

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
DTE ELECTRIC COMPANY for approval	)	
of its integrated resource plan pursuant to	)	Case No. U-21193
MCL 460.6t and for other relief.	)	
_____	)	

At the September 5, 2024 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

On June 27, 2024, DTE Electric Company (DTE Electric) filed an application in this case (June 27 application), with a supporting affidavit, exhibit, and attachments, pursuant to Section 6t of Public Act 341 of 2016 (Act 341), MCL 460.6t; Section 6j of Public Act 304 of 1982 (Act 304), MCL 460.6j; Public Act 295 of 2008 (Act 295), as amended by Public Act 342 of 2016 (Act 342), MCL 460.1001 *et seq.*, and all other applicable law, requesting *ex parte* approval of the Cedar Fields Solar Park Project (the Project) and the Engineering Procurement and Construction Master Service Agreement and the Master Supply Agreement for solar panel modules (collectively, the Contracts) for the Project. DTE Electric contends that the Project and the Contracts are consistent with the company's 2022 integrated resource plan (2022 IRP) approved in the July 26, 2023 order in this case (July 26 order) and are reasonable and prudent under Section 6t of Act 341. DTE Electric also requests: (1) approval of recovery of all payments under the Contracts through the

revenue recovery mechanism as an incremental cost of compliance in the company's forthcoming amended renewable energy plan pursuant to Act 342, as amended by Public Act 235 of 2023 (Act 235), and all other applicable law; and (2) approval of recovery of the full costs of the Project through the combined application of the transfer price mechanism for power supply cost recovery, application of any revenue recovery mechanism surcharges under Act 342, as amended by Act 235, and any other mechanisms as determined by the Commission to recover these costs.

In the June 27 application, DTE Electric explains that on November 3, 2022, the company filed its IRP in this case that included the procurement of new solar resources. The Commission approved a settlement agreement (IRP settlement agreement) resolving all issues in the case in the July 26 order. Included in the IRP settlement agreement was the company's commitment to utilize competitive solicitation processes to acquire technologies specified in the company's proposed course of action and to seek approval of contracts selected for development of renewable resources arising from the IRP through *ex parte* applications to the Commission. The company further notes that the parties to the IRP settlement agreement agreed that projects priced at or below fair market value by the independent monitor (IM) or at or below 150% of the \$52.80 per megawatt-hour (MWh) solar levelized cost of energy (LCOE) (i.e., \$79.20 per MWh) are consistent with the company's IRP. June 27 application, pp. 2-3.

On March 17, 2023, DTE Electric implemented a renewable energy request for proposals (RFP) to procure up to 400 megawatts (MW) of renewable energy capacity to meet its 2022 IRP demand by the first quarter of 2026. DTE Electric explains that the Project was selected as a result of the RFP that it developed in consultation with the Commission Staff pursuant to and consistent with the December 4, 2008 order in Case No. U-15800 (December 4 order) and the December 23, 2008 order in Case No. U-15800 (December 23 order); the Competitive Procurement Guidelines

approved in the September 9, 2021 order in Case No. U-20852; and the settlement agreement approved in the June 9, 2021 order in Case Nos. U-20713 *et al.* (June 9 order). June 27 application, pp. 3-4.

For the RFP, the company states that it selected Guidehouse Inc. (Guidehouse) as the IM and independent evaluator (IE). Guidehouse provided support and oversight of the company's RFP development, administration of the bidding, and proposal evaluation processes. DTE Electric states that, to ensure evaluations of proposals were performed on a fair and consistent basis and to maintain integrity within the competitive bidding process, Guidehouse and DTE Electric established a firewall and communication protocols between the RFP evaluation team, RFP subject matter experts, and the DTE Electric self-build team. Guidehouse ensured that there was consistency between the RFP, the Competitive Procurement Guidelines, and the prespecified minimum RFP requirements contained in Section 11 of the settlement agreement approved in the June 9 order. June 27 application, p. 4.

DTE Electric attests that the Project was selected in a manner consistent with the December 4 and December 23 orders, the Competitive Procurement Guidelines, and the settlement agreement approved in the June 9 order. Because the RFP was issued and bid responses were received prior to execution of the IRP settlement agreement and the July 26 order, DTE Electric explains that the RFP conformed to the IRP settlement agreement, with the exceptions that DTE Electric prepared initial bidder responses with IM/IE review, all projects were scored and ranked together, and company-owned projects were not prohibited from bidding on the portion of the capacity from third parties. However, DTE Electric attests that once the IRP settlement agreement was finalized, company-owned projects were not considered for the portion of the capacity allocated to third-party power purchase agreements. June 27 application, pp. 4-5.

The company indicates that the Project was shortlisted for IRP needs based on the process described above. DTE Electric notes that the Project was among the highest scoring projects in the RFP. Consistent with paragraph 14(b) of the IRP settlement agreement approved in the July 26 order, a summary of the RFP responses was included in Guidehouse's Report titled, "DTE 2023 Renewable Energy Request for Proposals Report." June 27 application, p. 5; June 27 application, Attachment B, p. 17.

According to DTE Electric's application, the estimated installed cost for the Project is \$2,108 per kilowatt and the LCOE is expected to be \$70 per MWh, which is at a cost consistent with the July 26 order because it is below the 150% threshold of the \$52.80 per MWh solar LCOE. DTE Electric also notes that the Project will be eligible for the 30% federal Investment Tax Credit (ITC) and is expected to qualify for an additional 10% ITC assuming the Energy Community bonus. DTE Electric contends that, while the RFP requested projects with commercial operation dates (CODs) in the first quarter of 2026 and the Project's COD is expected in the second quarter of 2027, the Project is still reasonable and prudent. The company explains that the later COD is due to interconnection delays outside of the company's control. June 27 application, pp. 5-6.

Discussion

MCL 460.6t provides, in pertinent part:

(11) In approving an integrated resource plan under this section, the commission shall specify the costs approved for the construction of or significant investment in an electric generation facility, the purchase of an existing electric generation facility, the purchase of power under the terms of the power purchase agreement, or other investments or resources used to meet energy and capacity needs that are included in the approved integrated resource plan. The costs for specifically identified investments, including the costs for facilities under subsection (12), included in an approved integrated resource plan that are commenced within 3 years after the commission's order approving the initial plan, amended plan, or plan review are considered reasonable and prudent for cost recovery purposes.

(12) Except as otherwise provided in subsection (13), for a new electric generation facility approved in an integrated resource plan that is to be owned by the electric utility and that is commenced within 3 years after the commission's order approving the plan, the commission shall finalize the approved costs for the facility only after the utility has done all of the following and filed the results, analysis, and recommendations with the commission:

- (a) Implemented a competitive bidding process for all major engineering, procurement, and construction contracts associated with the construction of the facility.
- (b) Implemented a competitive bidding process that allows third parties to submit firm and binding bids for the construction of an electric generation facility on behalf of the utility that would meet all of the technical, commercial, and other specifications required by the utility for the generation facility, such that ownership of the electric generation facility vests with the utility no later than the date the electric generation facility becomes commercially available.
- (c) Demonstrated to the commission that the finalized costs for the new electric generation facility are not significantly higher than the initially approved costs under subsection (11). If the finalized costs are found to be significantly higher than the initially approved costs, the commission shall review and approve the proposed costs if the commission determines those costs are reasonable and prudent.

Based on the plain language of these subsections in MCL 460.6t, the Commission finds that the Legislature intended costs and specific projects to be refined through subsequent applications and proceedings before the Commission. Moreover, the IRP settlement agreement as approved by the Commission contemplates the filing of subsequent *ex parte* applications for approval of resources consistent with those outlined in the agreement.

The Commission has reviewed DTE Electric's application; supporting affidavit, exhibits, and attachments; and the language in Section 6t of Act 341, Section 6j of Act 304, and Act 295, as amended, and finds that the Project should be approved. The Commission finds that the Project was selected for development in a manner consistent with the requirements set forth in the IRP settlement agreement approved by the Commission in the July 26 order. The Commission also

finds that the finalized costs for the Project are at or below the approved LCOE cost threshold in the July 26 order.

However, the Commission is concerned about the process DTE Electric used to conduct the competitive bidding in this instance. Namely, the company selected a project beyond the COD range specified in the RFP, thus choosing a self-build project that is outside the company-set parameters of its RFP. This raises concerns, which the Commission has voiced in the past, that DTE Electric is setting parameters of the RFP that are not ultimately binding and thus undermining the credibility of the competitive bidding process and calling into question the reasonableness of the project.

Speaking to those past concerns, in the July 18, 2019 order in Case No. U-18232 (July 18 order), the Commission expressed similar concern regarding DTE Electric's RFP process and its selection of company-owned wind projects without presenting an analysis of third-party-owned alternatives in its renewable energy plan (REP) proceeding. Specifically, the Commission stated that it was "unconvinced that costs for the proposed projects are lower than could have been obtained had DTE Electric pursued a more open RFP process[.]" July 18 order, p. 24, n. 3. While the Commission ultimately approved some of the projects in that case, the Commission repeats its broad concern that the limitations of the company's RFP process ultimately may result in suboptimal results for customers. Similarly, in the July 9, 2020 order in Case No. U-18232 (July 9 order), the Commission again expressed unease regarding DTE Electric's RFP process. In that case, DTE Electric ultimately selected a self-build project outside the size parameters included in the RFP from which "the company – and only the company – was privy to the weighting of project selection criteria and the role non-price factors would play in the ultimate project selection." July 9 order, p. 43.

Here, the Commission is concerned that despite the development of the Competitive Procurement Guidelines – and DTE Electric’s agreement to utilize them, consistent with the terms of its IRP settlement agreement – the company is again making exceptions to its own RFP parameters. Substantial progress has been made in developing and implementing the Competitive Procurement Guidelines, including DTE Electric’s improvement in transparency and independence from past RFPs, which the Commission commends. The Commission also recognizes and commends DTE Electric’s selection of third-party PPAs consistent with the allocation set out in the IRP settlement agreement. *See*, April 11, 2024 order in Case No. U-21193, p. 6 (approving PPAs between DTE Electric and Coldwater River Solar, LLC, and White Pine Grove Solar, LLC). Further, the Commission also understands that the delay in the COD for the Project in the instant application was caused by a delay in the MISO interconnection queue that may not have been known when the project was shortlisted or selected. Nevertheless, the ability to make exceptions to the RFP parameters after the fact, as DTE Electric did in this case, gives the company an inherent advantage over other potential bidders.

Indeed, while the company noted that it utilized firewalls relating to the company’s participation in the RFP, the fact that the company – and only the company – knows which provisions of the RFP are truly binding and which may be subject to modification or waiver creates an information asymmetry that disadvantages other potential bidders. In the absence of such inside knowledge, potential third-party respondents to an RFP for a project that includes a COD or other elements that fall outside the parameters of an RFP may reasonably choose not to respond to the RFP at all because there is simply no way for a non-utility bidder to know whether such parameters are potentially negotiable. This limits the pool of potential projects that can be

evaluated, thus depriving customers of the potential benefits of lower costs or otherwise more advantageous projects.

As stated above, the Commission finds that the company has demonstrated that the Project in the instant application sufficiently meets the standards of the Competitive Procurement Guidelines and terms of the IRP settlement agreement such that it is reasonable and should be approved. However, the Commission cautions DTE Electric that its competitive bidding practices will continue to be closely reviewed and that manipulations of the bidding process that unreasonably favor company-owned projects may result in disapprovals of projects in the future.

As to cost recovery, the Commission shall review for reasonableness and prudence the final cost for the Project in the appropriate renewable energy reconciliation proceeding following the Project's commercial operation. The Commission further finds that *ex parte* review and approval are appropriate because approval of the Project will not affect rates or rate schedules resulting in an increase in the cost of service to customers. *See*, MCL 460.6a(3).

THEREFORE, IT IS ORDERED that the June 27, 2024 application filed by DTE Electric Company seeking *ex parte* approval of the Cedar Fields Solar Park Project, including the Engineering Procurement and Construction Master Service Agreement and Master Supply Agreement for solar panel modules, and related relief is 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 LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at sheacl@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

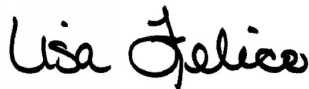


Katherine L. Peretick, Commissioner



Alessandra R. Carreon, Commissioner

By its action of September 5, 2024.



Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

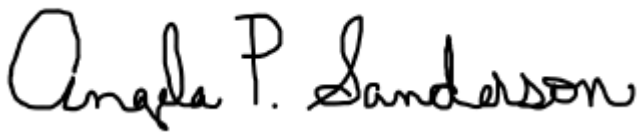
Case No. U-21193

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on September 5, 2024 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 5th day of September 2024.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

**Service List for
Case:****U-21193**

Name	On Behalf Of	Email Address
Amanda Urban	We Want Green, Too	t-9aurba@lawclinic.uchicago.edu
Amanda Urban	Soulardarity	t-9aurba@lawclinic.uchicago.edu
Andrea E. Hayden	DTE Electric Company	andrea.hayden@dteenergy.com
Benjamin L. King	Utility Workers Union of America, Local 223	bking@michworkerlaw.com
Benjamin L. King	Michigan Building & Construction Trades Council	bking@michworkerlaw.com
Breanne K. Reitzel	DTE Electric Company	breanne.reitzel@dteenergy.com
Brian W. Coyer	Great Lakes Renewable Energy Association (GLREA)	bwcoyer@publiclawresourcecenter.com
Carlton D. Watson	DTE Electric Company	carlton.watson@dteenergy.com
Christopher M. Bzdok	Natural Resources Defense Council (NRDC)	chris@tropospherelegal.com
Christopher M. Bzdok	Citizens Utility Board of Michigan (CUB)	chris@tropospherelegal.com
Christopher M. Bzdok	Michigan Environmental Council	chris@tropospherelegal.com
Cole V. Lussier	Michigan Public Power Agency (MPPA)	clussier@dickinsonwright.com
Courtney F. Kissel	International Transmission Company	ckissel@dykema.com
Daniel H.B. Abrams	Environmental Law & Policy Center (ELPC)	dabrams@elpc.org
David S. Maquera	DTE Electric Company	david.maquera@dteenergy.com
Don L. Keskey	Great Lakes Renewable Energy Association (GLREA)	donkeskey@publiclawresourcecenter.com
DTE Electric Company	DTE Electric Company	mpscfilings_account@dteenergy.com
Hannah E. Buzolits	International Transmission Company	hbuzolits@dykema.com
Heather M.S. Durian	MPSC Staff	durianh@michigan.gov
Hema Devi Lochan	Sierra Club	hlochan@earthjustice.org
Jason T. Hanselman	Small Business Association of Michigan (SBAM)	jhanselman@dykema.com
Jennifer U. Heston	Enerwise Global Technologies d/b/a CPower	jheston@fraserlawfirm.com
Joel B. King	Department of Attorney General	kingj38@michigan.gov
John R. Canzano	Michigan Building & Construction Trades Council	jcanzano@michworkerlaw.com
John R. Canzano	Utility Workers Union of America, Local 223	jcanzano@michworkerlaw.com

Jon P. Christinidis	DTE Electric Company	jon.christinidis@dteenergy.com
Joseph J. Baumann	Wolverine Power Supply Cooperative, Inc.	jbaumann@wpsci.com
Justin K. Ooms	Institute for Energy Innovation	jooms@potomaclaw.com
Justin K. Ooms	Clean Grid Alliance	jooms@potomaclaw.com
Justin K. Ooms	Advanced Energy Economy	jooms@potomaclaw.com
Justin K. Ooms	Michigan Energy Innovation Business Council (MIEIBC)	jooms@potomaclaw.com
Kyle M. Asher	Wolverine Power Supply Cooperative, Inc.	kasher@dykema.com
Laura A. Chappelle	Michigan Energy Innovation Business Council (MIEIBC)	lchappelle@potomaclaw.com
Laura A. Chappelle	Institute for Energy Innovation	lchappelle@potomaclaw.com
Laura A. Chappelle	Advanced Energy Economy	lchappelle@potomaclaw.com
Laura A. Chappelle	Clean Grid Alliance	lchappelle@potomaclaw.com
Lauren D. Donofrio	DTE Electric Company	lauren.donofrio@dteenergy.com
Mark N. Templeton	We Want Green, Too	templeton@uchicago.edu
Mark N. Templeton	Soulardarity	templeton@uchicago.edu
Michael C. Soules	Sierra Club	msoules@earthjustice.org
Michael E. Moody	Department of Attorney General	moodym2@michigan.gov
Monica M. Stephens	MPSC Staff	stephensm11@michigan.gov
Nicholas J. Schroeck	The Ecology Center	schroenj@udmercy.edu
Nicholas J. Schroeck	Vote Solar	schroenj@udmercy.edu
Nicholas J. Schroeck	Environmental Law & Policy Center (ELPC)	schroenj@udmercy.edu
Nicholas J. Schroeck	Union of Concerned Scientists, Inc.	schroenj@udmercy.edu
Nolan J. Moody	Michigan Public Power Agency (MPPA)	nmoody@dickinsonwright.com
Paula Johnson-Bacon	DTE Electric Company	paula.bacon@dteenergy.com
Richard J. Aaron	International Transmission Company	raaron@dykema.com
Stephen A. Campbell	Association of Businesses Advocating Tariff Equity (ABATE)	scampbell@clarkhill.com
Timothy J. Lundgren	Michigan Energy Innovation Business Council (MIEIBC)	tlundgren@potomaclaw.com
Timothy J. Lundgren	Institute for Energy Innovation	tlundgren@potomaclaw.com
Timothy J. Lundgren	Advanced Energy Economy	tlundgren@potomaclaw.com
Timothy J. Lundgren	Clean Grid Alliance	tlundgren@potomaclaw.com
Timothy J. Lundgren	Energy Michigan, Inc.	tlundgren@potomaclaw.com
Tracy Jane Andrews	Natural Resources Defense Council (NRDC)	tjandrews@tropospherelegal.com

Tracy Jane Andrews	Citizens Utility Board of Michigan (CUB)	tjandrews@tropospherelegal.com
Tracy Jane Andrews	Michigan Environmental Council	tjandrews@tropospherelegal.com
Tracy Jane Andrews	Department of Attorney General	tjandrews@tropospherelegal.com
Tracy Jane Andrews	Sierra Club	tjandrews@tropospherelegal.com