

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion to)	
regarding the regulatory reviews, revisions,)	
determinations, and/or approvals necessary for)	Case No. U-20713
DTE ELECTRIC COMPANY to comply with)	
Section 61 of 2016 PA 342.)	
_____)	

In the matter of DTE ELECTRIC COMPANY's)	
application for the regulatory reviews, revisions,)	
determinations, and/or approvals necessary to)	Case No. U-20851
fully comply with Public Act 295 of 2008.)	
_____)	

At the April 21, 2021 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

ORDER

Procedural History

On August 31, 2020, DTE Electric Company (DTE Electric) filed an application in Case No. U-20713 requesting approval of the company's voluntary green pricing (VGP) plan and biennial review of the MIGreenPower program pursuant to Section 61 of Public Act 342 of 2016 (Act 342), MCL 460.1061 (Section 61), including tariff revisions, ownership structure, a financial compensation mechanism (FCM), and other approvals. DTE Electric filed this application pursuant to the Commission's directive in the May 8, 2020 order in Case

No. U-20713 (May 8 order), to file for its biennial review of its VGP programs no later than August 31, 2020. May 8 order, p. 3.

In its application, DTE Electric explains that the MIGreenPower program and the accompanying Standard Contract Rider No. 17 were approved by the Commission as a Section 61 compliant VGP program in the February 21, 2019 order in Case No. U-18352. The company further explains that, in the January 18, 2019 order in Case No. U-20343, the Commission approved the company's Large Customer Voluntary Green Pricing Program (LC-VGP) and the accompanying Standard Contract Rider No. 19 as a pilot.

Concurrently with the application in Case No. U-20713, DTE Electric filed an application requesting *ex parte* approval of its August 2020 amended renewable energy plan (REP) in Case No. U-20851 pursuant to Public Act 295 of 2008, as amended by Act 342. The company explains that it is requesting approval of changes to its REP approved in the July 9, 2020 order in Case No. U-18232, with those changes being limited to including the VGP program filed in Case No. U-20713, in the REP.

On September 25, 2020, the Commission Staff (Staff) filed a motion to consolidate Case Nos. U-20713 and U-20851 into a combined proceeding pursuant to Rule 415(5) of the Rules of Practice and Procedure Before the Commission, Mich Admin Code, R 792.10415(5). Staff's motion, p. 1. The Staff asserted that consolidation is permitted by statute because the statutory provision pertaining to REP amendments, MCL 460.1022(4), does not restrict REP cases to an *ex parte* proceeding but rather, requires a contested case if the recovery mechanism is altered by the utility's proposed amendment. *Id.*, p. 2. The Staff further argued that the issues in the two cases are closely interrelated considering the proposed REP amendment in Case No. U-20851 consists only of the VGP program filed in Case No. U-20713. Lastly, the Staff observed that

DTE Electric has proposed nearly 800 megawatts (MW) of new renewable resources in Case No. U-20851 as well as new accounting treatment (a tax equity partnership framework) and consolidation of these interrelated cases will allow for expeditious and proper examination of the issues. *Id.*, pp. 3-4.

A prehearing conference in Case No. U-20713 was held on October 27, 2020, before Administrative Law Judge Martin D. Snider (ALJ), at which, the ALJ granted intervention to Soulardarity; Natural Resources Defense Council (NRDC); the Michigan Environmental Council (MEC); the City of Ann Arbor (Ann Arbor); the Michigan Municipal Association for Utility Issues (MAUI); the Environmental Law and Policy Center, the Ecology Center, and Vote Solar (together, as ELPC); the Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and Advanced Energy Economy (together, as EIBC); and Energy Michigan. Hearing no objection from DTE Electric, the ALJ also granted the Staff's motion for consolidation of Case Nos. U-20713 and U-20851 into a single proceeding.¹ 1 Tr 7-8. Thereafter, the Association of Businesses Advocating Tariff Equity (ABATE), Pine Gate Renewables, LLC (Pine Gate), and Great Lakes Renewable Energy Association, Inc. (GLREA) filed petitions for leave to intervene out of time which were also granted by the ALJ. *See*,

¹ Another prehearing conference was held on December 17, 2020, in Case Nos. U-20713 and U-20851, at which the ALJ explained that due to the late completion of the paperwork required by the Michigan Office of Administrative Hearings and Rules to hold a prehearing in both cases, the prehearing conference that was held on October 27, 2020, was for Case No. U-20713 only. Once the paperwork was submitted on November 24, 2020, to set a prehearing conference in Case No. U-20851, a notice was issued by the Commission for a prehearing conference to take place on December 17, 2020. At the December 17, 2020 prehearing, the ALJ clarified that these matters have been consolidated, affirmed that all interventions filed in both Case Nos. U-20713 and U-20851 have been granted, and confirmed that the same schedule that had been adopted at the October 27, 2020 prehearing conference in Case No. U-20713, also applies to Case No. U-20851. 2 Tr 17-24.

Scheduling Memo, filing #U-20713-0032 (November 9, 2020), ALJ's Ruling, filing #U-20713-0052 (December 9, 2020), and ALJ's Ruling, filing #U-20713-0059 (December 11, 2020).

On November 30, 2020, DTE Electric filed an application in Case No. U-20851, seeking *ex parte* approval of a build-transfer agreement (BTA) with Freshwater Solar Holdings, LLC, a BTA with White Tail Solar Holdings, LLC, and a power purchase agreement with Calhoun County Solar Project, LLC.

A hearing was held on February 8, 2021, at which cross-examination of DTE Electric witnesses Brian T. Calka and David B. Harwood took place along with the binding into the record of testimony and exhibits. 3 Tr 43-290. The hearing reconvened on February 9, 2021, at which the remaining testimony and exhibits were bound into the record. 4 Tr 308.

On April 12, 2021, the parties, with the exception of GLREA, filed a stipulation (stipulation regarding scheduling) stating an intent to file a settlement agreement that will resolve all issues in Case No. U-20851, and a partial settlement agreement that will resolve all issues in Case No. U-20713, with the exception of the issues surrounding DTE Electric's request for an FCM. The parties to the stipulation regarding scheduling agree as follows: (1) to waive the right to a proposal for decision (PFD) pursuant to Section 81 of the Administrative Procedures Act of 1969, MCL 24.281, and agree that the Commission may read the record; (2) to submit new initial briefs on the sole topic of the FCM on or before April 15, 2021, except GLREA may file its initial brief on or before April 19, 2021, with reply briefs due on or before April 30, 2021; and (3) to maintain the existing case schedule, which provides a target date of June 7, 2021, for a Commission order, subject to the Commission's discretion. Case No. U-20713, filing #U-20713-0136, pp. 1-2.

Contemporaneously, the parties, including GLREA, filed a separate stipulation regarding a contested settlement agreement, in which the parties agree as follows: (1) to waive their rights to a 14-day objection period as provided in Mich Admin Code, R 792.10431(3) and agree that any objections to the settlement agreement shall be filed no later than April 20, 2021, at 5:00 p.m. (Eastern time); (2) if any party files an objection to the settlement agreement, to adopt a schedule that requires testimony to be filed on or before April 27, 2021, rebuttal testimony to be filed on or before May 4, 2021, cross-examination (if necessary) to be held on May 6, 2021, initial briefs to be filed on or before May 11, 2021, and reply briefs to be filed on or before May 17, 2021; and (3) to maintain a schedule that provides a target date of June 7, 2021, for a Commission order, subject to Commission discretion. Case No. U-20713, filing #U-20713-0137, pp. 1-2.

GLREA filed a separate stipulation indicating that it does not agree with the introductory language of the stipulation regarding scheduling filed by the other parties to the consolidated proceeding because the introductory language is inconsistent with GLREA's intent to file objections to the settlement agreement. However, GLREA does not object to the three points of agreement, listed above, set out in the stipulation regarding scheduling filed by the other parties. Case No. U-20713, filing #U-20713-0135, p. 1.

On April 14, 2021, a full settlement agreement for Case No. U-20851 and a partial settlement agreement for Case No. U-20713, that resolves all issues with the exception of the

FCM issue was filed in this matter.² All parties,³ with the exception of Soulardarity and GLREA are signatories to the partial settlement agreement. Also, on April 14, 2021, DTE Electric filed a memorandum of understanding between the company, ELPC, EIBC, MEC, and NRDC to be executed contemporaneously upon the approval of the partial settlement agreement in this consolidated matter. *See*, Case No. U-20713, filing #U-20713-0139.

GLREA filed objections to the partial settlement agreement on April 20, 2021, stating its objections are as follows:

1. The Partial Settlement fails to incorporate an authentic community solar proposal, including a low[-]income community solar project which would provide for community ownership and a non-discriminatory compensation mechanism equivalent to that provided for Distributed Generation (DG) customers;
2. The Partial Settlement provides for a flawed tax equity financing arrangement;
3. The Partial Settlement fails to provide for or require a non-discriminatory, robust, and authentic competitive bidding or RFP process for determining and selecting additional supply resources;
4. The Partial Settlement does not recognize or include the option of DTE purchasing Renewable Energy Credits (RECs) from existing DG customers and/or existing PURPA QFs as a means of meeting the requirements of 2008 PA 295;
5. The Partial Settlement fails to incorporate any consideration by DTE for

² The filed settlement agreement seeks to clarify that a full settlement agreement resolves all issues in Case No. U-20851, and a partial settlement agreement resolves all issues in Case No. U-20713, with the exception of the FCM issue. The Commission understands this clarification but given that this proceeding is a consolidated matter, the Commission will not treat the settlement agreements as applying separately to each case but will instead use the term “partial settlement agreement” applying to Case Nos. U-20713 and U-20851, together as a consolidated proceeding.

³ On April 19, 2021, Ann Arbor filed a letter indicating that the Ann Arbor City Council unanimously approved the partial settlement agreement at its city council meeting held on April 19, 2021, and attached its executed signature page to the partial settlement agreement. Case No. U-20713, filing #U-20713-151.

lifting the 1% cap relative to customer-owned behind-the-meter Distributed Generation (DG) resources;

6. The Partial Settlement provides for the retention of the issue concerning the Financial Compensation Mechanism for direct Commission determination, in contrast to eliminating an FCM proposal from this REP/VGP case.

7. The Partial Settlement fails to fully comport with the purposes and objectives of Michigan's energy statutes as summarized in Section 1001, MCL 460.1001, a copy of which is attached to these objections.

GLREA's objections, pp. 1-2. As of the date of this order, Soulardarity, which is not a signatory to the partial settlement agreement, did not file a written response to the partial settlement agreement.

The Commission has reviewed the partial settlement agreement, the objection to the partial settlement agreement, the stipulation regarding scheduling for DTE Electric's request for an FCM, and the separate stipulation regarding the contested settlement agreement in this consolidated matter and approves the schedule for a contested settlement agreement and the schedule for addressing the request for an FCM, as stipulated to by all of the parties. Thus, direct testimony in support of, or in objection to, the partial settlement agreement shall be filed no later than April 27, 2021. Rebuttal testimony shall be due no later than May 4, 2021. Cross-examination, should it be necessary, shall be held on May 6, 2021. Initial briefs shall be filed no later than May 11, 2021, and reply briefs shall be filed no later than May 17, 2021. In addition, the parties shall submit reply briefs on the sole topic of the FCM no later than April 30, 2021. The Commission also acknowledges the parties' waiver of their right to a PFD and will read the record in this consolidated matter issuing an order approving or rejecting the partial settlement agreement and making a final determination on the FCM issue no later than June 9, 2021.

THEREFORE, IT IS ORDERED that:

A. The parties to this consolidated matter shall adhere to the stipulated schedule for a contested partial settlement agreement proceeding and the stipulated schedule for DTE Electric Company's request for a financial compensation mechanism, as described in this order.

B. The Commission will read the record in this consolidated matter.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungpl@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of April 21, 2021.

Lisa Felice, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

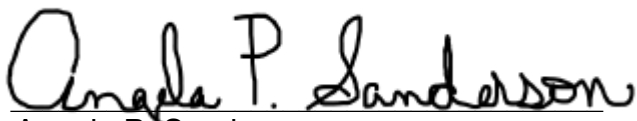
Case No. U-20713 *et al.*

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on April 21, 2021 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 21st day of April 2021.



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

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