

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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 October 27, 2022 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

On September 27, 2022, DTE Electric Company (DTE Electric) filed an application (September 27 application), with supporting affidavits and attachments, requesting *ex parte* approval of master supply agreements (MSAs) and engineering, procurement, and construction (EPC) contracts for four renewable projects: Gratiot Co-Location Solar Park (Gratiot), Polaris Co-Location Solar Park (Polaris), Pine River Co-Location Solar Park (Pine River), and Sauk Solar Park (Sauk) (collectively referred to as the projects).

With respect to the MSAs necessary to develop the projects, DTE Electric explained that it has entered into module supply agreements with New East Solar Energy (America) Inc. (New East Solar Energy) and Vietnam Sunergy Joint Stock Company (VSUN). New East Solar Energy will provide solar panel modules for Pine River and Polaris. VSUN will provide solar panel modules for Gratiot and Sauk. The EPC contracts include agreements between DTE Electric and Barton

Malow Company (Barton Malow) and DTE Electric and J. Ranck Electric, Inc. (J. Ranck). Barton Malow will design, engineer, construct, install, start-up, and test Pine River and Sauk. J. Ranck will design, engineer, construct, install, start-up, and test Gratiot and Polaris. These projects are self-build, and DTE Electric will own each site. September 27 application, p. 5; *see also, id.*, affidavit of Terri L. Schroeder, p. 3.

Within the September 27 application DTE Electric also requests *ex parte* approval of: (1) the associated transfer prices, which are combined energy and capacity price projections, set forth in Exhibit A-5 filed in Case No. U-21010,¹ for recovery under the company's power supply cost recovery (PSCR) process under MCL 460.6j; (2) the capacity charges, which are included in the transfer prices, set forth in Exhibit A-5 filed and approved in Case No. U-21010,² for generating facilities for purposes of MCL 460.6j(13)(b); (3) the recovery of the costs, which are supplied, engineered, procured, and constructed under the contracts through DTE Electric's revenue recovery mechanism as an incremental cost of compliance with the renewable energy standards under the company's amended renewable energy plan (REP), as needed; (4) assurance that the full costs of Gratiot, Pine River, Polaris, and Sauk will be recovered through the combined application of the transfer price mechanism for PSCR, application of the revenue recovery mechanism surcharges under Public Act 295 of 2008 (Act 295), and other mechanisms as determined by the Commission to recover these costs after the REP period in accordance with MCL 460.1047(6) for any unsubscribed portion of the generation from Gratiot, Pine River, Polaris, and Sauk; and (5) any additional approvals that the Commission may deem necessary under Act 295, as amended

¹ DTE Electric's application in Case No. U-21010, Exhibit A-5, filing #U-21010-0002.

² DTE Electric's application in Case No. U-21010, Exhibit A-5, filing #U-21010-0002; *see*, May 26, 2022 order in Case No. U-21010, p. 2 (approving a settlement agreement that resolved all issues in the case).

by Act 342 of 2016 (Act 342), or under Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j. September 27 application, pp. 1-2

In providing background, DTE Electric states that the instant application was filed in accordance with Act 295, as amended; the December 4, 2008 and December 23, 2008 orders in Case No. U-15800 (which implemented Act 295); and the August 23, 2017 order in Case No. U-18409. The company filed an amended REP on March 29, 2018 in Case No. U-18232, with an order issued on July 18, 2019, and subsequently filed a 2020 amended REP on March 31, 2020 in the same docket, with an order issued on July 9, 2020. On August 31, 2020, the company filed an amended REP (August 2020 amended REP) in the instant case, Case No. U-20851, and a voluntary green pricing (VGP) program biennial plan review (VGP build plan) pursuant to Section 61 of Act 342, MCL 460.1061. The amended REP in the instant case and the VGP build plan were consolidated into one proceeding and were approved in the June 9, 2021 order in Case Nos. U-20713 *et al.* (June 9 order), with the Commission approving a partial settlement agreement.³ September 27 application, p. 3.

To serve DTE Electric's VGP build plan approved in Case Nos. U-20713 *et al.*, the Commission approved the development of 420 megawatts (MW) in 2022, 162 MW in 2023, 183 MW in 2024, and 132 MW in 2025. With the June 9 order, the Commission also approved an *ex parte* application for the company to develop the Freshwater Solar and White Tail Solar renewable energy projects, totaling 320 MW, for DTE Electric's VGP build plan. September 27 application, p. 6; *see also*, June 9 order, p. 53; June 9 order, Exhibit A, p. 5. DTE Electric states

³ The partial settlement agreement resolved all issues in the consolidated case except for DTE Electric's request for a financial compensation mechanism (FCM) pursuant to Section 6t of Public Act 341 of 2016. The Commission declined to approve the FCM proposed by DTE Electric but approved a financial incentive to be applied to power purchase agreements used to supply the company's VGP program. June 9 order, p. 53.

that, at the time of the instant application, the Freshwater Solar and White Tail Solar projects have been delayed indefinitely, which has caused the company to postpone commencement of MIGreenPower (DTE Electric's VGP program) agreements and has caused constraints on the potential for non-contracted customer enrollments. To address these delays, the company is requesting approval of the 380 MW provided through the Gratiot, Pine River, Polaris, and Sauk projects, which DTE Electric asserts are consistent with the company's approved VGP plan and August 2020 amended REP. September 27 application, pp. 6-7.

According to DTE Electric, the company issued a request for proposals (RFP), consistent with the partial settlement agreement in Case Nos. U-20713 *et al.*, on April 1, 2022, for up to 500 MW of renewable energy with commercial operation dates on or before March 31, 2024. For this RFP, DTE Electric selected Guidehouse Inc. (Guidehouse) as the independent evaluator. The company used an independent evaluator, as opposed to an independent administrator, as specified in the Commission-approved September 9, 2021 settlement agreement in Case No. U-20852. A copy of the independent evaluator's report was included with the instant application. Guidehouse oversaw the RFP process and evaluated each project with assistance from DTE Electric subject matter experts. Of the projects submitted, the four self-build DTE Electric projects were the only ones to pass to the final selection stage. September 27 application, pp. 5-6.

DTE Electric and New East Solar Energy entered into an MSA on April 8, 2022, for solar panel modules for Pine River and Polaris. *See*, September 27 application, Attachment B. DTE Electric and VSUN entered into an MSA on July 5, 2022, for solar panel modules for Gratiot and Sauk. *See, id.* DTE Electric and J. Ranck entered into an EPC agreement on September 21, 2022, for Gratiot and Polaris. *See, id.* DTE Electric and Barton Malow entered into an EPC agreement on September 21, 2022, for Pine River and Sauk. *See, id.* DTE Electric filed copies of the

agreements and contracts with the instant application with certain sensitive portions redacted to protect confidential information that might negatively affect the competitive market. Per DTE Electric, the Gratiot project is a 50 MW solar facility to be located in Gratiot County. The Pine River project is an 80 MW solar facility to be located in Gratiot County. The Polaris project is a 100 MW solar facility to be located in Gratiot County. The Sauk project is a 150 MW solar facility to be located in Branch County. September 27 application, affidavit of Terri L. Schroeder, p. 3.

DTE Electric estimates the installed cost for the projects combined to be \$1,451 per kilowatt and the levelized cost of energy (LCOE) to be \$51-\$53 per megawatt-hour, which is consistent with the previously approved 2022 commercial operation date LCOEs that have been delayed and the 2023 generic solar build LCOE. With the passing of the federal Inflation Reduction Act of 2022, HR 5376, the projects qualify for a 100% Production Tax Credit (PTC) value. The PTC value for the life of the projects is approximately \$209 million. September 27 application, pp. 7-8.

The company states in its application that approval of these projects will not result in an alteration or amendment in rates or rate schedules and will not result in an increase in cost of service to customers beyond what was approved by the Commission in the company's VGP plan in Case Nos. U-20713 *et al.* The Commission Staff electronically reviewed the company's RFP process as well as the unredacted versions of the agreements and contracts on September 27, 2022, and recommends approval of the MSAs and EPC contracts.

Discussion

Section 61 of Act 342 provides the following:

An electric provider shall offer to its customers the opportunity to participate in a voluntary green pricing program under which the customer may specify, from the options made available by the electric provider, the amount of electricity attributable to the customer that will be renewable energy. If the electric provider's

rates are regulated by the commission, the program, including the rates paid for renewable energy, must be approved by the commission. The customer is responsible for any additional costs incurred and shall accrue any additional savings realized by the electric provider as a result of the customer's participation in the program. If an electric provider has not yet fully recovered the incremental costs of compliance, both of the following apply:

(a) A customer that receives at least 50% of the customer's average monthly electricity consumption through the program is exempt from paying surcharges for incremental costs of compliance.

(b) Before entering into an agreement to participate in a commission-approved voluntary green pricing program with a customer that will not receive at least 50% of the customer's average monthly electricity consumption through the program, the electric provider shall notify the customer that the customer will be responsible for the full applicable charges for the incremental costs of compliance and for participation in the voluntary renewable energy program as provided under this section.

MCL 460.1061.

MCL 460.6j(13) provides, in relevant part, that in a power supply cost reconciliation, the Commission shall do all of the following:

(b) Not disallow the capacity charges for any facilities for which the electric utility would otherwise have a purchase obligation if the commission has approved capacity charges in a contract with a qualifying facility, as that term is defined by the Federal Energy Regulatory Commission pursuant to the public utilities regulatory policies act of 1978, Public Law 95-617, 92 Stat 3117, unless the commission has ordered revised capacity charges upon reconsideration under this subsection. A contract is valid and binding in accordance with its terms, and capacity charges paid pursuant to that contract are recoverable costs of the utility for rate-making purposes notwithstanding that the order approving that contract is later vacated, modified, or otherwise held to be invalid in whole or in part if the order approving the contract has not been stayed or suspended by a competent court within 30 days after the date of the order, or by July 29, 1987 if the order was issued after September 1, 1986 and before June 29, 1987. The commission shall determine the scope and manner of the review of capacity charges for a qualifying facility. Except as to approvals for qualifying facilities granted by the commission before June 1, 1987, proceedings before the commission seeking those approvals shall be conducted as a contested case pursuant to chapter 4 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to 24.287. The commission, upon its own motion or upon application of any person, may reconsider its approval of capacity charges for a qualifying facility in a contested case hearing after passage of a period necessary for financing the qualifying facility, if both of the following apply:

(i) The commission has first issued an order making a finding based on evidence presented in a contested case that there has been a substantial change in circumstances since the commission's initial approval.

(ii) The commission finding is set forth in a commission order subject to immediate judicial review.

The Commission has reviewed DTE Electric's application, supporting affidavits and attachments, and the language in Section 61 and Act 304, and finds that the projects were reasonably and prudently selected in a manner consistent with DTE Electric's approved amended REP and VGP review and should be approved. The Commission further finds that *ex parte* review and approval are appropriate as approval will not affect rates or rate schedules and will not increase the cost of service to customers. *See*, MCL 460.6a(3).

THEREFORE, IT IS ORDERED that the master supply agreement between DTE Electric Company and New East Solar Energy (America) Inc.; the master supply agreement between DTE Electric Company and Vietnam Sunergy Joint Stock Company; the engineering, procurement, and construction contract between DTE Electric Company and Barton Malow Company; and the engineering, procurement, and construction contract between DTE Electric Company and J. Ranck Electric, Inc., are approved.

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, pursuant to 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 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 October 27, 2022.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

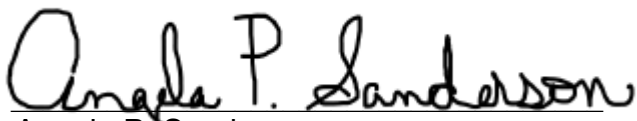
Case No. U-20851

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on October 27, 2022 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 27th day of October 2022.



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

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