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Case No. U-20657

<sup>1</sup> In this order, “SolarCurrents” refers to DTE Electric’s pilot program to contract with residential net metering customers for the purchase of renewable energy credits (RECs). *See*, Exhibit R-3. The Complainant is currently eligible for compensation through true net metering as described in Mich Admin Code, R 460.650(1).

On January 16, 2020, an evidentiary hearing was held before Administrative Law Judge Kandra K. Robbins (ALJ). The Complainant, appearing in *pro per*, the Respondent, and the Commission Staff (Staff) participated in the hearing. On February 10, 2020, DTE Electric and the Staff filed initial briefs. On February 19, 2020, DTE Electric filed its reply brief and the Staff filed notice that it would not be filing a reply brief. On February 21, 2020, Mr. Klein filed a reply brief. The record consists of 34 pages of testimony and nine exhibits admitted to the record.

On March 18, 2020, the ALJ issued a Proposal for Decision (PFD) in which she set forth an overview of the parties' positions and testimony, with references to specific testimony and exhibits. *See*, PFD, pp. 2-7. On April 8, 2020, DTE Electric filed notice that it would not be filing exceptions to the PFD. On April 9, 2020, the Staff filed notice that it would not be filing exceptions to the PFD. The Complainant did not file exceptions to the PFD.

### Proposal for Decision

The ALJ recounted the procedural history of the case, the relevant contract provisions, and the statutes and rules applicable to the proceeding. She identified one area of disagreement for resolution: whether the contract between the parties was solely intended to secure the company's purchase of RECs from the Complainant for 20 years, as the Respondent argues; or, was intended, as well, to provide for compensation to the Complainant for excess solar energy generation by means of net metering for 20 years. The ALJ concluded that, under the terms of the contract and MCL 460.1183(1),<sup>2</sup> the Complainant is entitled to compensation for excess solar energy generated

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<sup>2</sup> MCL 460.1183(1) provides that "[a] customer participating in a net metering program approved by the commission before the commission establishes a tariff pursuant to section 6a(14) of 1939 PA 3, MCL 460.6a, may elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment." This statute became effective on April 20, 2017, as a result of amendments to 2008 PA 295 (Act 295) by 2016 PA 342 (Act 342).

for 20 years, but is eligible for compensation under net metering for 10 years after enrollment; and, when 10 years expires in May 2021, the Complainant is eligible for compensation under the distributed generation (DG) method approved by the Commission for the remaining term of the contract, barring any further modifications of the program. *Id.*

#### Relevant Public Acts, Statutes, Commission Orders, and Tariffs

On October 6, 2008, 2008 PA 286 (Act 286) was signed into law and took effect, amending 1939 PA 3 and 2000 PA 141 and setting forth the Commission's and regulated utilities' responsibilities relating to the provision of electric energy to Michigan's residents and businesses, including the development of renewable energy.

Also, on October 6, 2008, the Clean, Renewable, and Efficient Energy Act,<sup>3</sup> 2008 PA 295 (Act 295) was signed and took effect. In part, Act 295 was intended to provide for a net metering program. The Commission was ordered to promulgate rules for the program consistent with Act 295's provisions, which limited the net metering program to not less than 10 years, limited the size of the program, and provided, in certain circumstances, for true net metering, defined as an accounting system that permitted any excess kilowatt hours (kWh) of generation not used to offset the customer's use in the billing period to be carried forward to subsequent billing periods. *See*, MCL 460.1001 to 460.1211.

As part of the implementation of Acts 286 and 295, the Commission developed a net metering program and ordered DTE Electric to develop net metering tariffs. Pursuant to the Commission's order, DTE Electric developed Standard Contract Rider No. 16 (Rider 16) which the Commission approved. Rider 16 provided that customers who were enrolled in net metering were eligible to

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<sup>3</sup> As of April 17, 2017, the act became known as "The Clean and Renewable Energy and Energy Waste Reduction Act."

participate for a single continuous period of 10 years. The net metering program and Rider 16 were consistent with Act 295 requirements.

Pursuant to Acts 286 and 295, on June 2, 2009, the Commission approved DTE Electric's renewable energy plan (REP) and energy optimization plan, including DTE Electric's proposed SolarCurrents pilot. The order states DTE Electric's pilot plan was "to enter into long-term contracts to purchase RECs from residential or small commercial customers who install small solar generating systems on their rooftops in conjunction with the company's net metering program." June 2, 2009 order in Case No. U-15806 (June 2 order), pp. 4, 19-21.

2016 PA 342 (Act 342) was signed into law on December 20, 2016, and became effective on April 20, 2017, amending Act 295 to add, in pertinent part:

A customer participating in a net metering program approved by the commission before the commission establishes a tariff pursuant to section 6a(14) of 1939 PA 3, MCL 460.6a, may elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment.

MCL 460.1183(1).

2016 PA 341 (Act 341) was signed into law on December 20, 2016, and became effective on April 20, 2017. In pertinent part, Act 341 added the following section to 1939 PA 3:

Within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate case filed after June 1, 2018, the commission shall approve such a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. A tariff established under this subsection does not apply to customers participating in a net metering program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before the date that the commission establishes a tariff under this subsection, who continues to participate in the program at their current site or facility.

MCL 460.6a(14).

On May 2, 2019, the Commission issued an order in Case No. U-20162 (May 2 order) approving new rates for DTE Electric. Consistent with MCL 460.6a(14) and the DG compensation plan approved by the Commission on April 18, 2018, in Case No. U-18383 (April 18 order),<sup>4</sup> the May 2 order included the addition of Standard Contract Rider No. 18 (Rider 18)<sup>5</sup> which provides that generated energy in excess of what is used by the customer will be applied to power supply and power supply cost recovery components in the customer's current billing cycle and then carried forward to subsequent months. Exhibit R-7; Case No. U-20162, filing #U-20162-0608, Attachment B, p. 73, Customer Billing – Category 1, 2, and 3 Customers, Outflow. Rider 18 also provides that “[t]he Company will enter into a separate agreement with the customer for the purchase of any RECs.” Exhibit R-7; May 2 order, Attachment B, p. 78, Renewable Energy Credits.

Specific to customers who are eligible for net metering, Rider 18 states:

A customer participating in a net metering program approved by the Commission before May 9, 2019 shall have the option to take service under this tariff at the time service under the terms and conditions of the previous net metering program terminates . . . .

*Id.*, p. 71, Availability.

In addition, the May 2 order included the following revision to Rider 16:

This Rider is available only to customers participating in this Rider prior to May 9, 2019. A customer is “participating” if the customer has a completed application for service under this Rider pending before the utility prior to May 9, 2019. A customer who has an application filed with the utility before May 9, 2019 may still

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<sup>4</sup> The Staff convened a work group, sought comments from stakeholders and other parties, and filed a report, recommending the Inflow/Outflow method of DG compensation. The Commission approved the method and directed regulated utilities to include the method in their next rate case filings or, alternatively, to include their own tariff. *See*, April 18 order for full discussion.

<sup>5</sup> On May 21, 2019, the Commission issued an errata (May 21 errata) correcting pages 73-75 of the version of Rider 18 attached to the May 2 order.

be allowed to participate in this Rider if the application is found deficient, provided the customer cures the deficiency within 60 days.

Exhibit R-6; May 2 order, Attachment B, p. 70, Availability. Rider 16 contains no other revisions.

### Positions of the Parties

The Complainant did not give testimony or offer exhibits to be admitted to the record. He stated that his complaint and the attachments thereto were sufficient to explain his case. 1 Tr 7. In his complaint, he stated that “MCL 460.1183 does not indicate the intention to abrogate existing contracts that were entered into to meet renewable energy portfolio requirements.” *See*, Complaint, p. 1. He further contended “If DTE’s stated intention is allowed, [he] will be required to continue providing RECs with reduced compensation for excess energy.” *Id.*, p. 2. He asserted that the contract states that, in instances where there is a conflict between the terms of the contract and any DTE Electric Rider or agreement, the contract prevails. 1 Tr 7; Complaint, Attachment A, p. 4, ¶ 17.

In his closing statement, the Complainant asserted that “the contract confers the benefit of net metering for the 20-year term of the contract.” 1 Tr 26. He also asserted that DTE Electric is trying to take “a contracted economic benefit from the customer without compensation and give it to the utility.” *Id.* at 28.

DTE Electric asserted that the 20-year term of the contract applies solely to the purchase of RECs and the utility has no obligation to continue to provide net metering compensation beyond the ten-year limitation. *See*, DTE Electric’s Answer and Affirmative Defenses, pp. 2-3; DTE Electric’s initial brief, p. 5. In support of this argument, DTE Electric cited the May 2 order, p. 199, quoting: “The ALJ agreed with DTE Electric that the tariff provisions in the company’s current Rider 16 tariff should prevail and that DTE Electric’s net metering program was, from the beginning, only for 10 years (DTE Electric’s reply brief, p. 233). PFD, p. 286.” *Id.*, p. 6. DTE

Electric also argued that the contract requires compliance with the laws of the State of Michigan, and, under those laws, net metering is being phased out. DTE Electric's reply brief, p. 6; PFD, p. 12.

The Staff stated that the term of the contract is 20 years, as clearly set forth in the agreement, and that Rider 16 states that customers may participate in net metering for a single period of up to 10 years. Staff's Initial brief, pp. 4-5; PFD, pp. 12-13. However, the Staff argued that the plain language of the contract could be understood to require the use of net metering for the full 20-year term of the contract. *Id.* See, Exhibit R-4, ¶¶ 2, 5; Complaint, Attachment A, ¶¶ 2, 5.

The ALJ noted that:

The primary goal of contract interpretation is to honor the parties' intent. *Stone v. Auto—Owners Ins Co*, 307 Mich. App 169, 174; 858 NW2d 765 (2014). “If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties' intent as a matter of law.” *Hastings Mut Ins Co v. Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). In determining the meaning of an ambiguous contract, the fact finder gives effect to every word, phrase, and clause in a contract to avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp v. United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Where a written contract is ambiguous, a factual question is presented as to the meaning of its provisions, requiring a factual determination as to the intent of the parties in entering the contract; thus, the fact finder must interpret the contract's terms, in light of the apparent purpose of the contract as a whole, the rules of contract construction, and extrinsic evidence of intent and meaning. A contract is ambiguous when its provisions are capable of conflicting interpretation. Ambiguities are to be construed against the drafter after all other conventional means of contract interpretation are used. *Klapp v. United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

PFD, pp. 10-11.

The ALJ found that the contract has conflicting terms; i.e., the contract states the term is for 20 years and provides for net metering compensation under Rider 16 even though Rider 16 limits net metering to 10 years. PFD, p. 16. See, Exhibit R-4, ¶¶ 2, 17. She also noted that the record is not clear regarding whether the conflicting language was given any consideration by either party at

the time the contract was entered into or how DTE Electric intended to compensate its customers when the 10-year enrollment limitation was expired. The ALJ reasoned that it did not seem credible that the company would then no longer compensate the customer for excess generation. She further pointed out that “[a]ttachment C of the Solar*Currents* Contract provides that the ‘PV System and the Property shall be subject to all terms and conditions of the Agreement during the term of the Agreement[,]’” thereby providing some support for the premise that net metering was expected to continue for 20 years. PFD, pp. 13-14; Complaint, Attachment A, p. 8; Exhibit R-4.

The ALJ agreed with the Complainant that the term of the contract is for 20 years, but disagreed that he was entitled, under the contract, to compensation solely via net metering for the entire term. Giving effect to the entirety of the contract language, she found, specifically, that the Complainant entered into the contract for 20 years, that he is required to be compensated for his excess solar energy generation for the entire 20 years, and that the contract does not require that he enter into any additional agreement for net metering. PFD, pp. 14-15. But the ALJ also found that the contract states, first and foremost, that it is governed by the laws of the State of Michigan, and that, despite the Complainant’s argument that MCL 460.1183(1) does not apply to contract holders, the statute clearly provides that it applies to all customers participating in net metering. *Id.*, pp. 16-17.

She remarked that the Commission had conducted a study on appropriate tariffs in compliance with MCL 460.6a(14) and, consistent with the study, approved the wording of Rider 18 and the inflow/outflow method of compensation in the May 2 order. PFD, p. 17.<sup>6</sup> The ALJ recommended that the Commission find the Complainant must be compensated for excess generation under net

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<sup>6</sup> See, May 2 order, pp. 167-208 for discussion of DG, Rider 18, and Rider 16.

metering until the 10-year timeframe set forth in Rider 16 is expired and then compensated under the new inflow/outflow method approved by the Commission in the May 2 order.

### Discussion

The Commission is not persuaded that the contract provides for 20 years of net metering compensation for excess energy generation as asserted by the Complainant. Further, the Commission respectfully disagrees with the ALJ that the contract has conflicting terms.

The contract makes clear that the time period for REC purchase is 20 years and sets forth detailed terms and conditions of the purchase. However, the contract does not contain such statements regarding the Complainant's compensation for excess generation, stating only that the Complainant will receive compensation for energy in excess of his consumption "as set forth in the Detroit Edison's Standard Contract Rider No. 16 Tariff . . . as modified from time to time." Exhibit R-4, ¶ 5. At the time the contract was entered into, Rider 16 limited compensation for excess generation via net metering to a 10-year timeframe, consistent with statutory requirements and Commission orders. *See*, discussion of Act 295, Rider 16, and related Commission orders, above. No persuasive testimony or other persuasive evidence was provided to establish that the contract provides, or that the parties intended that it provide, for a 20-year term of compensation via net metering, in contravention of Rider 16 and paragraph five of the contract. Accordingly, the Commission finds that the contract provides for 10 years of net metering compensation for excess generation.

In contrast, the contract precisely sets forth the terms and conditions for the purchase of RECs, including the term of 20 years: "Customer's delivery obligations shall be twenty (20) years, beginning on the Effective date." Exhibit R-4, ¶ 2. Delivery is defined as "for every kilowatt-hour (kWh) generated by the PV system, the equivalent kWh of a REC will be deemed delivered

and title to such kWh of a REC will transfer to Detroit Edison.”<sup>7</sup> *Id.*, ¶ 1. The contract’s monetary compensation for the purchase of RECs is calculated for a 20-year period and consists of a one-time upfront REC payment of \$2.40 multiplied by the number of direct current watts installed. *Id.*, ¶ 3. This upfront payment amounted to \$11,340.00, and was assigned to Mid Michigan Solar, LLC, the company that provided installation of the PV system. Complaint, p. 5, Exhibit A – PV System Details; *Id.*, p. 10, Exhibit D, Assignment. In addition to the one-time upfront payment of \$11,340.00, the contract provides that REC compensation to the Complainant is to be paid at the fixed price of “\$0.11 per kWh generated by the PV System in Detroit Edison’s billing cycle.” Exhibit R-4, ¶ 3.

The initial purchase of RECs through subsidization of the installation of the Complainant’s PV system and subsequent purchase of RECs at a fixed price for 20 years is consistent with the provisions of Act 295 that were in effect at the time the contract was entered into by the parties. At that time, Act 295 provided that the “incremental cost of compliance [with renewable energy standards] shall be calculated for a 20-year period beginning with approval of the renewable energy plan and shall be recovered on a levelized basis.” Enrolled Senate Bill No. 213, enacted as Public Act 295 of 2008, Sec. 45, subsec. 4. Thus, the cost of the purchase of RECs included in DTE Electric’s REP was calculated incrementally over a 20-year period and, accordingly, set forth as such in the contract. *See also*, June 2 order.

For the reasons discussed above, the Commission finds that the contract, unambiguously, provides for 20 years of REC purchase and 10 years of net metering compensation under Rider 16.

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<sup>7</sup> Since the date that the parties entered into the contract, The Detroit Edison Company (Detroit Edison) changed its name to DTE Electric Company.

Addressing the Complainant's assertion that limiting his net metering compensation for excess generation to 10 years is the result of DTE Electric's misinterpretation of MCL 460.1183, and an unintended abrogation of the contract, the Commission disagrees. As discussed above, the Commission is not persuaded that the contract provides for other than 10 years of net metering.

In addition, MCL 460.1183(1) states that:

A customer participating in a net metering program approved by the commission before the commission establishes a tariff pursuant to section 6a(14) of 1939 PA 3, MCL 460.6a, may elect to continue to receive service under the terms and conditions of that program for up to 10 years from the date of enrollment.

Reading the plain language of the statute, as applicable to the instant case, the Commission finds that the statute permits the Complainant to elect to receive net metering compensation for excess generation for the entire ten years provided by the contract, at which time his eligibility for net metering compensation ends. Accordingly, MCL 460.1183(1) is consistent with the terms of the contract as set forth in paragraph five of the contract that compensation for net metering is to be as provided in Rider 16, i.e. for 10 years, and the Commission finds that no misinterpretation of the statute or abrogation of the contract or expressed intent to abrogate the contract has occurred.

Nevertheless, it appears more likely than not that the parties intended for the Complainant to be compensated for excess generation via some means, as demonstrated by the reference in paragraph five to compensation under Rider 16, *as modified from time to time*. This provision is indicative of knowledge that tariffs are subject to change. In the instant case, net metering compensation was limited to 10 years under Rider 16 at the time the contract was signed, and remains limited to 10 years, as of the date of this order, with the added provision that net metering is available only to those who were participating prior to May 9, 2019, the effective date of Rider 18 pursuant to the May 2 order. Accordingly, consistent with the contract and with the modified

Rider 16, the Commission finds that the Complainant is not eligible for net metering beyond the 10 years provided in the contract and another form of compensation may be employed.

MCL 460.6a(14) provides, in pertinent part:

In any rate case filed after June 1, 2018, the commission shall approve such a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. A tariff established under this subsection does not apply to customers participating in a net metering program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before the date that the commission establishes a tariff under this subsection, who continues to participate in the program at their current site or facility.

Reading the plain language of the statute, as applicable to the instant case and in conjunction with MCL 460.1183(1) and the modified Rider 16, the Complainant is entitled to complete the 10-year timeframe of net metering compensation (as provided by the contract), at which time he may convert to the DG compensation plan set forth in the May 2 order. Accordingly, the Commission finds that DTE Electric's proposal to convert the Complainant from net metering to the DG compensation plan approved in the May 2 order does not constitute a breach of the contract or intention to breach the contract.

### Conclusion

As discussed above, the Commission is not persuaded that the contract between the Complainant and DTE Electric contains conflicting terms, is ambiguous, or provides for other than 10 years of net metering compensation for excess energy generation. Further, the Commission finds that DTE Electric's proposal to convert the Complainant, effective in June 2021, from net metering to the DG compensation plan approved in the May 2 order does not constitute a breach of contract or an intention to breach the contract. Accordingly, the Complainant has not met his burden of proof in the matter and his desired relief must be denied. Therefore, the Commission

finds that the complaint filed by Dale Klein against DTE Electric should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that the complaint filed on October 25, 2019, by Dale Klein against DTE Electric Company is dismissed with prejudice.

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](mailto:mpscedockets@michigan.gov) and to the Michigan Department of the Attorney General - Public Service Division at [pungpl@michigan.gov](mailto: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

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Daniel C. Scripps, Chair

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Sally A. Talberg, Commissioner

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Tremaine L. Phillips, Commissioner

By its action of August 20, 2020.

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Lisa Felice, Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

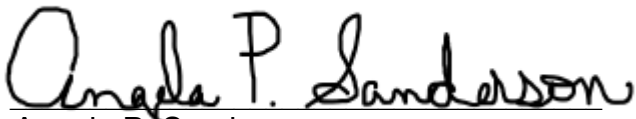
Case No. U-20657

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on August 20, 2020 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

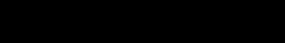
Subscribed and sworn to before me  
this 20<sup>th</sup> day of August 2020.



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

**Service List for Case: U-20657**

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Name	Email Address
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