistent allegations as inaccurate.

[5] *People v Rocha*, 110 Mich App 1, 16-18; 312 NW2d 657 (1981).

68. In response to numbered paragraph 68, Respondent incorporates its response to numbered paragraphs17 and 41, and denies as inaccurate that there were *"payments in the agreed upon amount of $2,500 for each engineering review"* and *"DTE received the payments for the initial 10 engineering reviews on October 3, 2017"* because, in summary and without limitation, the $2,500 payment for each engineering review was not the full and complete cost of that review.

69. In response to numbered paragraph 69, Respondent admits only that Complainant instructed it to proceed with engineering reviews of the 10 indicated projects, but denies as inaccurate that that the full and complete cost of each review was $2,500, incorporating its responses to numbered paragraphs 17, 31, 41 and 68.

70. In response to numbered paragraph 70, Respondent denies Complainant's characterization as inaccurate, incorporates its response to numbered paragraphs 17, 31, 41, 68, and 69.

71. In response to numbered paragraph 71, Respondent incorporates its response to numbered paragraph 34.

72. In response to numbered paragraph 72, Respondent denies Complainant's characterization as inaccurate, incorporating its response to numbered paragraph 35.

73. In response to numbered paragraph 73, Respondent incorporates its response to numbered paragraph 36.

74. In response to numbered paragraph 74, Respondent incorporates its response to numbered paragraph 37.

75. In response to numbered paragraph 75, Respondent incorporates its response to numbered paragraph 38.

76. In response to numbered paragraph 76, Respondent incorporates its response to numbered paragraph 39, and further states that on February 28, 2018, Respondent again informed Complainant that the information provided to Complainant was the consequence of Complainant's failure to provide inverter harmonic information to Respondent that is necessary to complete an engineering review and that further payment was required.

77. In response to numbered paragraph 77, Respondent incorporates its responses to numbered paragraphs 17, 41, 50, 66-76, states that the legal conclusion requires no answer, denies Complainant's characterization as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Answering further, Respondent states 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 due to the overwhelming number of interconnection requests and other time-consuming and burdensome activities by Complainant.

78. In response to numbered paragraph 78, Respondent incorporates its prior responses to numbered paragraphs 50 and 66-77, states that the legal conclusion requires no answer, denies Complainant's characterization as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Complainant also lacks standing to raise claims on behalf of third parties ("other renewable energy developers"), particularly where (as here) any claimant is hypothetical and non-existent.[6] Respondent otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations about potential future project development efforts and/or events and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs.

[6] *People v Rocha*, 110 Mich App 1, 16-18; 312 NW2d 657 (1981).

79. In response to numbered paragraph 79, Respondent incorporates its response to numbered paragraph 50, and further states that the cited rule speaks for itself, and the legal conclusions require no answer.

80. In response to numbered paragraph 80, Respondent incorporates its responses to numbered paragraphs 50 and 79, and further states that the cited and quoted rule speaks for itself, and the legal conclusions require no answer.

81. In response to numbered paragraph 81, Respondent incorporates its responses to numbered paragraphs 31, 70, 79 and 80.

82. In response to numbered paragraph 82, Respondent denies Complainant's characterization as inaccurate, incorporating its response to numbered paragraph 32.

83. In response to numbered paragraph 83, Respondent denies Complainant's characterization as inaccurate, incorporating its response to numbered paragraph 33, and adding that the allegation that Respondent's engineering study costs are "wildly inconsistent with similar charges" for allegedly comparable studies performed by other utilities is self-contradictory.

84. In response to numbered paragraph 84, Respondent denies as inaccurate that its engineering studies are inappropriate (including without limitation content and cost), incorporating its response to numbered paragraph 33 and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Answering further, Respondent states that scope of work for engineering reviews have been benchmarked for consistency and reasonableness in jurisdictions where Complainant has installed projects.

85. In response to numbered paragraph 85, Respondent incorporates its prior responses to numbered paragraphs 50, and 79-84, states that the legal conclusions require no answer, denies

Complainant's characterizations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue.

86. In response to numbered paragraph 86, Respondent incorporates its prior responses to numbered paragraphs 50, and 79-85, states that the legal conclusions require no answer, denies Complainant's characterizations as inaccurate, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. Complainant also lacks standing to raise claims on behalf of third parties ("other renewable energy developers"), particularly where (as here) any claimant is hypothetical and non-existent.[7] Respondent otherwise states that it is without sufficient knowledge or information upon which to form a belief as to the truth of the allegations regarding potential future project development efforts and/or events and, therefore, neither admits nor denies the same, but leaves Complainant to its proofs. Answering further, Respondent states to the extent that Respondent may be viewed as not fully complying with all requirements, then a waiver (under R 460.612 or otherwise) should be granted due to the overwhelming number of interconnection requests and other time-consuming and burdensome activities by Complainant.

87. In response to numbered paragraph 87, Respondent states that the cited rules and statute speak for themselves, and the legal conclusions require no answer. To the extent that a further answer may be required, Respondent incorporates its response to numbered paragraph 50, and further denies that a potential project that might never be built (because it is not viable or otherwise) is a "merchant plant."

88. In response to numbered paragraph 88, Respondent states that the quoted language and cited statute speak for themselves. To the extent that a further response may be required,

[7] *People v Rocha*, 110 Mich App 1, 16-18; 312 NW2d 657 (1981).

Respondent incorporates its response to numbered paragraph 87, and further states, in summary and without limitation, that that it is impossible to "connect" something that does not exist, and might never exist.

89. In response to numbered paragraph 89, Respondent states that 2000 PA 141, MCL 460.10 *et seq* ("Act 141") speaks for itself, denies the allegations that Respondent did not comply with it, and further denies any allegation of wrongdoing or other impropriety by Respondent as untrue. The legal conclusions require no answer, but to the extent that a further response may be required, Respondent incorporates its responses to numbered paragraphs 11, 50, 87 and 88, and further notes that Complainant appears to misread the statutory language beyond its plain meaning, to purportedly require the connection of potential future projects (that may be infeasible or otherwise abandoned) to transmission and distribution systems, or risk fines for not doing what is plainly not required and might not even be possible. Answering further, Respondent states 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 due to the overwhelming number of interconnection requests and other time-consuming and burdensome activities by Complainant. Respondent further denies that Respondent is not taking all reasonable and necessary steps with respect to the potential interconnection of the projects that are the subject of the Complaint. Respondent incorporates its response to numbered paragraph 50, and further denies that a potential project that might never be built (because it is not viable or otherwise) is a "merchant plant." Respondent further denies that Respondent is "*availing itself of every opportunity to impede Cypress Creek's efforts.*"

90. In response to numbered paragraph 90, Respondent incorporates its prior responses to all numbered paragraphs in this Answer as well as its Affirmative Defenses, 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, Respondent states 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 due to the overwhelming number of interconnection requests and other time-consuming and burdensome activities by Complainant.

91. In response to numbered paragraph 91, Respondent incorporates its responses to numbered paragraphs 7 and 8, and further states that the cited statute speaks for itself and legal conclusions require no answer.

92. In response to numbered paragraph 92, Respondent states that the quoted language and cited rule speak for themselves.

93. In response to numbered paragraph 93, Respondent incorporates its response to numbered paragraph 8, adding that the cited rule speaks for itself, and the legal conclusions require no answer.

94. In response to numbered paragraph 94, Respondent incorporates its prior responses to all numbered paragraphs in this Answer as well as its Affirmative Defenses, states that the legal conclusions require no answer, denies Complainant's characterization 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.

95. In response to numbered paragraph 95, Respondent admits that Complaint has made a request, a prehearing conference has been scheduled, and this matter has been set for a contested case; however, Respondent denies that the Complaint has merit or that Complainant is entitled to any relief, incorporating its additional answers and affirmative defenses.

96. In response to the un-numbered CONCLUSION paragraph, Respondent incorporates its responses to all numbered paragraphs in this Answer as well as its Affirmative Defenses, 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 is required to seek, or entitled to receive, any relief from the Commission. Answering further, Respondent denies that its "conduct thwarts Michigan's energy policies" and denies that Respondent's conduct is "unlawful", "unreasonable" or "should not be tolerated."

97. In response to the WHEREFORE paragraph, including sub-paragraphs A-R, 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 and/or failure to act. For example, and without limitation, Complainant submitted an overwhelming number of interconnection requests for potential projects in support of its "strategy and goal of securing queue position" as reflected in Attachment C to the Complaint), and thus providing the Complainant a basis to otherwise generate issues and/or claims for litigation. Furthermore, Complainant failed to provide Respondent with inverter harmonic information that is necessary to complete an engineering review or required payments necessary to receive completed engineering reviews.

3. Complainant has assumed the risk of exercising and implementing its "strategy and goal of securing queue position" and submitting voluminous interconnection requests that may not be viable.

4. Complainant was negligent in exercising and implementing its "strategy and goal of securing queue position" and submitting voluminous interconnection requests that may not be viable.

5. 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.

6. 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.

7. 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.

8. If the facts shall so show, then Respondent will rely upon same for the defense that Complainant's claim is barred by a change or modification of the contract sued upon.

9. 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.

10. 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.

11. 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.

12. Respondent is justified and should be excused with respect to its response to Complainant's "strategy and goal of securing queue position" and submitting voluminous interconnection requests that may not be viable.

13. Complainant has failed to join necessary and indispensable parties, including but not limited to, its "affiliates."

14. 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.

15. Complainant has failed to exhaust its administrative remedies.

16. If the facts shall so show, mootness.

17. If the facts shall so show, impossibility.

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

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

20. Complainant does not have standing and is not the real party in interest.

21. 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.

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

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

24. 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.

25. 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.

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

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

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

29. 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.

30. 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.

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

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

33. 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.[8] 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.[9]

[8] *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").

[9] *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)

36. Assuming for argument's sake that the Commission's Electric Interconnection and Net Metering Standards do apply here, they did not contemplate the overwhelming nature of Complainant's activities. Thus, to the extent that Respondent may be viewed as not fully complying with all timelines and other requirements, then a waiver should be granted due to the overwhelming number of interconnection requests and other time-consuming and burdensome activities by Complainant.

37. 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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FAHEY SCHULTZ BURZYCH RHODES PLC
Attorneys for DTE Electric Company

Stephen J. Rhodes
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Date: 2018.05.29 16:59:28 -04'00'

By: _____
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Dated: May 29, 2018

("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").

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of CYPRESS CREEK RENEWABLES, LLC against DTE ELECTRIC COMPANY for unjust, unreasonable and improper generation interconnection rates, charges and practices.	))))))	Case No. U-20151

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

Digitally signed by Adrienne Monahan
Date: 2018.05.29 16:59:51 -04'00'

Adrienne Monahan

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

Michelle L. LeRoy

Digitally signed by Michelle L. LeRoy
Date: 2018.05.29 17:00:10 -04'00'

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

SERVICE LIST
MPSC CASE NO. U-20151

ADMINISTRATIVE LAW JUDGE
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Administrative Law Judge
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