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March 12, 2021

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-20713 and U-20851 consolidated

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief of Michigan Energy Innovation Business Council, Institute for Energy Innovation, and Advanced Energy Economy. Thank you for your assistance in this matter.

Very truly yours,

VARNUM

Laura A. Chappelle

LAC/sej
Enclosures
c. ALJ
All parties of record.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determination and/or approvals necessary for regulated electric providers to comply with Section 61 of 2016 PA 342.	)))))	Case No. U-20713
In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determination and/or approvals necessary to fully comply with Public Act 295 of 2008.	)))))	Case No. U-20851 Consolidated

INITIAL BRIEF OF THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, INSTITUTE FOR ENERGY INNOVATION, AND ADVANCED ENERGY ECONOMY

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INITIAL BRIEF OF THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, INSTITUTE FOR ENERGY INNOVATION, AND ADVANCED ENERGY ECONOMY

I. INTRODUCTION

This Initial Brief is filed on behalf of the Michigan Energy Innovation Business Council ("Michigan EIBC"), the Institute for Energy Innovation ("IEI"), and Advanced Energy Economy ("AEE") collectively, "Michigan EIBC/IEI/AEE," by their attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

II. ARGUMENT

A. The Commission Should Reject DTE's Customer-Requested Behind-The Meter Proposal.

In this proceeding, DTE Electric Company ("DTE" or the "Company") is proposing a program entitled the "Customer-Requested Project Offering" ("customer-requested offering"), which Company witness Brian T. Calka describes as follows:

> DTE Electric is currently in discussions with several large customers interested in partnering with the Company to design and construct location specific community-solar projects to help them achieve their respective sustainability aspirations. These projects are one-of-a-kind projects with unique design criteria based on customer input that do not fit within the currently-structured Rider 17 and Rider 19 offerings.

3 TR 71. Witness Calka goes on to describe that the costs for each project "will be allocated to the participating customer(s) for the life of the project . . ." 3 TR 72. Furthermore, executed customer-requested contracts are proposed to be presented to the Commission for approval and filed *ex-parte* in a future regulatory filing. 3 TR 83.

DTE's proposed customer-requested offering is not a pilot, but rather is a broad-based permanent program that is targeted to all non-residential customers. As witness Calka testified, "[A]s an initial matter, any commercial or industrial customer is eligible, in that no customers are prohibited from proposing a locally-sited project." 3 TR 71. In addition to commercial and industrial customers, DTE also envisions "executing customer-requested project contracts with municipalities, higher education institutions, and other public-sector entities." 3 TR 82. In this regard, the proposed customer-requested offering is also exceptionally broad, given that DTE has stated that the "Company has not made the determination to limit participation to municipalities, higher education institutions, and other public-sector entities." Exhibit EIB-3-LSS-3.

DTE is not awaiting Commission approval to move ahead with its proposed customer-requested offering and admits that it is "currently in discussions with several large customers interested in partnering with the Company to design and construct location-specific community solar projects to help them achieve their respective sustainability aspirations." 3 TR 71. For its

part, the Company states that it knows of no legal impediments to developing and rate-basing projects behind-the-meter, and that it has had one previous behind-the-meter project that was approved in its last general electric rate case in Case No. U-20162. 3 TR 103.

Michigan EIBC/IEI/AEE submits that the Commission should reject the Company's proposed customer-requested offerings that target behind-the-meter projects. As testified by Dr. Laura Sherman for Michigan EIBC/IEI/AEE, DTE's proposed behind-the-meter projects have all of the same legal and anti-competitive concerns as Consumers Energy Company's ("Consumers Energy" or "Consumers") previously proposed behind-the-meter pilot program, entitled the "Bring-Your-Own-Brightfield Program," from its most recent Voluntary Green Pricing ("VGP") case proceeding in Case No. U-20649. Namely, DTE's behind-the-meter proposal:

1. lacks explicit statutory authority for a regulated utility company to develop and rate-base resources in an otherwise open and unregulated market space;

2. is anti-competitive, given that DTE, as a regulated monopoly, possesses certain benefits that afford it an unfair advantage over third parties in the unregulated behind-the-meter solar market;

3. discriminatorily allows DTE to rate-base and finance projects under favorable regulatory and financial terms not available to any other unregulated market competitor;

4. allows the Company to access and utilize customer data that are not provided publicly, including, but not limited to: contact information, electricity load data, and information regarding engagement in prior utility programs. This information can allow for an unfair advantage in identifying and contracting potential commercial and industrial customers who might be interested in a behind-the-meter solar system;

5. allows DTE to operate in an unregulated market in a favorable position, thus ensuring that not only is there no level playing field, but also that DTE is clearly, and unfairly, advantaged against all other competitors; and

6. inappropriately eliminates full regulatory review of individual projects, given that the Company intends to file projects on an *ex-parte* basis.

4 TR 625-632. In actuality, DTE's proposed behind-the-meter offering is even more concerning than Consumers', given that unlike Consumers, DTE does not propose its offering as a pilot, but rather as a full-fledged program. Furthermore, unlike Consumers, DTE fails to even attempt to structure the program within the confines of the Commission's approved Code of Conduct requirements.[1] 4 TR 628.

The fact that DTE claims that it has previously had a behind-the-meter project approved in a past Commission proceeding is unavailing. DTE's alleged "precedent" was one project that was approved following a contested case proceeding in DTE's last electric rate case in Case No. U-20162. 3 TR 103. This is a significant distinction to DTE's current proposal, which is a broad, ill-defined program targeted to all commercial and industrial customers, in which the contracts, expected to be between 20-35 years,[2] will be submitted to the Commission on an *ex parte* basis. In fact, DTE states that "the Company does not propose to engage stakeholders prior to presenting any customer-requested contracts to the Commission for approval."[3]

In rejecting Consumers' proposed behind-the-meter offering, the Commission echoed many of these concerns, finding that:

> However, the Commission has several reservations regarding the BYOBF pilot and finds that approval is not appropriate at this time. The Commission's concerns are as follows: (1) the role of the utility in the behind-the-meter development market, the implications of putting host site solar assets into rate base, and the accounting treatment for the program have not been sufficiently explained or justified; (2) Consumers' agreement to adhere to the Code of Conduct is limited and the Commission finds the

[1] 2016 PA 341, Sec. 10ee; MCL 460.10ee(1).

[2] Exhibit EIB-5 (LSS-5).

[3] Exhibit EIB-6 (LSS-6).

> nature of the program may warrant additional analysis, especially if any affiliates are involved, and a more thorough consideration of the utility's role in serving a growing, competitive behind-the-meter solar market; and (3) the company stated its intent to use a competitive bidding process to supply the BYOBF pilot but failed to provide any meaningful detail as to the competitive bidding framework. The Commission finds that additional information and deliberation is needed before the Commission considers approval of the BYOBF pilot or a similarly structured program. The Commission expects to commence additional stakeholder workgroups in the MI Power Grid initiative that are well-suited to explore the potential of this program as well as the implications and to explore the concerns raised by the Commission. The Commission encourages Consumers to present the BYOBF pilot program in the emerging technologies and business models workgroup and work with the Staff and stakeholders to address the concerns raised in this docket. The company is not precluded from re-filing the program in the October 6 2021 biennial VGP filing with additional detail for the program as well as any revisions or lessons learned from participation in the MI Power Grid initiative.

MPSC Order No. U-20649, dated September 24, 2020 ("Order No. U-20649"), pp. 55-56.

Subsequent to the issuance of the Order in Case No. U-20649, the Commission issued an order on October 29, 2020, in Case No. U-20898 ("Order U-20898"), that instituted a new stakeholder workgroup within MI Power Grid, entitled the "New Technologies and Business Models" workgroup. The Commission noted in Order U-20898 that with respect to utility engagement in behind-the-meter solar developments:

> In the September 24, 2020 Order in Case No. U-20649, pp. 50-56, the Commission declined to approve the Bring Your Own Bright Field program as part of Consumers' voluntary green pricing (VGP) portfolio and provided direction for the Staff, the utility, and stakeholders to discuss (as part of the MI Power Grid initiative) issues related to the utility's role in owning and operating BTM solar. The Bring Your Own Bright Field program, as proposed by Consumers, would have involved the utility facilitating customers' application of BTM solar and potentially battery storage, with the utility owning the equipment as a rate-based asset. *Id*. The Commission has not determined whether or not this is a suitable role for the regulated utility (under VGP or otherwise), what guidelines are necessary should the utility or affiliate be engaged in this activity, or whether this activity is appropriate as a value-added service pursuant to MCL 460.10ee.

Order No. U-20808, p. 4, fn. 7. The first discussion of behind-the-meter issues took place on March 10, 2021, in the Commission's MI Power Grid New Technologies and Business Models Workgroup.

Given that all of the same concerns (and more) exist with DTE's proposed customer-requested behind-the-meter offering as existed of Consumers' proposed behind-the-meter pilot program, Michigan EIBC/IEI/AEE respectfully request that the Commission similarly reject DTE's proposal at this time.

B. The Commission Should Approve DTE's Proposed Customer-Requested Project Offering For Projects Located In Front Of The Meter, But Only To The Extent That DTE Utilizes Best Practices For Competitive Bidding Processes.

As Dr. Sherman testified, the Commission should only approve DTE's customer-requested offering for front-of-the-meter projects if the Commission requires DTE to utilize competitive bidding best practices before adopting any particular project. Despite the fact that DTE's proposed offering is broad and all-encompassing, it fails to describe any particular competitive procurement process to develop and build front-of-the-meter project offerings. Therefore, it is unclear if the Company plans to involve third parties or utility affiliates and what procurement process would be utilized for these proposed projects. 4 TR 635.

Therefore, Dr. Sherman suggested that if the Company moves forward with front-of-the-meter projects through its proposed customer-requested offering, it be required to utilize a fair, transparent and inclusive competitive bidding process that will ensure the lowest cost, most reasonable and prudent resources and ownership model for any given project. 4 TR 636. This would hold true even if the customer desires to be involved in the Request For Proposal ("RFP") and project development process. *Id.*

As Dr. Sherman noted, [T]here are a number of well-regarded organizations that provide practical explanations of how an effective competitive bidding process should be designed. According to the National Association of Regulatory Utility Commissioners ("NARUC"),[4] the competitive bidding process should be "designed to encourage a competitive response from the market." Public Act 295 of 2008 (MCL 460.1001 Sec.1(2)(c)) similarly establishes the goal of "[encouraging] private investment in renewable energy and energy efficiency." *Id.* According to NARUC, it is critical that any competitive bidding process be fair and objective.[5] Other important aspects of a fair, transparent and inclusive competitive bidding process include: 1) that the Company solicit bids with an open solicitation to ensure all interested parties are able to participate, thereby decreasing costs for customers; 2) a clear understanding to all parties as to how bids will be evaluated; and 3) what non-price factors will be considered. 6 TR 636-637.

DTE's proposed customer-requested offering for front-of-the-meter projects includes none of these competitive bidding processes or safeguards. While the Company states that it is "always looking for ways to improve the [RFP] processes going forward in order to benefit its customers," and that "[T]he Company looks forward to actively participating in the upcoming MI Power Grid Competitive Procurement Workgroup and to leveraging its learnings from the Workgroup to inform its future RFP processes," these claimed assurances fail to result in any concrete certainty regarding clear, fair and neutral competitive bidding practices for the Company's proposed build plan. 3 TR 82

4 Tierney, S. F. and Schatzki, T. 2008. "Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices," available at https://www.analysisgroup.com/globalassets/content/insights/publishing/competitive_procurement.pdf last accessed April 28, 2020. 6 TR 636.

5 *Id*.

For all of these reasons, the Commission should not accept DTE's proposal in this regard unless it also requires DTE to conduct best practices competitive procurement for any given project, as described by Dr. Sherman.

C. The Commission Should Require Changes Before Adopting DTE's Proposed Community Solar Offering.

DTE proposes to develop several "location-specific community-solar projects" for several of its large customers in order to help these customers achieve their respective sustainability aspirations. 3 TR 71. DTE describes these as "one-of-a-kind projects with unique design criteria based on customer input that do not fit within the currently-structured Rider 17 and Rider 19 offerings. Customers participating in this offering are required to subscribe to the output of the project for the life of asset. The cost and credit structure of customer-requested projects will align with similarly-structured programs." *Id*. DTE admits that it "does not have a single definition of community solar." Rather, it believes that community solar "is a classification that encompasses multiple different models that typically includes a central solar renewable energy source." Exhibit EIB-7 (LSS-7).

Several parties to this proceeding, including Michigan EIBC/IEI/AEE, expressed serious concerns with DTE's proposed customer-requested community solar offering. As an initial matter, Dr. Laura Sherman testified that the Company's proposed community solar offering does not adhere to the basic principles and characteristics of a community solar program of any type. 4 TR 639. For example, important characteristics of community solar programs include:

- the ability for third parties to own the solar system;
- fair and transparent competition to allow developers to build and operate projects, locally-sited projects; and
- virtual metering for subscriber bill credits; and

- subscribers should be limited to those in a given utility's territory;

4 TR 637-638. Dr. Sherman also noted several community solar features important to Michigan EIBC and AEE business members, including:

- a limit on the percentage of the facility's capacity that can be subscribed to by any given subscriber;
- carve outs or incentives should be allowed to encourage participation in community solar programs from low-and-middle income subscribers; and
- development of hosting capacity maps for improved distribution system planning and siting of renewable energy projects such as community solar developments.

Id. Additionally, Dr. Sherman highlighted that the Coalition for Community Solar Access similarly lists among its core principles for community solar:

- allow all customers the opportunity to participate in and directly economically benefit from the construction and operation of new clean energy assets;
- provide equal access for developers to build and operate community solar project and interconnect those projects to the serving utility's grid; and
- incorporate and fair bill credit mechanism that provides subscribers with an economic benefit commensurate with the value of the long-term, clean, locally-sited energy produced by community solar projects.[6]

Despite these clear business and acclaimed research descriptions and models for community solar programs, DTE's proposed customer-requested community solar program meets none of these principles. As only one example of such, Dr. Sherman noted that DTE stated that it does not plan to conduct virtual metering for customers who participate." 6 TR 639. Exhibit EIB-

[6] Coalition for Community Solar Access. 6 TR 638.

8 (LSS-8). In Dr. Sherman's expert opinion, "[I]t is fundamental to any community solar project that subscribers receive a bill credit (via virtual metering) for the electricity produced by their portion of the community solar project." *Id.*

Although Michigan EIBC/IEI/AEE has serious concerns with DTE's proposed community solar offering, the Commission should not outright reject the Company's proposal, as some parties suggest. Per Dr. Sherman, "there is significant demand in Michigan for community solar as evidenced by the number of municipalities, academic institutions, and corporations with carbon reduction and renewable energy goals." 4 TR 639. Although Dr. Sherman believes that Michigan lags currently in the deployment of community solar, a study conducted by GTM Research finds that with the right policies and programs in place, by 2030 community solar could represent 1.5% to 2.4% of retail electricity sales and serve up to 288,000 subscribers in Michigan.[7] *Id.*

To address the shortcomings of DTE's community solar offering, Michigan EIBC/IEI/AEE recommends that the Commission first find that the offering should be structured as a pilot, not a full-fledged and untested program. Such a pilot should also be required to include at least some of the nationally recognized principles for community solar offerings. As Dr. Sherman testified:

> Although such an offering would not likely incorporate all of the characteristics of community solar described above, it could incorporate some of the characteristics. For example, a municipality could request the construction of a 10 MW solar array within their community. The municipality would sign a contract with DTE Electric to pay for the entire cost of the project, thereby eliminating any perceived risk on the part of the utility related to a lack of future subscribers. DTE Electric, with appropriate input from the municipality, would conduct a fair and transparent competitive procurement process to develop and build the project. The municipality and/or the utility could then recruit subscribers who would be

[7] The Vision for U.S. Community Solar: A Roadmap to 2030, July 2018, prepared by GTM Research on behalf of Vote Solar. Available https://solstice.us/media_center/vote-solar-community-solar-roadmap-2030/

> given an electric bill credit for their subscription. Although this arrangement would not meet all of the principles for community solar as outlined above, it would be an initial step toward achieving a more community-driven approach to community solar that also takes advantage of the competitive market.

6 TR 640. For all of these reasons, Michigan EIBC/IEI/AEE submit that the Commission should require DTE to conduct a community solar offering as a pilot program as part of its proposed customer-requested project offering. This pilot offering should include at least some of the nationally recognized characteristics of a community solar program, as described herein.

D. The Commission Should Ensure That Any Approved FCM For The Company Is Clear, Transparent And Contains Granular Information.

DTE proposes a significant new number of resources to fulfill its demand for the Voluntary Green Pricing Program over the next five years, stating that:

> The Company proposes to meet its forecasted subscribed MWh through 2025 with a build plan that includes addition of new renewable resources of 420 MW in 2022, 62 MW in 2023, 183 MW in 2024, and 132 MW in 2025 . . . The 420 MW of new renewables will be filled by projects selected from the Company's Fall 2019 Requests for Proposals (RFPs) and includes various ownership structures including power purchase agreement (PPA) and tax-equity financing.

6 TR 641; 3 TR 78-79. For any PPAs approved for these projects, DTE is requesting approval of a Financial Compensation Mechanism ("FCM") structure that would be applied consistent with the Commission authority established in 2016 PA 341 6t(15) ("Section 6t(15)"). 3 TR 85. This would be the first instance in which the Commission has approved an FCM for DTE PPAs.

Although DTE proposed a specified financial mechanism ("incentive factor") to calculate the FCM, Michigan EIBC/IEI/AEE does not intend to comment on the particulars of the proposed financing, as such. Rather, Michigan EIBC/IEI/AEE is more concerned with the approval and use

of any FCM as it truly relates to "incentivizing" the use of PPAs for the Company's proposed build plan.

This is due to the fact that, even despite an FCM, there are strong existing financial incentives for a utility like DTE to build and own all of the facilities from which the utility obtains electricity and a lack of incentives for the utility to contract for electricity using PPAs. As Dr. Sherman noted, this "can create a situation where an investor-owned utility is strongly incentivized to avoid projects other than those that they build themselves or purchase from a developer after construction is complete." 4 TR 641-642. In Dr. Sherman's opinion, the intent of Section 6t(15) was to change the utility's financial incentives and put PPAs on a more equal footing with Company-owned projects. In this regard, she stated that "[A]lthough each developer has a different business model, under certain circumstances, a developer may prefer to pursue a deal using a PPA rather than a build-transfer agreement. In this situation, it would be beneficial to the developer if their interests were aligned with, rather than at odds with, the utility conducting the competitive bidding process and contracting for the resources." 6 TR 642.

Along these lines, DTE witness Calka testified that "an FCM on PPAs can improve the alignment of interests, allowing customers to access potentially lower cost supply alternatives while providing a fair financial return to the utility." 3 TR 87. Yet Michigan EIBC/IEI/AEE submit that DTE's proposed ownership model for its build plan fails to ensure that the full price of any proposed PPA project reasonably and fairly compares to a build-transfer agreement or Company-owned project. Therefore, Michigan EIBC/IEI/AEE recommend two requirements, should the Commission approve an FCM for DTE PPAs in this proceeding.

First, there should be greater specificity and transparency as to how the FCM will be applied in any competitive bidding circumstance. As Dr. Sherman testified, "it is critical that

calculation of any future FCM is transparent and understandable to all potential participants in a given competitive bidding process. Potential bidders should be able to easily calculate exactly what price mark-up to expect for a proposed PPA project in comparison to a build-transfer or Company-owned project. This requires that granular information on the FCM be provided to potential participants." 4 TR 641-642.

Second, DTE should only be allowed an FCM if it clearly commits to a fair and balanced inclusion of independent third-party PPAs for its proposed build plan. Despite the request for an FCM, the Company makes no commitments to the use of third-party PPAs for its VGP resources. The Company's proposed build plan contains no specified competitive bidding requirements, nor any specified commitments to third-party PPAs.

Consumers was allowed an FCM on PPAs through its settlement agreement in its Integrated Resource Plan ("IRP") case (Case No. U-20165), in which it agreed to a 50/50 split amongst company-owned projects and independent third-party PPAs.[8] DTE has long opposed a similar commitment, leading this Commission to note in its DTE Renewable Energy Plan Case Order in Case No. U-18232, on July 18, 2019, that DTE misinterprets the removal by Public Act 342 of the Public Act 295 provision that no more than 50% of an electric provider's RECs could come from renewable generation owned by the electric provider to mean that "the company has 'unfettered discretion to choose to pursue only company-owned renewable generation.'" (Case No. U-18232, July 18, 2019, Order p. 9). As Great Lakes Renewable Energy Association witness John Richter testified, Consumers' commitment to utilizing at least 50% third-party PPAs for its new renewable energy resources was a "significant change to the way [Consumers] conduct

[8] Settlement Agreement in Case No. U-20165. Filed March 23, 2019, pp. 8-9.

business," and that "DTE's proposals offer no such concession or change from business as usual." 4 TR 790.

Therefore, a FCM should be approved for DTE only to the extent it ensures that third-party PPAs are fairly and reasonably considered as alternatives to either Build-Transfer Agreements or Company-owned resources. This can be done by an established competitive bidding procedure or by implementing a "50/50 split" for future resources built to meet demand for the Company's Voluntary Green Pricing Program. 4 TR 644.

E. The Commission Should Require Changes To DTE's Proposed Small-Scale Competitive Procurement Plan.

In DTE's last Renewable Energy Plan Case, the Commission "strongly encouraged" DTE to "find opportunities" to allow small-scale renewable energy resources to respond to future RFPs for "projects to meet other drivers of renewable energy demand – including specifically in its VGP plan filing . . . " (Order No. U-18232, July 9, 2020, p. 42). In this proceeding, the Company states that it is its "intent to work with the appropriate stakeholders, including the Commission's Staff, to design an appropriate competitive solicitation for small-scale solar or solar plus storage projects (i.e., projects less than 25 MW) with CODs in 2022 and 2023, which we anticipate would occur before the end of the year." 3 TR 82. To the extent that the Commission adopts DTE's recommended small-scale procurement plan, Michigan EIBC/IEI/AEE recommend the following four requirements.

1. DTE Should Use Nationally Recognized Best Practices For Competitive Procurement With Respect To Any Future Small-Scale Renewable Energy Offerings.

As noted above, DTE is seeking approval of its small-scale competitive procurement plan, even though it has yet to establish an appropriate competitive solicitation process. This is in contrast to the settlement agreement in Consumers' IRP Case No. U-20165 that provided clear

requirements for its competitive bidding process for all renewable energy resources. Therefore, Michigan EIBC/IEI/AEE recommends that DTE's small-scale offering be required to utilize nationally recognized best practices for competitive procurement, based upon a fair, transparent and inclusive process for all bidders.

As Dr. Sherman testified, all bidders, at a minimum, should have access to information about bid evaluations, any required contract terms or standard contract language, and any FCM that will be added to PPA proposals. 4 TR 650. To ensure an open and inclusive process, similar to that conducted by Consumers Energy, the Company should allow both PPA and Company-owned projects with a certain percentage of the total MW (e.g., 50 percent) reserved for PPA projects. As stated previously, if this practice were instituted, it would be reasonable for the Company to request a fair FCM for any chosen PPA project.

The success of inclusion of small-scale resources into any RFP is incumbent upon a fair and transparent competitive procurement process. Michigan EIBC/IEI/AEE recommends that the Commission require such a process before adopting DTE's small-scale solar proposal.

2. DTE Should Reduce Its High Costs For Engineering And Distribution Studies.

Michigan EIBC/IEI/AEE witness Dr. Sherman testified that in her role as President of Michigan EIBC, she has been made aware of challenges some of her members have faced with the interconnection process in DTE's service territory. As only one such example, Allen Reese, Director of Development for Pine Gate Renewables, expressed concerns that the costs for engineering and distribution studies conducted by the Company are significantly higher than those for Consumers Energy. 4 TR 646-647. Specifically, as detailed by Mr. Reese, "all projects developed by Pine Gate Renewables that will finish construction in Consumers Energy's service territory by January 2021 underwent Engineering Reviews and Distribution Studies for $1,200 and

$5,000 respectively and have average interconnections facility upgrade costs of $187,000 at an average cost of $0.09/W (AC). In contrast, Glasgow Solar, LLC, the one similarly sized project that Pine Gate's predecessor, Cypress Creek Renewables, LLC, submitted for interconnection with DTE Electric, was charged a total of $28,460 for the Engineering Review and a total of $77,436.15 for the Distribution Study, which cited "$1,827,801 as Total Construction Cost, a 61% increase over what was shown in the Engineering Review Report and 870% above the average interconnection facilities cost of Pine Gate's Consumers projects." 4 TR 647; Exhibit EIB-9 (LSS-9).

In Dr. Sherman's opinion, it is clear from Mr. Reese's Affidavit that Pine Gate Renewables has found the Company's interconnection costs to be higher than those of Consumers Energy, as well as uncertain, unpredictable, and a deterrent to development of renewable energy systems, especially smaller projects. 4 TR 647-648. These high, uncertain costs raise particular challenges for smaller projects such as those excluded from DTE's Fall 2019 RFP (i.e., less than 25 MW), because these small projects cannot take advantage of economies of scale, and therefore have more narrow profit margins than larger renewable energy projects.

DTE objects to any focus on its high costs for engineering and distribution studies in this case, citing to the Commission's rulemaking process underway to update the Michigan Electric Utility Generator Interconnection Requirements in Case No. U-20344. 3 TR 110. However, those rules and the utility's corresponding procedures will not be approved for approximately 18 months. Michigan EIBC/IEI/AEE submits that the Commission can, and should, take notice of the strong evidentiary support provided in this proceeding that highlights significant concerns with DTE's excessive costs for engineering and distribution studies. Those factors should be taken into

account when considering DTE's proposals for use of PPAs in the absence of a firm commitment to a percentage requirement (such as 50/50) or to a competitive bidding model.

For all of these reasons, Michigan EIBC/IEI/AEE recommend that the Commission require DTE to reduce its high costs for engineering and distribution studies, in order to make those costs more in line with those for other Michigan investor-owned utilities.

3. DTE Should Maintain A Public Interconnection Queue.

Dr. Sherman testified to the fact that for all developers proposing projects in DTE's service territory, it is difficult, if not impossible, to know where a project is in the interconnection queue relative to other projects. This is because the Company, unlike Consumers Energy, provides no public interconnection queue.[9] 6 TR 649-650. It is likely that DTE will compile and provide a similar public interconnection queue once the Commission finalizes its update to Michigan's Interconnection and Distribution Generation Standards. In the meantime, however, Michigan EIBC/IEI/AEE respectfully request that the Commission require DTE to provide a publicly available, up-to-date interconnection queue.

F. DTE's Rider 19 Should Be Revised Before Commission Approval.

DTE is proposing several revisions to its Rider 19 (MIGreenPower Large Customer) Section 61 of 2016 PA 342 ("Section 61") products in this proceeding. 3 TR 54. DTE witness Calka describes the Rider 19 program, in part, as a pilot program, available to large customers who want the opportunity to meet their corporate sustainability goals and who want to encourage additional development of Michigan-sourced renewable energy resources. The program is available to full-service customers with an aggregated annual Maximum Demand of at least 1,000

[9] *See*: Consumers Energy Generator Interconnection Status Report: https://www.consumersenergy.com/-/media/CE/Documents/renewables/generator-interconnection/generator-interconnection-status-report.ashx?la=en&hash=DB1CC52718ADDCBD43ECCE8C6909DE38

kW (1 MW). Customers can choose a percentage of their electric usage to match with designated renewable energy resources and pay a levelized, cost-based subscription fee and receive market-based energy and capacity credits. The current available Rider 19 contract lengths are 5, 10, or 20 years. 3 TR 56-57.

DTE is seeking several changes to the Rider 19 program, including: 1) adding a "Flexible Pre-Payment Option," 2) adding a 15-year term option; 3) transitioning the program from a pilot to a permanent program; 4) adding new resources to accommodate forecasted demand growth; 5) switching to a "net premium" assessment, rather than using the levelized cost of new energy ("LCOE") "as the evaluation basis for cost-averaging new renewable energy projects into the program," and 6) explicitly defining the early termination fees. 4 TR 674; 3 TR 58; 60; 76-82.

While Michigan EIBC/IEI/AEE supports many of the proposed changes to DTE's Rider 19 program, several areas should be altered and/or improved upon before Commission acceptance of the full tariffed program, as more fully described below.

As an initial matter, Michigan EIBC/IEI/AEE witness Caitlin Marquis testified as to the growing demand for renewable energy programs – such as Rider 19 – intended for large commercial and industrial customers. As witness Marquis noted, demand for renewable energy among large customers, such as those that would enroll in Rider 19 – has been strong and growing over the last several years. Since 2016, large customers have signed nearly 25 GW of renewable energy contracts, with a record of more than 9 GW in 2019 alone; as of October 2020, nearly 5 GW of renewable energy contracts have been signed by large commercial and industrial customers. 4 TR 670.[10]

[10] https://rebuyers.org/deal-tracker

While witness Marquis stated that utility programs like DTE's Rider 19 have an important role to play in enabling companies to meet their renewable energy targets, the majority of renewable energy power purchase agreements occur through direct bilateral contracting between large customers and renewable energy developers, often via financial swaps available in organized wholesale markets. In fact, according to Bloomberg New Energy Finance, such transactions accounted for 80% of renewable energy deals signed in the U.S. in 2019.[11] 4 TR 670-671.

Witness Marquis discussed the continuing growth of large C&I renewable energy offerings across the country: "Since the first such utility renewable energy programs were introduced in 2013, utilities have introduced more than 36 renewable energy programs pending or available across 19 states. To date, roughly 3.7 GW of C&I renewable energy procurement has relied on these types of utility 'green tariffs.'" 4 TR 671.

Based on witness Marquis' extensive review of similar C&I green tariff offerings, she found that successful programs follow a shared set of best practices but varied in design according to customer needs and local circumstances. Based on Ms. Marquis' direct experience and that of AEE's members in working with utilities across the country, AEE has developed the following set of best practices for utility renewable energy programs:

- Program pricing that reflects actual market pricing and program costs;
- Competitive project solicitation to ensure lowest-cost, best-fit resources to meet customer needs;
- Development of new renewable energy, beyond business-as-usual;
- Allowing a range of customers to participate;

[11] Bloomberg New Energy Finance, "Corporate Clean Energy Buying Leapt 44% in 2019, Sets New Record" (Jan. 28, 2020), https://about.bnef.com/blog/corporate-clean-energy-buying-leapt-44-in-2019-sets-new-record/

- Providing flexible or varied offerings to meet the needs of a range of different customers; and

- No adverse impact on non-participating customers.

4 TR 671-672. These principles and the experience behind them guided witness Marquis' assessment of the needed revisions to Rider 19.

1. DTE Should Be Required To Rely On Competitive Solicitations That Give Fair Opportunity To Third-Party Developed Resources Before Adding New Resources.

Witness Marquis strongly supports DTE's request to add resources to meet growing demand under Rider 19. However, she noted that the "most impactful and important step to ensure the success of the Rider 19 program is to improve cost-competitiveness of the renewable resources serving Rider 19 customers." 4 TR 676-677. To this end, she recommends that the Company take the necessary steps to ensure that new resources that are added are cost-competitive and best suited to meet customer needs. She believes this is best accomplished by adopting the competitive procurement best practices discussed in Michigan EIBC/IEI/AEE witness Dr. Laura Sherman's Direct Testimony in this proceeding. 4 TR 677. A "robust and open competitive procurement process allowing for full and fair participation by third-party developers" will ensure that the selected resources "are the best available to meet customer needs on the basis of price and performance." 4 TR 678.

For all of these reasons, Michigan EIBC/IEI/AEE recommends that the Commission require that any new resources added to support Rider 19 must be subject to best practices of competitive procurement, as described herein by witness Dr. Sherman.

2. DTE Should Provide More Information On A Net Premium Approach To Evaluate New Rider 19 Projects Before Commission Approval.

Witness Marquis testified that the "primary drawback" of the Rider 19 program is the cost premium faced by participating customers. 4 TR 676. As witness Marquis noted, DTE has provided very little information about this aspect of the filing, but she explained it as follows:

> . . . the Company plans to use a five-year forecast of net premium (LCOE minus the expected energy and capacity credits) as a primary criterion for selecting projects to be added to Rider 19. After selecting new projects, the Company plans to compare the forecasted net premium of the new resources to that of the existing Rider 19 resources. If new projects have a lower forecasted net premium than existing projects, they would be cost-averaged into the program and existing subscribers would have their subscription charge and renewable energy credits adjusted accordingly (based on the LCOE and the actual monthly renewable energy credits of the new projects, respectively). If the new projects have a higher forecasted net premium than existing projects, existing customers would continue to be served by existing resources and new customers would subscribe to the new higher net premium resources. It is my understanding that DTE's "forecasted net premium" would be used for evaluation purposes and would not appear anywhere on the customers' bill; customer bills would reflect the actual net premium, or the difference between the subscription charge (based on LCOE only) and the energy and capacity credits (based on actual resource performance and market prices, which will vary monthly).

Id. Witness Marquis relayed several concerns with DTE's proposed net premium approach, including the fact that DTE has not fully explained how it will forecast the five-year net premium, nor adequately explained how existing and prospective customers would be given insight into the process or results of the evaluation. 4 TR 779-680. A better understanding of this approach is crucial, given that the accuracy of the five-year net premium forecast and its applicability over the life of the project is critical to ensure that new customers do not end up paying more relative to the current program. Therefore, witness Marquis stated that " . . .the net premium approach means that customers may end up paying (via the subscription charge) for a renewable energy project with a higher LCOE, on the basis of higher expected energy and capacity credits. If these higher credits do not materialize, customers would end up with a higher net premium compared to the current approach. Particularly for existing customers, who signed up with the understanding that

their subscription charge could decrease but would not increase, this change may cause concerns, because it could result in a higher subscription charge on the basis of an expected but uncertain increase in Renewable Energy Resource Credits." 4 TR 680.

Given witness Marquis' concerns with DTE's proposed new net premium approach, Michigan EIBC/IEI/AEE supports her two recommendations.

First, the Commission should scrutinize DTE's criteria for evaluating the five-year net premium of renewable energy projects and assess whether such a forecast is appropriate under a program that allows customers to sign up for as long as 20 years. If the Commission finds any cause for concern, it should reject the net premium approach.

Second, the Commission should require DTE to provide prospective and existing customers with information about the net premium evaluation process so they can either enter, or continue in, the program with a full understanding of how additional resources could impact their subscription charge and monthly bill credits moving forward.

3. DTE Should Be Required To Reverse The Deletion Of Important Tariff Language In Rider 19.

Perhaps inadvertently, DTE's proposed edits to the early termination tariff language for Rider 19, at Section D (Early Termination of Agreement) will cause confusion for customers seeking to unenroll in the program when they have less than one year remaining in their Rider 19 subscription. For this reason, Michigan EIBC/IEI/AEE supports witness Marquis' recommendation to clarify that this fee would still be capped at the remaining value of the customer agreement by retention of the clause "not to exceed the remaining value of the customer agreement."[12]

[12] Consumers Energy Company, Voluntary Large Customer Renewable Energy Pilot ("LC-REP") Program, C10.6, First Revised Sheet No. C-55, Oct. 28, 2020. https://www.michigan.gov/documents/mpsc/Consumers_14_current_675992_7.pdf

4. DTE Should Allow For A Market-Based Rate Structure In Rider 19, Similar To Consumers Energy's Market Index Provision In Its LC-REP Program.

Michigan EIBC/IEI/AEE support witness Marquis' recommendation to add an option for customers to switch to a market-based rate for their base electricity schedule in order to complement the structure of the Rider 19 renewable energy credits. This is the approach taken by Consumers Energy's Large Customer Renewable Energy Pilot (LC-REP) program, which includes a "Market Index Provision" allowing customers subscribing for at least 85% of their load to switch to a market-based rate. As witness Marquis noted, the "Market Index Provision allows customers to align their underlying electricity costs to the credits they get back from their renewable energy subscription. While the Market Index Provision and the LC-REP energy credit will not align perfectly, this arrangement reduces the market risk associated with the variable, market-based LC-REP credit. The structure of the subscription charge and renewable energy credits for the Rider 19 program is very similar to that of the LC-REP program, and addition of a market-based rate option would give DTE customers an attractive option to better manage the risk of their participation in Rider 19." 4 TR 682.

DTE avers that it has not performed analysis on the financial impacts of such a market-based structure, and that this proposal would be better suited for a general rate case where changes to power supply charges could be addressed. 3 TR 94. Michigan EIBC/IEI/AEE note that Consumers allowed such a program as part of its VGP proceeding. There should be no reason why DTE cannot do the same. DTE should embrace program options that deliver the best value for customers participating in the Rider 19 program. Allowing a market-based rate approach for Rider 19 customers would deliver that value.

For all of these reasons, Michigan EIBC/IEI/AEE recommend that the Commission find that DTE should add a market-based rate option for customers enrolled in the Rider 19 program.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, the Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and Advanced Energy Economy hereby respectfully request that the Commission consider the comments and recommendations contained herein when deciding upon DTE's amended Renewable Energy Plan and proposed Voluntary Green Pricing program.

These changes are necessary to ensure that DTE's Voluntary Green Pricing programs and Renewable Energy Plan resources comply with statutory law, including Section 61, and allow customers meaningful, actionable access to renewable energy options that meet their needs and fulfill the requirements of Section 61.

Respectfully submitted,

Varnum LLP
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March 12, 2021

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION
* * * * *

In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determination and/or approvals necessary for regulated electric providers to comply with Section 61 of 2016 PA 342.	)))))	Case No. U-20713
In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determination and/or approvals necessary to fully comply with Public Act 295 of 2008.	)))))	Case No. U-20851 Consolidated

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Sarah E. Jackinchuk, the undersigned, being first duly sworn, deposes and says that she is a Legal Assistant at Varnum LLP and that on the 12th day of March, 2021 she served a copy of the Initial Brief of Michigan Energy Innovation Business Council, the Institute of Energy Innovation, and Advanced Energy Economy upon those individuals listed on the Service List via email.

Sarah Jackinchuk

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SERVICE LIST MPSC CASE NO. U-20713 and U-20851 Consolidated

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