

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)	
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 June 9, 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

I. 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 its 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 a 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 (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 (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 (Act 295), as amended by Act 342, MCL 460.1022. 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.

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. Staff's motion., 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 that 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 (ELPC), the Ecology Center, and Vote Solar (together, the Clean Energy Organizations (CEO)); 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

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.

Association, Inc. (GLREA) filed petitions for leave to intervene out of time which were also granted by the ALJ. *See*, 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 *ex parte* application in Case No. U-20851 (November 30 *ex parte* application), seeking *ex parte* approval of a build-transfer agreement (BTA) with Freshwater Solar Holdings, LLC (Freshwater Solar), a BTA with White Tail Solar Holdings, LLC (White Tail Solar), and a power purchase agreement (PPA)² with Calhoun County Solar Project, LLC (Calhoun County Solar).

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 time 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 would resolve all issues in Case No. U-20851, and a partial settlement agreement that would 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 that the Commission may read the record; (2) to submit new initial

² In its application, DTE Electric refers to the PPA as a "purchase power agreement," while the Commission use the term "power purchase agreement." For the purposes of this order, the Commission considers the two terms synonymous.

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 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 did 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 did 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.³ Case No. U-20713, filing #U-20713-0138. All parties,⁴ 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, CEO, 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.

Consistent with the stipulated schedule, DTE Electric, the Staff, CEO, Energy Michigan, EIBC, Soulardarity, MEC, and ABATE filed initial briefs on April 15, 2021, regarding the remaining FCM issue. GLREA filed its initial brief concerning the FCM on April 19, 2021.

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,

³ 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.

⁴ 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.

robust, and authentic competitive bidding or RFP [request for proposals] process for determining and selecting additional supply resources;

4. The Partial Settlement does not recognize or include the option of DTE [Electric] purchasing Renewable Energy Credits (RECs) from existing DG customers and/or existing PURPA [Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117] QFs [qualifying facilities] as a means of meeting the requirements of [Act 295];

5. The Partial Settlement fails to incorporate any consideration by DTE [Electric] for lifting the 1% cap relative to customer-owned behind-the-meter [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 [(Public Act 341 of 2016 (Act 341) and Act 342)] as summarized in Section 1001, MCL 460.1001[.]

GLREA’s objections, pp. 1-2.

Soulardarity, which is not a signatory to the partial settlement agreement, did not file a written response to the partial settlement agreement. On April 23, 2021, Ann Arbor filed a memorandum of understanding between Ann Arbor and DTE Electric. Case No. U-20713, filing #U-20713-0155.

On April 21, 2021, the Commission issued an order in the consolidated case approving the schedules for the contested partial settlement agreement proceeding and for addressing the remaining FCM issue. The Commission also indicated that it would read the record in this matter. With the instant order, the Commission addresses DTE Electric’s request for an FCM, the contested partial settlement agreement, and DTE Electric’s *ex parte* application for approval of the Freshwater Solar BTA, the White Tail Solar BTA, and the Calhoun County Solar PPA.

On May 6, 2021, an evidentiary hearing was held, at which testimony and exhibits pertaining to the partial settlement were bound into the record. The record in this matter consists of 886

pages of transcript and 149 exhibits admitted into evidence, with some testimony marked as confidential.

II. FINANCIAL COMPENSATION MECHANISM

A. Overview of the Record

In its application, DTE Electric requested approval of an FCM, consistent with the Commission's authority provided in MCL 460.6t(15) (Section 6t(15)) and states that an FCM is necessary to offset the financial impacts of PPAs and aligns the interests of the company and its customers by utilizing potentially lower cost supply assets while allowing the company a fair financial return. VGP application, p. 5; 3 Tr 87. The company further explained that an FCM is reasonable because: (1) PPAs are credit negative, meaning they are long-term payment obligations without the benefit of ownership; (2) PPAs can increase the cost of equity in terms of being a lost opportunity to earn a return on investment, and reducing rate base growth; and (3) an incentive enables economic fairness for utility customers and investors. 4 Tr 318-319.

DTE Electric proposed a structure that would allow the company to earn an FCM on a given PPA equal to the sum of the PPA payments in that year multiplied by an incentive factor. Initially, DTE Electric proposed that an incentive factor equal to the company's authorized permanent after-tax weighted-average cost of capital (WACC). Over the course of the proceeding, the company revised the FCM structure to be based on the company's all-in cost of capital, which includes items like deferred taxes, and an incentive factor equal to the overall after-tax WACC, resulting in a factor of 5.46%. 3 Tr 109, 148, 263. DTE Electric explained as follows:

[T]he initial proposal for the financial compensation percentage was based on permanent capital structure. So only debt and equity was [sic] included as part of

that calculation. That was provided both in [Brian Calka's] direct testimony as well as Witness [Edward] Solomon's direct testimony.

Over the course of this proceeding that number has reduced down to a figure that is our all-in cost of capital which includes items such as deferred taxes. So it's our true rated average cost of capital. And it reduced the percentage by about 1.5 percent, in that general range.

3 Tr 148.

As to accounting treatment for the FCM, DTE Electric proposed that initially, the FCM will "be included to show the total revenue recognized and then subsequently will be excluded in the calculation of the ICOC [incremental cost of compliance]. This will result in a net impact of zero to the ICOC." 4 Tr 344. DTE Electric continued:

Once the mechanism is approved, the Company intends to recognize the income as it is earned; that is, as power is purchased for PSCR [power supply cost recovery] customers under the PPAs, and as power is purchased for VGP customers under the PPAs. This treatment assumes the revenue will be collected within 24 months of being recognized. The method for recovery of the FCM from PSCR customers will be addressed in a separate docket. The income recognition for the FCM collected from VGP customers would be achieved by excluding these FCM revenues from the Incremental Cost of Compliance (ICOC) calculation. This income recognition allows for the presentation of the true economics of the program.

Id.

DTE Electric pointed to the Commission's approval of an FCM for Consumers Energy Company (Consumers) in Case No. U-20165 in support of its request, explaining that a similar rationale exists for the FCM in this case and that DTE Electric's proposed structure is consistent with Consumers' approved FCM. 3 Tr 85-88.

The Staff recommended that if the Commission finds the FCM to be prudent, the FCM should only be applied to subscribed portions of VGP assets because unsubscribed VGP assets will be used for compliance with the company's REP. 4 Tr 399. DTE Electric agreed with the Staff's position. 3 Tr 108. As to the incentive factor, the Staff supported a factor no greater than

the after-tax overall WACC stating that the Staff supported an incentive factor equal to the overall WACC in Consumers' contested settlement agreement in Case No. U-20165 and found it reasonable to support a similar factor in this case. 4 Tr 407.

ABATE recommended that the Commission reject the company's request for an FCM based on the permanent WACC, arguing that it overcompensates the company and exceeds the amounts approved for Consumers in Case No. U-20165, and Upper Peninsula Power Company (UPPCo) in Case No. U-20350. 4 Tr 415, 417-418, 420. ABATE argued that it is unreasonable for DTE Electric to receive an incentive for a legislatively mandated requirement like VGPs. 4 Tr 419. ABATE further contended that the more appropriate forum to consider an FCM is in an integrated resource plan (IRP) proceeding. Additionally, ABATE stated that the company failed to provide evidence that an FCM is needed to invest in the Calhoun County solar project or that there is a significant savings to ratepayers from using a PPA-with-FCM option as opposed to a self-build option. 4 Tr 420-422. Speaking to the circumstances in which an FCM may be warranted, ABATE explained that DTE Electric is currently a party to 10 PPAs for a total of approximately 560 MW and therefore, its request for an FCM to apply to an additional 100 MW does not reflect a change from its business-as-usual operation that would require an FCM incentive. 4 Tr 447.

MEC/NRDC explained that while it supported FCMs in Consumers' and UPPCo's IRP cases, it opposes DTE Electric's request for an FCM in this case because DTE Electric is not committing to acquire a large amount of future generation through PPAs. Rather, according to MEC/NRDC, the company is requesting approval of a single PPA, to which the FCM would apply, and continuing to utilize company-owned assets. 4 Tr 583.

CEO similarly opposed DTE Electric's FCM request characterizing it as unjustified because: (1) no utility is guaranteed an expansion of rate base and DTE Electric's proposed mechanism is an inferior incentive; (2) rating agencies have sophisticated analyses and mitigation measures that negate the company's arguments regarding the financial impacts of PPAs on the company's credit assessment, (3) the Commission is not bound by the approvals of FCMs in other utility cases resolved by settlement agreement; and (4) DTE Electric's complaint that PPAs do not generate profit indicates a problem within electric utility regulation and a need for performance-based regulation (PBR). 4 Tr 561-575. CEO recommended that the Commission reject the FCM request and consider PBR like shared savings mechanisms (SSMs) as an alternative incentive. 4 Tr 562, 576-580. In further explanation, CEO stated that with an SSM, if the utility achieved savings by selecting a lower-cost PPA, it would then share in those savings. CEO illustrated as follows:

Suppose that the utility's levelized cost of power from a utility-owned solar facility is \$55/MWh [megawatt-hour] while the Company can procure power on a long-term PPA for \$50.00/MWh. The savings to customers of the utility signing the PPA is \$5.00/MWh. Suppose further that the Commission has set 25% as the sharing percentage. In this case, the utility would be paid a bonus of \$1.25/MWh (\$5.00 times 25%) for taking power under the PPA. The utility's interests are aligned with those of its customers: as the savings to customers from third-party PPAs increase, so does the incentive to the utility to enter into such PPAs. Under DTE[Electric]'s proposed FCM, which is fixed at an inflated WACC, the surcharge on the PPA would be \$3.53/MWh, whether or not there are any savings to customers.

4 Tr 579. While not advocating that the Commission take up PBR implementation in this docket, CEO contends that an SSM mechanism is a step in the right direction as a means of PBR because it incentivizes the utility to achieve savings for ratepayers. 4 Tr 576-578.

While expressing support for FCMs in a general sense, EIBC stated that any FCM calculation must be transparent and understandable to potential bidders in a competitive

solicitation process. Referencing the requirement in Act 295 for utilities to obtain at least 50% of their power supply via PPAs that was removed by Act 342, EIBC suggested that a 50/50 split be implemented for DTE Electric's procurement of resources for the VGP program. 4 Tr 644.

Pine Gate recommended that the Commission reject DTE Electric's proposed FCM arguing that the company would be the primary beneficiary of the FCM and that DTE Electric failed to provide evidence that its borrowing costs would increase or that the company needs a higher return on equity to attract investors. 4 Tr 765-768. Pine Gate contended that DTE has not adequately supported its proposed FCM and that the FCM would unduly burden ratepayers. 4 Tr 766. Further, Pine Gate argued that if the Commission does approve an FCM, the FCM should be lower than the WACC because:

When a utility purchases or develops an asset and placed it into rate base, it is typically authorized to earn a return on that investment at its WACC. If a developer, however, proposes a project that would be supported through a 20-year PPA, then the net present value of that PPA over the life of the project is the project's value. Included in the PPA price is a return and the financing costs for the developer. With an FCM, DTE's customers would pay for both the developer's risk as well as for DTE's cost of capital.

The actual risk to DTE and its customers from purchasing a project via a PPA over 20 years is substantially different than developing a project. DTE in signing a QF PPA is receiving the benefit of a fully operable generating project and only pays for what the project actually produces. There is no tax equity risk to DTE, no finance risk, no construction risk, and no production risk. Thus, compensating DTE with a FCM at its WACC over-compensates DTE for nothing at all.

4 Tr 767.

GLREA disagreed with the Staff's assessment that an FCM with an incentive factor equal to the after-tax overall WACC would be reasonable stating that it is not appropriate to approve an FCM outside of an IRP proceeding or rate case. 4 Tr 788-789. GLREA also disagreed with the Staff that the WACC is the limit for any FCM because awarding an FCM is discretionary, explaining that the limit is set by the statute, Section 6t(15). 4 Tr 791. GLREA pointed out that

the other two cases in which the Commission approved an FCM (for Consumers and UPPCo), were IRP cases, and in Consumers' case, the IRP included a significant change in the company's course of business by committing to obtain 50% of its power supply from PPAs. 4 Tr 790.

GLREA also argued that DTE Electric's own evidence suggests that the projects selected for the REP build plan would have been selected even if an FCM was not included. 4 Tr 790-791.

B. Positions of the Parties

In its initial brief, DTE Electric advocated for approval of an FCM applicable to renewable energy PPAs utilized for the company's VGP programs. DTE Electric's initial brief, p. 5. The company stated that it intends for the FCM to apply to the Calhoun County Solar PPA and contends that approval is appropriate under Section 6t(15) and consistent with the Commission's previous FCM approvals for Consumers and UPPCo. *Id.*, pp. 5, 10. DTE Electric explained that it has revised its initial request and agrees with the Staff's position to utilize an incentive factor equal to the overall after-tax WACC and to apply the FCM to only subscribed portions of the PPA supplying MIGreenPower. Thus, DTE Electric requested an incentive factor of 5.46% as ordered in Case No. U-20561. *Id.*, p. 8. To justify the necessity of the FCM, DTE Electric argued that PPAs are credit negative and increase the cost of equity. The company explained that credit rating agencies categorize PPAs as obligations and add them to the company's debt balances. As to increasing the cost of equity, DTE Electric explained further that using a PPA means the company loses the opportunity to earn a return on investment and thereby reduces the rate base growth that can be disfavored by investors. *Id.*, p. 9. DTE Electric argued that an FCM compensates the utility for the fact that the developer supplying the PPA benefits from better debt and equity financing due to the utility's good credit. *Id.*, pp. 9-10. As to the application of the FCM to subscribed portions of the PPAs, DTE Electric stated that it will add the FCM to the

subscription fee assessed to MIGreenPower customers and that the FCM will not be included in the PSCR or ICOC. *Id.*, p. 10.

The Staff, in its initial brief, observed that the Commission approved an FCM for Consumers in Case No. U-20165, and for UPPCo in Case No. U-20350, and stated that, if the Commission approves an FCM for DTE Electric, the incentive factor should not exceed the after-tax overall WACC. Staff's initial brief, pp. 4-6. The Staff next stated that the FCM should only apply to subscribed portions of DTE Electric's VGP program. *Id.*, pp. 6-7. In response to testimony submitted by GLREA, the Staff disagreed that an FCM cannot be approved outside of an IRP. According to the Staff, nothing in the language of Section 6t(15) limits approval of an FCM solely to an IRP proceeding. *Id.*, p. 7.

Citing several reasons, CEO recommended that the Commission deny DTE Electric's request for an FCM. CEO's initial brief, p. 3. First, CEO argued that financial incentives should not be used to reward business as usual or statutory obligations. *Id.*, pp. 4-5. Second, CEO contended that DTE Electric failed to provide evidence that utilizing PPAs will impact the company's imputed debt and credit ratings. CEO stated that DTE Electric's assessment of imputed debt is overly simplistic and that there are other methods apart from an FCM that would address concerns about imputed debt, including adjustments to regulatory capital structure and increasing the authorized rate of return on equity. *Id.*, p. 5. Third, CEO described the FCM requested by the company as excessive and unsupported, considering that rating agencies apply a risk factor of 25% to 50% to PPAs while DTE Electric multiplies 100% of the PPA cost by the WACC without support. *Id.*, pp. 6-7. Fourth, CEO argued that the Commission is not bound to approval in this case based on approval of FCM in settlement agreements for Consumers' and UPPCo's IRP cases. Further, CEO stated that the circumstances in which an FCM was approved

for Consumers and UPPCo (a significant shift in resource procurement) do not exist in DTE Electric's case because the company is merely proposing to enter into a single 100 MW PPA. *Id.*, pp. 7-10. Lastly, CEO argued that there are incentive alternatives superior to the FCM and that the Commission should utilize the MI Power Grid Incentives/Disincentives workgroup to develop a clear set of principles regarding when an incentive under Section 6t(15) is appropriate. CEO also suggested that the Commission should consider PBR mechanisms like an SSM as an alternative incentive that would ensure customer savings. *Id.*, pp. 10-13.

While declining to comment on the particulars of the financing involved with an FCM, EIBC recommended approval of an FCM for DTE Electric in this case. EIBC explains that an incentive to build utility-owned supply resources still exists and the legislative intent of Section 6t(15) was to put PPAs on a more equal footing with utility-owned projects. Therefore, EIBC asserted that an FCM on PPAs can align the interests of customers for lower cost supply with the interests of the utility for a financial return. EIBC's initial brief, pp. 2-3. However, EIBC averred that DTE Electric's current practices do not fairly compare the prices of PPAs to utility-owned projects or BTAs, so EIBC suggested the following conditions for approval of an FCM: (1) greater specificity and transparency as to how an FCM would be applied in a competitive bid and (2) DTE Electric should be required to commit to "a fair and balanced inclusion of independent third-party PPAs for its proposed build plan." *Id.*, p. 4.

In its initial brief, Soulardarity contended that DTE Electric's 100 MW PPA, to which it requests to apply an FCM, was selected at the instruction of the Commission in Case Nos. U-18232 and U-20471 for the company to solicit PPAs. Thus, Soulardarity argued that an FCM would additionally compensate DTE Electric for doing something the law and prudent business practice require it to do. Soulardarity stated that an FCM would be particularly harmful to

communities of color and low-income customers who would bear the additional cost of an FCM and that an FCM would undermine community-based renewable energy development that benefits low-income communities. Therefore, Soulardarity requested that the Commission deny DTE Electric's proposed FCM. Soulardarity's initial brief, pp. 1-4.

In a combined initial brief, MEC/NRDC opposed approval of an FCM for DTE Electric. MEC/NRDC argued that the settlement agreements approved for Consumers and UPPCo do not set precedent for FCM approval and do not support approval of an FCM in this case. MEC/NRDC stated that the Consumers and UPPCo settlement agreements, which were approved in IRP proceedings, were considered in their entirety and found to be reasonable and in the public interest as a whole. Therefore, DTE Electric's reliance on select parts of the record in those cases does little to support its FCM request. Further, MEC/NRDC argued that DTE Electric's procurement plan was distinct from those approved in the IRP cases of Consumers and UPPCo and therefore, poses a diminished need for an FCM. MEC/NRDC's initial brief, pp. 4-10. MEC/NRDC also argued that the 100 MW PPA for which DTE Electric requests the FCM, is a result of Commission direction in Case Nos. U-18232 and U-20471; therefore, the selection of this PPA is something the company would do anyway and an FCM incentive would be superfluous. *Id.*, pp. 10-13. MEC/NRDC further contended that DTE Electric failed to sufficiently rebut on the record the concerns expressed above and thus has failed to meet its evidentiary burden for approval of the FCM. *Id.*, pp. 13-14. Lastly, MEC/NRDC argued that the modifications of DTE Electric's original application requests to arrive at a settlement agreement with the other parties do not warrant approval of the FCM. MEC/NRDC reasoned that the changes made represent "bare minimum adjustments to improve transparency" rather than a

significant change in DTE Electric's business model or ownership structure for future RFPs. *Id.*, p. 15.

ABATE, in its initial brief, described DTE Electric's request for an FCM as unreasonable and unnecessary and recommended that the Commission reject DTE Electric's proposed FCM. ABATE's initial brief, pp. 1-4. ABATE explained that the company is legally obligated to offer VGP programs and therefore, an incentive like the FCM serves no purpose. *Id.*, pp. 1-2. Arguing that the company failed to show that PPAs would be disfavored without an FCM, ABATE pointed to DTE Electric's exhibits showing that the levelized cost of energy (LCOE) for the Calhoun County Solar PPA and the LCOE for the next lowest-cost self-build and BTA were in similar ranges (\$48-\$51 per MWh and \$51-\$54 per MWh, respectively). *Id.*, pp. 2-3. Accordingly, ABATE contends that an FCM would artificially inflate the cost of a PPA and make self-build or BTA projects more attractive. *Id.*, p. 3.

GLREA opposed approval of DTE Electric's request for an FCM for several reasons. First, GLREA stated that while an FCM is authorized by Section 6t(15), it is not authorized expressly by, and is not germane to, the REP and VGP statutes and thus, an FCM should not be approved in a non-IRP case. GLREA's initial brief, pp. 1-2. Second, according to GLREA, DTE Electric's assertions of support for the FCM in Consumers' and UPPCo's cases are misleading and DTE Electric has not met the conditions that were met by Consumers and UPPCo in their respective cases that led to settlement agreements. GLREA explained that DTE Electric has not agreed to reserve 50% of future builds for PPAs or to implement a robust competitive bidding process. Further, GLREA states that the settlement agreements contained provisions barring use in future cases and should not be used as justification for approving an FCM in this case. *Id.*, pp. 4-5 (citing the February 6, 2020 order in Case No. U-20350, Exhibit A, p. 8, ¶ 22 and the

June 7, 2019 order in Case No. U-20165, Exhibit A, pp. 11-2, ¶ 14). Third, GLREA stated that the Commission is not obligated to approve an FCM pursuant to Section 6t(15). *Id.*, p. 5.

Fourth, DTE Electric's request for an FCM includes a request for approval of an FCM to apply to all future PPAs, which GLREA contends is overly broad and unnecessary. *Id.* Lastly, GLREA argued that DTE Electric's proposed incentive factor equal to the WACC is excessive and does not mirror the FCM approved for UPPCo, which had a tiered list of value percentages based on the duration of the PPA. *Id.*, p. 6.

In its reply brief, DTE Electric responded to intervenor arguments that reasonableness and prudence do not require the utility to choose the lowest-cost supply options; rather, rates must be reasonable and supply choices must consider "customer affordability, electric reliability, and utility health." DTE Electric's reply brief, p. 2. DTE Electric also cited legal precedent holding that utilities are entitled to a fair rate of return. *Id.*, pp. 2-3. DTE Electric then repeated its arguments that the Commission has discretion to grant an FCM and that an FCM is an appropriate incentive because the utility is not required to contract with third parties to supply the VGP program. *Id.*, pp. 3-5. DTE Electric explained that the Commission cannot and has not required the company to enter into PPAs. Rather, the Commission directed the company to solicit PPAs to give the Commission enough information to compare and evaluate DTE Electric's plan. *Id.*, pp. 5-6 (citing the February 20, 2020 order in Case No. U-20471, pp. 27-28 (February 20 order)). DTE Electric went on to explain that there are several benefits to utility-owned supply such as ensuring long-term, regulated management for safety and risk mitigation and eliminating the remarketing risk when PPAs end, and that these benefits mean an incentive may be necessary to remove the barriers to using PPAs. *Id.*, pp. 6-9.

Responding to intervenor claims about DTE Electric meeting its evidentiary burden, the company argued that Section 6t(15) does not provide specific requirements that a utility must meet to qualify for an FCM. *Id.*, p. 9. In response to MEC's argument that DTE Electric failed to rebut MEC's testimony, the company stated that it is not required to rebut expert opinion testimony. *Id.*, pp. 10-11. DTE Electric maintained that its FCM incentive equal to the after-tax WACC is reasonable and intervenor arguments describing the amount as excessive are not persuasive. Lastly, the company clarified that it is seeking to apply the FCM to new PPAs supplying the VGP program, the FCM will not be applied to assets used for renewable portfolio standard (RPS) compliance, and the FCM will not apply to the 79 MW Assembly Solar Park that the company plans to move to the VGP program. *Id.*, p. 12.

In its reply brief, the Staff countered the arguments made by GLREA by repeating its arguments that Section 6t(15) contains no language limiting FCM approval to an IRP proceeding. Staff's reply brief, p. 1. The Staff then recited its positions that, if approved, the FCM incentive factor should not exceed the after-tax overall WACC and that the FCM should only be applied to subscribed portions of VGP assets. *Id.*, p. 2.

MEC/NRDC replied to arguments made by DTE Electric and EIBC and repeated that the Commission should reject the FCM in this case. MEC recounted that DTE Electric argued that an FCM is appropriate because it will offset the credit rating practice of imputing PPAs into the utility's debt balances, offset the slower growth rate and increase cost of equity for PPAs, and compensate the utility for the developer's "free-ride" on the company's good credit. MEC/NRDC's reply brief, p. 1. MEC/NRDC dismissed each of these points arguing that credit rating agencies have sophisticated analysis methods to properly calculate PPA impacts. As to the slower growth rate, MEC/NRDC contended that DTE Electric is not entitled to the maximum

possible profits or a VGP portfolio comprised of only utility-owned resources mixed with one or two PPAs. MEC/NRDC also pointed out that an FCM would increase costs for the VGP program, customers to which are already deterred by higher prices. *Id.*, pp. 2-3. MEC/NRDC added that DTE Electric's customers providing guaranteed revenue and a return on equity are the reason for the company's good credit standing and that those customers should not be made to pay extra for supply assets that would otherwise be competitively priced. *Id.*, p. 3.

In response to EIBC, MEC/NRDC disagreed that the changes DTE Electric proposed to reach a partial settlement agreement in this case are sufficient to justify an FCM. *Id.*, p. 4. MEC/NRDC points out that the transparency and non-discrimination measures agreed to by DTE Electric are legally required and do not constitute changes to the company's business model. Further, according to MEC/NRDC, the changes agreed to by DTE Electric do not address the cost impacts for the VGP program on customers. Lastly, MEC/NRDC points out that the Staff did not endorse approval of the FCM in this case, but rather made recommendations for a how an FCM should be structured if one was approved. *Id.*, pp. 4-5.

CEO began its reply brief by repeating its position that DTE Electric has not established that an FCM is necessary or appropriate in this case. In support, CEO stated that DTE Electric failed to provide sufficient evidence to convince the Commission that PPAs will negatively impact the company's financial health. CEO's reply brief, p. 1. CEO also disputed DTE Electric's claim that the Staff and intervenors broadly supported an FCM in Consumers' and UPPCo's respective IRP proceedings, pointing out that the Solar Energy Industries Association opposed the settlement agreement and Ecology Center, ELPC, the Union of Concerned Scientists, and Vote Solar filed a statement of non-objection in Consumers' case. *Id.*, p. 2. CEO repeated its arguments that DTE Electric has not committed to the kind of business model change that was

contained in the Consumers and UPPCo settlement agreements, and therefore, an FCM in this case is not justified. *Id.*, pp. 2-3. Further, CEO claimed that DTE Electric has not shown how an FCM will incentivize company practices “beyond business as usual.” *Id.*, p. 4. According to CEO, the record in this case and other proceedings demonstrates DTE Electric’s resistance to robust and transparent competitive bidding practices and the Commission should not reward the company’s bias against third-party developers with an FCM. *Id.*, pp. 3-4.

ABATE again recommended that the Commission should reject DTE Electric’s request for an FCM. In support, ABATE argued that the figures presented by DTE Electric in support of its request in fact show that adding an FCM to PPAs makes choosing a PPA more costly for ratepayers and skews project selection in favor of BTAs. ABATE’s reply brief, pp. 1-2.

ABATE also averred that DTE Electric failed to show that an FCM is necessary when PPAs are approximately equally priced with self-build projects. ABATE stated that allowing an FCM would artificially inflate customer costs and provide DTE Electric with an imprudent return. *Id.*, p. 2.

GLREA responded to DTE Electric’s arguments made in its initial brief, namely that credit agencies consider PPAs as long-term debt obligations that are less favorable than company-owned generation with a rate of return on investment. GLREA’s reply brief, p.1. According to GLREA, this argument should be given no weight for the following reasons: (1) approval of an FCM does not align with the objectives of Act 342 to increase the diversity of energy resources; (2) an FCM should be considered within an IRP proceeding; (3) PPAs can reduce a utility’s financial risk as opposed to being considered imputed debt by credit rating agencies; (4) Consumers did not argue that PPAs are considered imputed debt by credit rating agencies when it agreed to obtain 50% of its future generation from PPAs and therefore, the Commission

should reject DTE Electric's imputed debt argument in this case; and (5) in carrying out its duty to establish just and reasonable rates, the Commission should reject the company's FCM as it is unnecessary. *Id.*, pp. 2-4.

C. Discussion

Section 6t(15) states as follows:

For power purchase agreements that a utility enters into after the effective date of the amendatory act that added this section with an entity that is not affiliated with that utility, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital.

MCL 460.6t(15).

As an initial matter, the Commission finds that consideration of a financial incentive in this proceeding is appropriate. Section 6t(15) does not contain language limiting the Commission's consideration of a financial incentive to an IRP proceeding. The Commission is a creature of statute and operates under the authority granted to it by the Legislature. *See, Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 146; 428 NW2d 322 (1988). In interpreting a particular statute, the Commission gives effect to the Legislature's intent through the plain meaning of the statute and assumes that any use of or omission of statutory language by the Legislature was intentional as the Legislature understands the principles of statutory construction. *People v Mazur*, 497 Mich 302, 308; 872 NW2d 201 (2015); *In re Complaint of Pelland Against Ameritech Michigan*, 254 Mich App 675, 687; 658 NW2d 849 (2003); *Lumley v Univ of Michigan Bd of Regents*, 215 Mich App 125, 129-130; 544 NW2d 692 (1996).

In this instance, Section 6t(15) states that any PPA entered into after the effective date of Act 341 may be considered for a financial incentive. The statute does not limit the Commission's consideration of an incentive for PPAs to an IRP proceeding. The Commission finds it

reasonable to conclude that the Legislature intended the specificity with respect to PPAs included in the statute; thus, it is applicable to any PPA entered into after the effective date of Act 341. The Commission understands the omission of any other requirement to be intentional by the Legislature and is disinclined to read into the statute a limitation that is not stated in the statutory language. Therefore, the Commission finds consideration of a financial incentive for the PPA at issue in this proceeding to be appropriate.

The Commission does not agree, however, with the company's proposal to apply the maximum incentive allowed by statute to its PPA payments. The WACC represents the maximum incentive allowable under Section 6t(15), not the prescribed incentive amount. The Commission is not convinced by the record and arguments put forth by DTE Electric that this level of incentive is appropriate in this case. The primary intent of Section 6t(15) is to incentivize electric providers to utilize PPAs that may be more cost-effective over self-build options that have the benefit of earning the company a rate of return. In this case, however, authorizing the company to add an incentive equal to the after-tax WACC of 5.46% to PPA payments could lead to higher costs for customers than BTAs or other procurement options. While the Commission has encouraged DTE Electric to consider PPAs in prior cases,⁵ it has never been the position of the Commission that PPAs should be pursued for their own sake. Rather, given the fact that PPAs have often been less costly on a levelized basis than company-owned projects, the Commission's intent in encouraging greater consideration of PPAs has been to ensure the resources ultimately selected were truly in the best interest of DTE Electric's customers. Adding an incentive to a PPA at a level that makes that supply option more costly

⁵ See, July 18, 2019 order in Case No. U-18232, pp. 23-25 (July 18 order); *see also*, February 20 order, pp. 26-28.

than other alternatives would be unreasonable and would frustrate both the Commission's objectives and the legislative intent behind MCL 460.6t(15).

The Commission is further unpersuaded that the full after-tax WACC of 5.46% is necessary to counter the financial detriment posed by PPAs that is alleged by DTE Electric. The company argues that PPAs are credit negative and are treated as long-term obligations similar to leases. 3 Tr 318. The company contends that PPA obligations, "*depending* on the methodology applied by the rating agency and/or credit analyst, *are often* net present valued, in whole or in part, and added to the debt balances of the Company." 3 Tr 318 (emphasis added). DTE Electric's testimony does not demonstrate certainty of the negative credit impact on PPAs and leaves the impression that some credit rating agencies may apply more favorable methodologies to PPAs. This impression is supported on the record by CEO's testimony that credit rating agencies such as Moody's Analytics and Fitch Ratings do not always use a debt equivalence method. 4 Tr 567. Further, DTE Electric has not provided any evidence that the Calhoun County Solar PPA, to which it seeks to apply the FCM, has negatively impacted its credit rating, or that the company has plans to utilize PPAs in the future to such an extent that its credit rating would be impacted by agencies utilizing the debt equivalence method. In short, the Commission is not convinced that the application of a significant incentive of 5.46% applied to the sum of PPA payments is necessary to combat a negative impact that has not been adequately proven to be occurring.

Finally, rather than encouraging the utility to select the most competitively priced option, the incentive as proposed would instead perversely incent the utility to select the *highest cost* PPA option, as this will maximize the incentive the utility receives when multiplied by a set percentage, regardless of whether this option results in savings to its customers. This exacerbates some of the concerns previously expressed by the Commission regarding the

relatively high cost of DTE Electric's MIGreenPower program in comparison to the VGP programs of other Michigan utilities. October 5, 2018 order in Case No. U-18352, pp. 17-18 (October 5 order). While DTE Electric has made changes to MIGreenPower since the October 5 order and the Commission has approved the program as a Section 61 VGP program, cost remains an important factor in customer participation and the Commission is reluctant to inflate the cost of a PPA by 5.46% that would otherwise represent a lower-cost supply option for MIGreenPower.

A better option, as suggested by CEO, is to tie the utility's incentive to the savings achieved for customers through a PPA option. In this way, the utility's compensation for entering into the PPA is directly tied to the benefit customers receive. The Commission notes that in the past, DTE Electric has favored self-build or BTA options in fulfilling its VGP and RPS supply needs and therefore, an incentive could be helpful in removing the reluctance to utilize a PPA over a company-owned option that is accompanied by a rate of return. *See*, July 18 order, pp. 2, 23-26. With this understanding, the Commission finds that an incentive that encourages DTE Electric to choose generation options that result in savings to customers is appropriate. Therefore, the Commission finds that a financial incentive based on savings achieved for customers similar to that proposed by CEO should be approved for the Calhoun County Solar PPA and PPAs supplying the VGP program. *See*, 4 Tr 576-580.

In setting the level of the financial incentive, the Commission notes that a separate statutory scheme includes percentage-based incentives tied to customer savings. *See*, MCL 460.1075. The Commission finds the levels included in this statutory framework informative and finds it appropriate to apply the highest percentage of cost savings included in MCL 460.1075(2) as the financial incentive for PPAs, subject to the provisions of MCL 460.6t(15) that such incentive

may not exceed the utility's WACC. As such, the financial incentive will apply a 30% incentive factor to any positive difference between the LCOE of a selected PPA (based on its score in a competitive solicitation) and the LCOE of a BTA or self-build option that the company would otherwise select based on its score from the same competitive solicitation (or other criteria used to select a project in instances when two or more projects have the same score), provided that such incentive does not exceed the utility's after-tax WACC.

Finally, in comparing the LCOE for PPAs versus the LCOE for company-owned projects, the Commission has some concern over how LCOEs are determined. A BTA project is calculated using the approved depreciation life for a renewable asset, which can differ from the contract term of a PPA even though the project supporting the PPA can have a similar lifespan as a project supporting a BTA. Making matters more complicated is the fact that, in this case, DTE Electric did not rely on the 22-year depreciation schedule for renewable assets approved in its most recent depreciation case,⁶ but instead relied on the 35-year project life that was used in Case No. U-18232. 3 Tr 245 (referring to an LCOE methodology adjusted for terminal value used in Case No-18232); 4 Tr 438 in Case No. U-18232 (explaining that a terminal value is added to PPAs to account for the different timeframes between PPAs and BTAs, to make them comparable, and to assess the full customer cost of each project over the same time frame ensuring that projects with the lowest full life cycle cost were identified). For the Calhoun County Solar PPA, DTE Electric, in the bidding process, evaluated the LCOE using the terminal value assessment (as shown in Exhibit A-6) and presented an LCOE in the November 30 *ex parte* application of \$52.46 per MWh using the 25-year contract term and added the company's requested FCM (which is not being approved). For the purposes of arriving at the proper

⁶ See, December 6, 2018 order in Case No. U-18150.

financial incentive that is based on the savings between the LCOE of a PPA and the LCOE of a BTA, the Commission is concerned that the use of the two different depreciation periods is not an apples-to-apples comparison and can potentially result in a skewed LCOE for both PPAs and company-owned projects. The Commission acknowledges that the use of the terminal value assessment has been agreed to in the partial settlement agreement in this case. Going forward, recognizing that this case is not the appropriate venue to address depreciation rates, the Commission expects that the LCOE and financial incentive calculation methods will be reviewed by the Staff in the company's REP reconciliation and during any *ex parte* review of contracts submitted for approval by the Commission, and that depreciation schedules will continue to be reviewed through the utility's regular depreciation cases. This will help to ensure an accurate and appropriately calculated financial incentive.

To illustrate how the financial incentive would operate, the Commission provides the following example with hypothetical prices assigned to a company-owned project and a PPA:

“A” represents the LCOE of the company-owned asset expressed in dollars (\$) per MWh. “B” represents the LCOE of the PPA expressed in dollars per MWh. “X” represents the savings achieved calculated as $A - B$.

$$A - B = X$$

The financial incentive (FI) for each year is calculated by multiplying the achieved savings (X) by the financial incentive factor (Y), which in this case is 30% or 0.30, and the number of MWh sold in a year (Z).

$$X * Y * Z = FI$$

As such, in a hypothetical situation in which the LCOE for the company-owned asset is \$55 per MWh and the LCOE for the selected PPA option is \$50 per MWh, the financial incentive for the year would result in the following:

A = \$55 per MWh (company-owned build option)

B = \$50 per MWh (PPA option)

X = \$5 per MWh (achieved savings)

Y = 30% or 0.30 (financial incentive factor)

$Z = 10,000,000 \text{ MWh (via PPA sold in a single year)}$

$\$50 \text{ per MWh} * 10,000,000 \text{ MWh} = \$500,000,000 \text{ (total annual PPA payments)}$

$FI = X * Y * Z$

$FI = \$5 \text{ per MWh} * 30\% * 10,000,000 \text{ MWh} = \$15,000,000$

Finally, the total incentive must be compared to the WACC to ensure compliance with the provisions of MCL 460.6t(15). For the purposes of calculating an annual maximum allowable incentive (cap) in the instant case, the product of the 5.46% after-tax WACC multiplied by the sum of the eligible PPA payments for the year shall be the cap:

$\$500,000,000 \text{ (total annual PPA payments)} * 5.46\% = \$27,300,000 \text{ (cap)}$

Under this hypothetical example, the financial incentive of \$15,000,000 is less than the after-tax WACC cap of \$27,300,000 and therefore, the utility would be authorized to receive a financial incentive of \$15,000,000 for the year. If, however, the total savings to customers in selecting a lower-cost PPA option (A – B) resulted in an incentive greater than the after-tax WACC multiplied by the total annual PPA payments, then the total incentive for the year would be capped at the after-tax WACC of \$27,300,000.

The financial incentive approved in this order will be added to the cost of the selected PPA and will be recovered through the subscription fee for the VGP program. Per Section 61, non-participating DTE Electric customers will not be responsible for the costs associated with the assets supplying the MIGreenPower program or the financial incentive approved in this order. As agreed to by the company, only the portions of the PPA that are supplying the VGP program are eligible for the financial incentive. 3 Tr 108.

Under this incentive structure, should a PPA represent the more cost-effective option, VGP customers will receive the benefit of the less costly supply option and the company will receive 30% of the total savings achieved. In instances in which the PPA is not the more cost-effective option, there would be no incentive for selecting it. The Commission finds that this structure provides the right incentive to the company and aligns with the Commission's goals of exploring and incorporating performance-based and savings-based incentives.

II. PARTIAL SETTLEMENT AGREEMENT

As noted previously, the parties, with the exception of GLREA and Soulardarity, filed a partial settlement agreement on April 14, 2021, resolving all issues in the REP case and all issues in the VGP case, except for the FCM issue. GLREA filed objections to the settlement agreement on April 20, 2021. An evidentiary hearing was held on May 6, 2021, at which, testimony and exhibits were bound into the record. Briefs pertaining to the partial settlement agreement were filed on May 11, 2021, and reply briefs were filed on May 17, 2021.

A. Overview of the Record Regarding the Partial Settlement Agreement

GLREA objected to the following aspects of the partial settlement agreement: (1) the low-income solar pilot; (2) the RFP methodology; (3) the tax equity financing structure; and (4) the absence of a plan for DTE Electric to purchase RECs from existing PURPA QFs and/or DG customers as a means of Act 295 compliance. 5 Tr 807-808. GLREA asserted that the low-income solar pilot fails to give pilot customers equal compensation treatment as DG customers in that the pilot proposes to credit low-income customers at the wholesale rate for energy rather than the retail rate. 5 Tr 808, 829-830. GLREA also stated that the economics of the proposed pilot are flawed and result in windfall revenues to the company at the expense of low-income customers. 5 Tr 833-834. GLREA recommended that the pilot incorporate community participation in decision making and that the partial settlement agreement should lift the 1% cap on customer-owned DG. 5 Tr 834-840. As to the RFP provisions, GLREA cited a history of Commission guidance for competitive bidding and explains that the partial settlement agreement fails to meet this guidance, in part. Specifically, GLREA argued that the partial settlement agreement gives the company too much control over the bidding process, and therefore, does not

prevent self-dealing. 5 Tr 808-812. GLREA contended that third-party ownership provide lower-cost benefits to ratepayers and the Commission should reduce DTE Electric's control over the RFP. 5 Tr 812-814.

Turning to the tax equity structure, GLREA argued that a tax equity structure is a more expensive source of capital than relying on the company's shareholders and bondholders and constitutes a "work-around" to typical regulatory accounting processes. 5 Tr 815. GLREA explains:

For DTE [Electric], tax equity financing would function as a work-around to long-established regulatory accounting practices, which apply rate recovery of plant depreciation and tax credits over the life of the asset ("tax normalization"). This can be quite different than the depreciation schedule under IRS rules and completely different than the immediate tax benefit of the Investment Tax Credit (ITC). If the intention is to pass the benefits of immediate recognition of the ITC and accelerated depreciation on to ratepayers, then the rules themselves should be changed (to "flow through"). Changing the accounting rules would cut out the middleman (the third party in the tax equity financing agreement) and greatly simply [sic] the process. The third parties will profit from these agreements ("Tax equity offers an attractive after-tax return from a combination of cash yield and tax savings") and those funds would be better directed to ratepayer relief.

Id. (citations omitted). GLREA averred that the tax equity structure proposed in the partial settlement agreement is overly broad. GLREA therefore requested that if the Commission approves the partial settlement agreement, it should clarify that the approval only applies to REP and VGP projects. 5 Tr 819.

Lastly, GLREA took issue with the omission of any requirement in the partial settlement agreement for DTE Electric to purchase RECs from QFs and DG customers currently operating or from any of the developers currently waiting in the company's interconnection queue. 5 Tr 819-820. GLREA asked that the Commission make clear that it expects DTE Electric to consider purchasing RECs from existing facilities before the Commission will approve renewable energy facility builds. 5 Tr 821-822.

DTE Electric testified to the reasonableness of the partial settlement agreement and argued that the agreement includes a number of improvements in customers' best interest, namely: (1) including future VGP projects in the REP enables the company to offer a subscription charge based on the LCOE; (2) the VGP build plan will support the programs' growing customer base; (3) approval of new projects in addition to the rotation of some REP assets into the VGP and some VGP assets into the REP will increase the cost-effectiveness of MIGreenPower; (4) the ahead-of-meter option and Anchor Tenant Community Solar pilot provide additional renewable energy options; (5) the Rider No. 17 amendments and low-income donation pilot support renewable energy and align with customer research; (6) the low-income solar pilot provides a community solar option and bill credit for fully subscribed low-income customers; and (7) the tax equity structure provides cost-effective financing for new projects that reduce costs for all customers. 5 Tr 844-845.

The Staff, in its testimony, recited various key provisions of the partial settlement agreement and expressed support for the partial settlement agreement.

Soulardarity explained in testimony that it does not object to but will not sign the partial settlement agreement. Soulardarity recognized the progress the partial settlement agreement may bring to low-income customers and communities of color in terms of opportunities for renewable energy projects but contended that the agreement does not go far enough in that the low-income solar pilot includes only utility-owned projects, fails to compensate low-income subscribers fairly, and the leadership council does not have final say in project selection or siting. 5 Tr 869-872. Soulardarity recommended that DTE Electric implement a community solar program with a community ownership structure and that the company increase the compensation to low-income

subscribers under the low-income solar pilot provided in the settlement agreement. 5 Tr 871-873.

At the May 6, 2021 hearing, counsel, on behalf of Ann Arbor and MAUI, read a statement on the record indicating Ann Arbor's and MAUI's support for the partial settlement agreement. 5 Tr 883. In the statement, Ann Arbor and MAUI contended that the partial settlement agreement: (1) contains provisions that address the cost differential between Rider No. 17 residential customers and Rider No. 19 business customers, (2) allows large customers to share the costs and benefits with other DTE Electric customers through the Anchor Tenant Community Solar pilot, and (3) commits to participation by the Ann Arbor landfill solar project in the solar pilot. 5 Tr 883-884. Expressing the importance of these provisions to Ann Arbor, MAUI, and their constituents and members and that these provisions would not be enforceable without Commission approval, Ann Arbor and MAUI urged the Commission to approve the partial settlement agreement. 5 Tr 884.

In rebuttal to GLREA's objection to the low-income solar pilot, DTE Electric testified that GLREA's comparison to the DG program is inappropriate because the low-income solar pilot was not designed as a DG program—it was designed as a front-of-meter solar option located in communities, not on customer property, to provide a community benefit. 5 Tr 850. DTE Electric also asserted that the collaborative effort of the company and intervenors resulted in a pilot that allows low-income communities renewable energy opportunities and provides participants with monthly bill credit of approximately \$25-35, which is based on market prices. 5 Tr 850-851. The company noted that it will own and operate the pilot projects but will not earn a return on the investments per the terms of the partial settlement agreement. 5 Tr 852. As to the RFP methodology set out in the partial settlement agreement, DTE Electric stated that the RFP

allows for oversight by an independent evaluator; feedback from the Staff, developers, and stakeholders prior to issuing the RFP; and a bid open to varying ownership structures with no minimum size requirement beyond the 550 kilowatts (kW) for interconnection categories 4 and 5. 5 Tr 852-853. The company also argued that purchasing RECs from facilities already in operation is not feasible due to the prior approval of REP projects to achieve compliance through 2029 and VGP customers' desire for additionality in renewable generation. 5 Tr 853-854. In response to GLREA's last objection regarding the DG cap, DTE Electric stated that the instant proceeding is dedicated to VGP compliance under Part 2 of Act 342, which does not include the DG program. Further, the DG program is currently at 32.6% capacity, which the company argued negates the need to evaluate the cap. 5 Tr 854.

In addressing GLREA's objection to the tax equity financing provision, DTE Electric contended that it is a widely used financing tool that is compliant with rules of the federal Internal Revenue Service (IRS) and allows the company to efficiently deliver the value of tax benefits to customers and to offset the company's capital costs. 5 Tr 857.

The Staff, in its rebuttal testimony, disagreed with GLREA's assessment of the RFP methodology that the Commission should reject the partial settlement agreement unless more control over the RFP is given to an independent administrator. The Staff argued that the partial settlement agreement's RFP provisions are an improvement over previous company RFPs and include a pre-RFP conference, Staff and stakeholder involvement, and elimination of project size requirements. 5 Tr 863-864. Turning to the low-income solar pilot, the Staff averred that the pilot included in the partial settlement agreement is an improvement from the pilot DTE Electric originally proposed. The Staff argued that basing the pilot bill credit on market prices (the locational marginal price and planning resource auction of the Midcontinent Independent System

Operator, Inc. (MISO)) that is also used in Rider No. 17 and Rider No. 19 is reasonable and the Commission should not reject the partial settlement agreement on this basis. 5 Tr 864-865.

Additionally, while expressing general support for raising the DG program cap, the Staff explained that it does not believe that the absence of an agreement to raise the cap in the partial settlement agreement warrants rejection of the partial settlement agreement. 5 Tr 866.

Responding to Soulardarity's testimony, CEO stated that it agrees with the shortcomings Soulardarity describes with respect to the low-income community solar pilot but contended that the partial settlement agreement is in the public interest because it constitutes a "first step in developing a meaningful community solar program." 5 Tr 879. CEO also expressed agreement with DTE Electric regarding the movement of assets between the VGP program and REP to improve the cost-effectiveness of the VGP program and the benefits provided by the Anchor Tenant Community Solar pilot. 5 Tr 879-881. Further, CEO agreed with the Staff's support of the small-scale solar procurement provision in the partial settlement agreement and states that the steps for processing interconnection applications outlined in the agreement will help developers understand interconnection costs and financial viability of projects. 5 Tr 881-882.

B. Positions of the Parties

DTE Electric, in its initial brief, first recited the procedural history of the instant consolidated case, the company's position set out in its application, and the positions of the Staff and intervenors before restating the requirements set out by statute and the Commission for VGP programs. DTE Electric's initial brief, pp. 2-16. The company then outlined the partial settlement agreement and represented that it is a reasonable compromise between the parties, is in the public interest, and should be approved. *Id.*, pp. 17-20. DTE Electric explained that the partial settlement agreement meets all statutory requirements for VGP and REP programs and

contains significant benefits for DTE Electric customers. According to the company, those benefits include the following:

- Inclusion of future VGP projects into the REP will maintain the ability to offer customers a subscription charge based on levelized cost of energy as well as backstopping provisions through the REP;
- VGP build plan will provide enough capacity to support the growing customer base in DTE Electric's MIGreenPower program;
- Approval of White Tail Solar build transfer agreement (BTA), Freshwater Solar BTA, and Calhoun County Solar power purchase agreement (PPA) will add cost-effective projects to DTE[Electric]'s MIGreenPower portfolio, ultimately decreasing the net premium to all VGP customers; [m]oving Pinnebog wind park, Lapeer solar park, and O'Shea solar park (72.65 MW in total) into the REP as compliance projects, bringing the Assembly solar park PPA (79 MW) into the VGP and combining with existing Rider 19 projects will greatly reduce the MIGreenPower net premium for residential and small commercial customers as well as slightly reduce the net premium for large customers;
- Ahead-of-meter customer requested offerings as well as an Anchor Tenant Community Solar pilot will provide customers with even more options to pursue their renewable energy goals;
- Rider 17 proposed tariff amendments and MIGreenPower Low-Income Donation Pilot will offer customers additional ways to support renewable energy investments that align with customer research;
- Low-Income Solar Pilot will seek to provide three communities and respective eligible low-income customers with the benefits of a community solar array and associated bill credits from a full subscription;
- Tax equity financing structure will permit cost-effective financing means for new projects, which will reduce costs for all customers.

Id., pp. 20-21 (citing 5 Tr 844-845). DTE Electric stated that the Staff agreed that the partial settlement agreement is in the public interest as well. *Id.*, p. 21. Lastly, the company contended that the partial settlement agreement furthers the Legislature's goals in enacting the VGP and REP requirements as well as the company's commitment to increasing access to renewable energy at reasonable rates. *Id.*

The Staff, filing its initial brief in support of the partial settlement agreement, repeated its arguments previously made on the record regarding the benefits provided in the partial settlement agreement, and argued that GLREA's objections are without merit and should be rejected. Staff's initial brief, pp. 1-2. Addressing GLREA's concerns regarding the RFP methodology and the RFP administrator's lack of defined control in the process, the Staff explained that the MI Power Grid Competitive Procurement workgroup, together with stakeholders, are currently exploring the role of an independent administrator in future RFPs. The Staff thus contended that GLREA's opposition to the instant settlement agreement does not stand, especially given the improvements in the RFP methodology. *Id.*, p. 2. The Staff also disagreed with GLREA's objections regarding the low-income bill credit and the DG cap and argued that these objections are not grounds to reject the partial settlement agreement. As to the low-income bill credit, the Staff averred that the credit methodology represents a "tangible positive movement" with a bill credit of \$25-\$35 towards a low-income customer's monthly bill. *Id.*, p. 4. Regarding the DG cap, the Staff stated that, while it generally supports raising the DG cap, the cap issue is outside of the scope of this proceeding and should not serve as a basis to reject the partial settlement agreement. *Id.*, pp. 4-5.

EIBC supported approval of the partial settlement agreement and argued that the partial settlement agreement satisfies the criteria set forth in Mich Admin Code, R 792.10431 (Rule 431) in that the agreement is in the public interest, represents a fair and reasonable resolution of the proceeding, and is supported by substantial evidence on the record. EIBC's initial brief, pp. 3-9. EIBC maintained that the partial settlement agreement is the result of extensive negotiations and agreement between most of the parties to the case who represent a variety of stakeholders and interests, thereby representing the public interest. While acknowledging that

the partial settlement agreement has some shortcomings in how the company evaluates PPAs, a lack of a true community solar option, and the absence of an agreement to lift the DG cap, EIBC explained that the agreement contains several good faith improvements of importance to EIBC. Lastly, EIBC commented on the length of this proceeding and the discovery, testimony, and briefing filed by the parties which amounts to substantial evidence in support of the partial settlement agreement. *Id.*, pp. 4-8.

GLREA began its initial brief with a recitation of the procedural history, its testimony on the record in this matter, as well as a summary of the other parties' positions on the partial settlement agreement. GLREA's initial brief, pp. 1-17. GLREA then argued that the partial settlement agreement does not comport with the goals of Act 341 or Act 342 in that the agreement does not break DTE Electric from its propensity to rely on company-owned supply resources despite past Commission warnings to consider third-party ownership. *Id.*, pp. 18-20, 29. Contending that the history of renewable energy projects in Michigan since Act 295 was enacted show that PPAs represent a more cost-effective option, GLREA urged the Commission to require DTE Electric to reform its business practices. *Id.*, pp. 20-21. GLREA then repeated the arguments formulated in its objections to the partial settlement agreement with respect to a lack of a true community solar option, the low-income community solar pilot's unfair compensation in comparison to the DG program, the overly expensive tax equity financing structure, RFP methodology that allows DTE Electric too much control over the competitive bidding process, the lack of a requirement to purchase RECs from existing DG customers or PURPA QFs, and the absence of an agreement to lift the 1% DG cap. Additionally, according to GLREA, the partial settlement agreement retains the FCM issue and demonstrates DTE Electric's intent to unnecessarily increase costs to ratepayers. *Id.*, pp. 28-29.

GLREA ultimately recommended that the Commission reject the partial settlement agreement, but asked that, in the event the Commission does not reject the partial settlement agreement, the Commission adopt the following remedies:

1. To require DTE [Electric] in its next IRP, rate case, or other case application, to propose an authentic low-income community solar project which would provide for community (not DTE [Electric]) ownership and a non-discriminatory compensation mechanism at least equivalent to that provided for Distributed Generation (DG) customers;
2. To narrow the application of any tax equity financing arrangement to only these cases, and to ensure that any such arrangements comport with what is most fair and cost-effective for ratepayers;
3. To require DTE [Electric] in its next IRP, rate, or other case to provide for a nondiscriminatory, robust, transparent, and authentic competitive bidding or RFP process for determining and selecting additional supply resources;
4. To require DTE [Electric] in its next IRP, rate, or other case to fully evaluate and consider the purchase of REC credits from DG customers and PURPA QFs as a means of meeting requirements of [Act 295], as amended, or for other purposes which are most cost[-]effective;
5. To require or encourage DTE [Electric] to eliminate the 1% DG “soft cap” or to increase the cap, and to exercise all other administrative and legislative efforts to eliminate or increase the cap;
6. To reject a Financial Compensation Mechanism for purposes of this case;
7. To fashion findings to clarify actions and practices that DTE [Electric] should undertake in its next IRP, rate, REP, or other cases to better implement the purposes, goals, and provisions of Michigan’s Energy Acts.

Id., pp. 30-31.

In its reply brief, DTE Electric restated its support for approval of the partial settlement agreement arguing that it meets the requirements of Rule 431 as well as all applicable law and previous Commission orders. DTE Electric’s reply brief, pp. 1-2. In response to GLREA, the company defended the Low-Income Donation pilot, the Low-Income Solar Pilot, the tax equity financing structure, and the competitive bidding process for VGP projects through 2025. *Id.*,

pp. 2-14. DTE Electric explained that the Low-Income Solar pilot and Donation Pilot will benefit low-income communities, will provide a robust data set for the company and stakeholders to assess the costs and benefits of low-income VGP options, and is a superior option to community-owned solar given the lack of detailed understanding associated with community-owned solar at this time. The company disputes GLREA's claim that the pilots will result in windfall revenues for the company, contending that GLREA

provides a misleading calculation that subtracts the proposed credit from the full Residential retail rate and concludes that the remainder represents net revenue to DTE Electric. This argument is entirely specious. The way all of the Company's VGP proposed programs work is by a) selling all the VGP project capacity into the annual Midcontinent Independent System Operator ("MISO") Planning Resource Auction ("PRA"), b) self-scheduling or bidding all the VGP project electricity into the daily MISO market at zero, so that the company always receives the Locational Marginal Price ("LMP"), c) retiring Renewable Energy Credits ("RECs") generated by the VGP projects on behalf of subscribers, and d) crediting back to subscribers the MISO income from the sale of the energy at LMP, and capacity at the PRA clearing price. DTE Electric does not make a profit on the sale of the energy or the capacity of any VGP project.

Id., pp. 5-6 (internal citations omitted).

Turning to GLREA's objections regarding the tax equity structure, DTE Electric stated that GLREA used misleading data regarding DTE Electric's profits and points out that rather than the \$6 billion in profits claimed by GLREA, the company's actual net income in 2020 was \$778 million. The company then argued that profits do not necessarily dictate the use of tax credits. *Id.*, p. 7. DTE Electric also argued that the IRS has approved the use of tax equity financing and that using such a structure is appropriate in this case. *Id.*, p. 8. The company further contended, in response to GLREA's claims, that the submission of VGP projects to the Commission for a determination of reasonableness and prudence will protect ratepayers from unreasonable costs and, citing Exhibit A-8, that the tax equity financing structure will result in a savings to customers. *Id.*, pp. 8-9.

With respect to the competitive bidding structure, DTE Electric argued that the partial settlement agreement's proposed RFP aligns with the Commission's guidance regarding competitive bidding structures issued in Case No. U-20852⁷ and, because the RFP applies to VGP projects in the build plan through 2025, the RFP process would not displace any new competitive bidding guidelines that the Commission may issue. As to GLREA's recommended adjustments to the RFP process, DTE Electric argued: (1) the partial settlement agreement's term "independent" and "third-party" are sufficient to ensure the RFP evaluator is not a bidder or affiliated with any bidder in the RFP, (2) the Commission appointment of an evaluator is unnecessary because of the Staff's ability to retain an expert witness to review the company's conduct, (3) there is no legal requirement that an independent evaluator must score any utility or affiliate bids, and (4) the terms of the partial settlement agreement ensure fair treatment for all bidders. *Id.*, pp. 10-14.

DTE Electric argued that the lack of a requirement to purchase RECs from existing VGP customers and the lack of a voluntary commitment to lift the DG cap from 1% do not warrant rejection of the settlement agreement. *Id.*, pp. 14-15. Lastly, the company clarified that the signatory parties agreed to not include the FCM in the partial settlement agreement, that nothing prevents the Commission from considering an FCM in a VGP proceeding, and that the partial settlement agreement, as a whole, comports with the purpose and goals set out in MCL 460.1001 and all other applicable laws and Commission orders. *Id.*, pp. 16-17.

Replying to GLREA's objections, the Staff pointed to its initial brief stating that it has previously addressed many of GLREA's arguments. Staff's reply brief, p. 1. Specifically, the

⁷ *See*, August 20, 2020 order in Case No. U-20852 (commencing a collaborative to consider best practices for competitive bidding).

Staff restated provisions of the partial settlement agreement and argued that they represent an improved RFP process and positive progress in terms of a low-income solar program that should not be discarded because the partial settlement agreement does not meet every demand made by GLREA. *Id.*, pp. 1-2. Staff also repeated its argument that the DG cap issue is outside of the scope of this proceeding and recommended that the Commission approve the partial settlement agreement. *Id.*, pp. 2-3.

In its reply brief, CEO repeated its position that the partial settlement agreement complies with all applicable law and should be approved by the Commission. CEO's reply brief, p. 1. CEO again states that, while there are shortcomings in the partial settlement agreement with respect to low-income community solar offerings, "the magnitude of work yet to be done does not diminish the progress made in this Partial Settlement." *Id.*, p. 2. CEO points to improvements such as the Ann Arbor anchor tenant community solar pilot, the inclusion of small-scale solar projects, and cost reductions resulting from the combination of Rider No. 17 and Rider No. 19 resources in support of approval of the partial settlement agreement. CEO concludes that the partial settlement agreement is in the public interest, supported by the record as a whole, and should be approved. *Id.*

GLREA repeated its opposition to the partial settlement agreement in its reply brief. GLREA restated the arguments presented in its initial brief that the low-income solar pilot is deficient because DTE Electric, not the community, would own the assets supplying the pilot and the credit to customers is less than the credit paid DG customers. GLREA's reply brief, pp. 1-2. GLREA again argued that the tax equity financing structure is vague, overly broad, and costly to ratepayers and that the RFP process is not robust or transparent and affords DTE Electric too much control. GLREA went on to state the ongoing collaboration to improve the RFP process

discussed by the Staff in testimony will be conducted too late to be incorporated into DTE Electric's next RFP and therefore, the Commission should limit the resources selected with the RFP process contained in the partial settlement agreement and require that the third-party evaluator score the bids. *Id.*, pp. 2-4. GLREA then recited its previous arguments regarding the omission of a requirement to purchase RECs from existing DG customers or PURPA QFs, the lack of a commitment to increase the DG cap, the misplacement of the FCM issue in the instant proceeding instead of in the company's IRP proceeding, and the failure of the partial settlement agreement to promote the purpose and goals of Act 341 and Act 342. *Id.*, pp. 4-5.

C. Discussion

After consideration of the objections presented by GLREA, the record in this matter, and Section 61, the Commission finds that the partial settlement agreement in this case should be approved. The Commission also finds that the *ex parte* application for approval of the White Tail Solar BTA, the Freshwater Solar BTA, and the Calhoun County Solar PPA should be approved. The Commission addresses the partial settlement agreement and the *ex parte* application in turn.

i. Partial Settlement Agreement

Pursuant to Rule 431(5)(a)-(c), Commission approval of a contested settlement agreement is appropriate where the Commission determines: (1) that the objecting parties have been given a reasonable opportunity to present evidence and arguments in opposition to the settlement agreement, (2) the public interest is adequately represented by the parties who entered into the settlement agreement, (3) the settlement agreement is in the public interest, (4) it represents a fair and reasonable resolution of the proceeding, and (5) it is supported by substantial evidence on

the record as a whole. The Commission finds the partial settlement agreement meets the requirements of Rule 431 and should be approved.

As to the first requirement under Rule 431, the parties that did not sign the partial settlement agreement were provided with a reasonable opportunity to object to and present evidence and arguments in opposition to the partial settlement agreement. GLREA filed its objections on April 20, 2021, testimony and exhibits were bound into the record on May 7, 2021, and on May 11 and 17, 2021, GLREA filed an initial brief and reply brief, respectively.

As to the second requirement, the Commission also finds that the public interest is adequately represented by the parties in this matter; together, they represent the interests of the utility, the Staff, municipalities, environmental advocacy groups, residential and business customers, independent power producers and their customers, and renewable energy and solar advocacy groups. Thus, a broad cross-section of interests is represented in this proceeding, satisfying the requirement that the public interest be represented by the parties.

Third, the Commission finds that approval of the partial settlement agreement is in the public interest and provides a number of benefits that have been outlined by the parties in this case.

Those benefits include:

1. Increased cost-effectiveness for VGP program participants resulting from: (1) the combined pooling of renewable energy assets supplying the Rider No. 17 and Rider No. 19 programs; (2) the movement of the Pinnebog Wind Park, the Lapeer Solar Park, and the O'Shea Solar Park from the VGP program into the company's RPS compliance portfolio, (3) the movement of the Assembly Solar Park (without an FCM) into the VGP program; and (4) the addition of cost-effective assets to the VGP programs with the approval of the White Tail Solar BTA, the Freshwater Solar BTA, and the Calhoun County Solar PPA.
2. A build plan through 2025 that is sufficient to meet the forecasted demand growth of MIGreen Power and the LC-VGP program.
3. A customer-requested anchor tenant community solar offering that allows for customer-sited projects and includes a memorandum of understanding with Ann Arbor to develop a

potential 24 MW landfill solar project as well as an agreement by DTE Electric to work with the Staff and the anchor tenant to develop a low-income offering within the anchor tenant offering.

4. Inclusion of a low-income donation pilot for Rider No. 17 and a low-income community solar pilot that expand access to VGP programs for low-income customers and bring a community solar option to three low-income communities in DTE Electric's service territory that provides subscribing customers a monthly bill credit of approximately \$25 to \$30. The pilot will also be supplied with company-owned projects upon which DTE Electric will not earn a return on investment. The partial settlement agreement also operates in tandem with a memorandum of understanding to form a Low-Income Solar Council that will bring community involvement into the operation and development of the three projects. DTE Electric will also report on these pilots consistent with the Commission's guidance for pilot evaluations issued in the February 8, 2021 order in Case No. U-20645.
5. The addition of a fixed-price offering for the Rider No. 17 program and a flexible pre-payment option for the Rider No. 19 program that will expand the VGP subscription options available and allow customers to select a cost-effective option that meets their renewable energy ambitions.
6. A tax equity financing structure that allows for cost-effective financing for new BTA or company-built projects (including the White Tail Solar and Freshwater BTAs) that will reduce costs for ratepayers.
7. An improved RFP process that ensures that all VGP resources through 2025 will be procured through a competitive solicitation that provides for transparency in price and non-price bidding criteria as well as the inclusion of any financial incentive and terminal value analysis; ensures non-discriminatory treatment of project bids of varying ownership structures, resource type, size, and locations that meet minimum requirements that are disclosed to bidders; provides for oversight by an independent, third-party evaluator; and an opportunity for the Staff to review the timeline and contents of the RFP prior to the RFP being issued.
8. The inclusion of a solicitation of 100 MW of small-scale solar for projects sized less than 25 MW and greater than 550 kW available to projects that are not DTE Electric-owned or owned by a DTE Electric affiliate, with pending interconnection applications as of the date of this order.

GLREA disagrees that the partial settlement agreement is in the public interest and objects to the partial settlement agreement for the following reasons:

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 [Act 295];
 5. The Partial Settlement fails to incorporate any consideration by DTE for 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[.]

GLREA's objections, pp. 1-2. The Commission responds to each objection in turn.

Beginning with the proposed community solar pilots, the Commission disagrees that the partial settlement agreement should be rejected because the company will retain ownership of the projects and the customer credit does not match that provided to DG customers. The community solar pilots included in the partial settlement agreement represent constructive steps in providing a community solar option to DTE Electric customers that may otherwise not be able to participate in VGP programs. Several parties have advocated for inclusion of a community solar option in this proceeding and others⁸ and the proposed pilots here represent a measure of success

⁸ See, Soulardarity's September 25, 2018 initial brief in Case No. U-18232, pp. 2-13, filing #U-18232-0097; Soulardarity's October 29, 2019 initial brief in Case No. U-20471, pp. 13-16, filing #U-20471-056; Ann Arbor's October 30, 2019 initial brief in Case No. U-20471, p. 7, filing #U-20471-0571; ELPC's October 30, 2019 initial brief in Case No. U-20471, p. 41, filing #U-20471-0563.

in incorporating community solar into the company's VGP portfolio. Further, the partial settlement agreement provides for community involvement and an opportunity for DTE Electric to experiment with and learn from ownership models and operation of these projects. Per the partial settlement agreement, DTE Electric will analyze the data resulting from these projects and file a case with the Commission no later than the first quarter of 2025 to determine the continuation and terms of the low-income community solar pilot.

As to the pilot's credit, the low-income community solar pilot is proposed as a VGP program, pursuant to Section 61 with a credit mechanism that mirrors the market-based credit method used for Rider No. 19; the pilot is not proposed as a DG program under MCL 460.1171 *et seq.* and will not operate pursuant to DTE Electric's DG tariff. 5 Tr 850. The low-income community solar pilot is also distinguishable from DG projects in that the three solar projects will not be sited on customer property and are likely to exceed the project sizes prescribed for DG projects. *See*, MCL 460.1173; 5 Tr 850. Given these differences, the Commission is not inclined to reject the partial settlement agreement for a failure to apply a credit method that matches that of a customer with a DG project approved under a separate statutory scheme. *See*, MCL 460.1171 *et seq.* The credit method for the low-income community solar pilot is comparable to other VGP programs and provides a \$25-\$30 monthly credit to participants. While the Commission's approval here does not foreclose any future adjustment to the credit method that may be appropriate after review of the pilot's performance and data, the Commission does not take issue with the credit method contained in the partial settlement agreement.

GLREA contends that the tax equity financing structure is vague, overly broad, can be costly to future ratepayers, constitutes a work around to IRS tax normalization rules, and is unnecessary

given DTE Electric's access to low-cost capital. GLREA's initial settlement brief, pp. 22-24.

The Commission is not convinced that the partial settlement agreement should be rejected on this basis. The tax equity financing structure is an allowable financing option consistent with IRS rules and is expected to generate savings for customers, contrary to GLREA's assertion that such a structure may or may not provide a savings to customers. 4 Tr 323; Exhibit A-8; GLREA's initial settlement brief, p. 23. Thus, the Commission does not find that the partial settlement agreement should be rejected or modified from the parties' agreement with respect to tax equity financing.

As to the RFP, the Commission disagrees with GLREA that the RFP terms in the partial settlement agreement lack transparency and protections against discrimination such that the agreement should be rejected. The Commission finds that the RFP contained in the partial settlement agreement represents a significant improvement in terms of transparency, non-discrimination, the use of an independent evaluator, and the inclusion of a separate small-scale solar solicitation from the RFPs previously issued by the company. In the July 18 order, the Commission declined to approve part of DTE Electric's REP, expressing concern that the company had limited its consideration for REP supply resources to company-owned generation only. July 18 order, pp. 23-24. In the July 9, 2020 order in Case No. U-18232 (July 9 order), the Commission found that DTE Electric had improved its RFP process, but still noted shortcomings:

Though each RFP was single-source, the company solicited bids for both wind and solar, and solar plus storage proposals were made and shortlisted. While the Commission would prefer future solicitations to fully include all technologies and to allow for PPA proposals without requiring a BTA option, the Commission acknowledges that it had requested information allowing a comparison between PPAs and company-owned projects in the July 18 order. Furthermore, DTE Electric indicates that no proposal was rejected simply on the basis that the BTA requirement was not met. *See*, July 18 order, p. 23. The Commission finds DTE

Electric's requirement for a minimum level of experience to be reasonable, and is satisfied that Navigant played a useful role in providing an independent evaluation of the RFPs. As indicated below, however, the Commission finds that further discussion is warranted on the recommended use of independent bid administrators or firewalls for various utility personnel involved in preparing utility RFPs, responding to RFPs with utility proposals, and evaluating the results of RFPs.

July 9 order, p. 40.

The Commission finds that the RFP for the VGP build plan agreed to in the partial settlement agreement further improves upon DTE Electric's previous RFPs and addresses the Commission's concerns. The RFP process agreed to in the instant case will be open to all technologies meeting reasonable minimum system and program requirements, will not require PPA proposals to include a BTA option, provides for the inclusion of additional information regarding any terminal value assessment calculation, establishes a more involved role for an independent evaluator, and installs firewalls between DTE Electric employees and affiliates who are responsible for project bids and those involved in the RFP design. While these improvements may not satisfy every demand made by intervenors, the Commission finds these improvements sufficient for approval of the partial settlement agreement.

GLREA contends that the partial settlement agreement should be rejected because it fails to require the purchase of RECs from existing DG customers or PURPA QFs to achieve RPS compliance. The Commission disagrees. The application to amend DTE Electric's REP in Case No. U-20851 is limited to the addition of the VGP build plan and associated requests in meeting the needs of the company's VGP program. As explained by DTE Electric, the company is not seeking approval of any new projects for RPS compliance in this proceeding. Therefore, the Commission finds GLREA's objection to be misplaced and unsupported on the record. Further, the Commission agrees with DTE Electric that reliance on REC purchases within the VGP

context would frustrate customers' desire for their participation to result in additional renewable generation coming online, not a reallocation of RECs from existing projects. 5 Tr 854.

Turning to GLREA's objection regarding the 1% DG cap, the Commission finds this matter to be beyond the scope of this proceeding and therefore declines to reject the partial settlement agreement on these grounds. While the Commission is aware of other rate-regulated utilities voluntarily lifting the DG cap beyond the 1%,⁹ the Commission does not find the partial settlement agreement should be rejected because DTE Electric has not voluntarily lifted the DG cap.

Regarding the FCM, the Commission disagrees that an agreement to leave a contested issue to the determination of the Commission constitutes grounds to reject a partial settlement agreement. The request for an FCM applicable to PPAs entered into after the effective date of Act 341 is a permissible request under MCL 460.6t(15). The partial settlement agreement does not attempt to encroach on the Commission's authority to approve or reject an FCM, but rather, does no more than leave this issue to be decided by the Commission. The Commission finds no reason to reject the partial settlement agreement on this basis.

To GLREA's last objection regarding alignment with the purpose and goals of Act 341 and Act 342, the Commission finds GLREA's objection to be vague and untenable. GLREA argues that, with the partial settlement agreement, DTE Electric has continued its adherence to company-owned generation. GLREA's initial settlement brief, pp. 18-21. However, GLREA fails to explain how any specific provision of the partial settlement agreement is sufficiently

⁹ For example, Consumers has voluntarily lifted its DG cap from 1% to 2%. Consumers Energy Company Rate Book, Tariff Sheet C-64.10, C.11.3.B.7. UPPCo has also agreed to lift its cap to not less than 3%. *See*, May 26, 2021 order in Case No. U-20995, p. 4.

contrary to the goals and purpose of Act 341 and Act 342 that the partial settlement agreement is not in the public interest. Rather, GLREA contends that the partial settlement agreement “does not go far enough.” *Id.*, p. 18. However, settlement agreements are inherently the result of negotiations between parties, subject to Commission approval based on the elements articulated above. To reject a settlement agreement merely because it “does not go far enough” would make the perfect the enemy of the good and would effectively jeopardize the ability of parties representing different perspectives to arrive at agreements on constructive approaches to issues in a whole host of cases before the Commission. This the Commission will not do. The Commission is not convinced by GLREA’s argument and therefore, declines to reject the partial settlement agreement on such grounds.

The Commission finds the partial settlement agreement is the culmination of extensive negotiation among the parties, and while the agreement may not satisfy the demand of every party, considered in its entirety, it constitutes a fair and reasonable resolution of this proceeding and is based on substantial evidence on the record. The agreement provides significant public benefits that are outlined above and complies with the statutory requirements of Section 61 as well as the Commission’s guidance for VGP programs issued in the July 12, 2017 order in Case Nos. 18349 *et al.* The Commission finds the partial settlement agreement should be approved.

ii. *Ex Parte* Application

On November 30, 2020, DTE Electric filed an *ex parte* application pursuant to MCL 460.6j, requesting approval of three renewable energy contracts, the Freshwater Solar BTA, the White Tail Solar BTA, and Calhoun County Solar PPA, and the associated transfer prices approved in Case No. U-20484, as well as cost recovery, as needed and assurance that the full costs of the contracts will be recovered through the transfer price, surcharge, or another cost recovery

mechanism. DTE Electric's *ex parte* application, pp. 1-2. In its application, DTE Electric represented the following:

The Freshwater Solar BTA is between DTE Electric and Freshwater Solar Holdings, LLC, which is being developed by Ranger Power LLC. The BTA requires Freshwater Solar Holdings, LLC to design, engineer, construct, install, startup, and test the Freshwater project, at which point it will be purchased by a Tax Equity limited liability company (LLC) in which DTE Electric is majority owner. The Freshwater project will be sited in Montcalm County and is anticipated to provide 200 MW of renewable energy capacity with commercial operation on or before December 31, 2022. The White Tail Solar BTA is between DTE Electric and White Tail Solar Holdings, LLC, which is being developed by Ranger Power, LLC. The BTA requires White Tail Solar Holdings, LLC to design, engineer, construct, install, startup, and test the White Tail project, at which point it will be purchased by a Tax Equity LLC in which DTE Electric is majority owner. The White Tail project will be sited in Washtenaw County and is anticipated to provide 120 MW of renewable energy capacity with commercial operation expected on or before December 31, 2022. The Calhoun County Solar [sic] PPA is between DTE Electric and Calhoun County Solar Project, LLC, a subsidiary of Savion. The PPA requires Calhoun County Solar Project, LLC to design, engineer, construct, install, startup, test and maintain the Calhoun project such that it can sell renewable capacity, energy, ancillary services and RECs to DTE Electric for the 25-year term of the contract. The Calhoun project will be sited in Calhoun County and is anticipated to provide 100 MW of renewable energy capacity with commercial operation on or before December 31, 2022.

Id., pp. 3-4.

DTE Electric explained that these contracts were the result of an RFP conducted in consultation with the Staff and approved by the Commission in the July 9 order. *Id.*, pp. 4-5.

The company asserted that the Freshwater Solar BTA, White Tail Solar BTA, and Calhoun County Solar PPA are all consistent with the company's VGP plan and August 2020 amended REP addressed in the instant consolidated matter. The company then recited the pricing information associated with each contract.

The cost of the Freshwater Contract and associated costs related to development of the Freshwater Solar Park were totaled and are consistent with the August 2020 Amended REP, pending approval by the Commission in Case No. U-20851. The estimated installed cost of \$1,293 per kW for the Freshwater Solar Park is lower than the 2022 installed cost of \$1,340 per kW assumed in MPSC [Michigan

Public Service Commission] Case No. U-20471, DTE Electric's 2019 Integrated Resource Plan. The levelized cost of energy (LCOE) is expected to be \$48-\$51/MWh. The cost of the White Tail Contract and associated costs related to development of the White Tail Solar Park were totaled and are consistent with the costs included the August 2020 Amended REP, pending approval by the Commission in MPSC Case No. U-20851. The estimated installed cost of \$1,321 per kW for the White Tail Solar Park is lower than the 2022 installed cost of \$1,340 per kW assumed in MPSC Case No. U-20471, DTE Electric's 2019 Integrated Resource Plan. The LCOE is expected to be \$51-\$54/MWh. The cost of the Calhoun County Contract was totaled and is consistent with the August 2020 Amended REP, pending approval by the Commission in Case No. U-20851 (consolidated with U-20713). The LCOE is expected to be \$52.46/MWh for the Calhoun County Solar Park, including the financial compensation mechanism. The LCOE of these projects will primarily be recovered from the Company's VGP subscribers, with only unsubscribed portions received via the REP, consistent with Case Nos. U-20713 and U-20851.

Id., pp. 5-6. The company argued that approval will not result in an alteration or amendment to rates or rate schedules because the contracts are consistent with the planned activities, expenses, and revenue recovery mechanisms in the approved portions of DTE Electric's 2018 amended REP, VGP plan, as well as the VGP plan and August 2020 amended REP addressed in the instant consolidated proceeding. Thus, according to the company, *ex parte* review and approval are appropriate.

The Commission has reviewed the *ex parte* application and finds that application should be granted. The Commission finds that approval is consistent with the approval of a financial incentive, as described in this order, and approval of the partial settlement agreement resolving the VGP proceeding in Case No. U-20713 and the August 2020 amended REP in Case No. U-20851, the now consolidated proceeding. The Commission further finds that *ex parte* review and approval are appropriate as doing so will not result in an alteration to rate schedules or an increase in rates. *See*, MCL 460.6a(3).

THEREFORE, IT IS ORDERED that:

A. The partial settlement agreement, attached to this order as Exhibit A, is approved.

B. DTE Electric Company is authorized to apply a financial incentive pursuant to MCL 460.6t(15) to power purchase agreements serving the company's voluntary green pricing program, as described in this order.

C. DTE Electric Company's *ex parte* application requesting approval of a build-transfer agreement with Freshwater Solar Holdings, LLC, a build transfer agreement with White Tail Solar Holdings, LLC, and a power purchase agreement with Calhoun County Solar Project, LLC, is approved.

D. DTE Electric Company shall, within 30 days of the date of this order, file with the Commission tariff sheets reflecting the changes to the voluntary green pricing program tariffs, Rider No. 17 and Rider No. 19, consistent with this order and the partial settlement agreement approved with this order.

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 June 9, 2021.

Lisa Felice, Executive Secretary

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

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

SETTLEMENT AGREEMENT

Pursuant to MCL 24.278 and Rule 431 of the Rules of Practice and Procedure before the Michigan Public Service Commission (“MPSC” of the “Commission”), the undersigned parties agree as follows:

WHEREAS on August 31, 2020 DTE Electric Company (“DTE Electric” or the “Company”) filed its Application for Approval of its biennial voluntary green pricing (“VGP”) review pursuant to MCL 460.1061, supported by testimony and exhibits.

WHEREAS on August 31, 2020 DTE Electric filed its Ex Parte Application to Amend its Renewable Energy Plan (“REP”) supported by affidavits.

WHEREAS on October 27, 2020 the cases were consolidated.

WHEREAS on November 30, 2020, DTE Electric filed an Ex Parte Application for Approval of the Freshwater Solar Build-Transfer Agreement, White Tail Solar Build-Transfer

Agreement (“BTAs”), and Calhoun County Solar Power Purchase Agreement (“PPA”) supported by affidavits.

WHEREAS, the initial prehearing conference in this proceeding was held on October 27, 2020 before Administrative Law Judge Martin D. Snider. A second prehearing conference was held in the consolidated proceedings on December 17, 2020. The parties to the case are DTE Electric, the Commission Staff (“Staff”), the City of Ann Arbor (“Ann Arbor”), Michigan Municipal Association for Utility Issues, Energy Michigan Inc., Advanced Energy Economy, Institute for Energy Innovation, Michigan Energy Innovation Business Council, Association of Businesses Advocating Tariff Equity, Soulardarity, The Ecology Center, Vote Solar, Environmental Law & Policy Center, Michigan Environmental Council, Natural Resources Defense Council, Pine Gate Renewables LLC, and Great Lakes Renewable Energy Association (“GLREA”).

WHEREAS DTE Electric filed testimony, affidavits, and exhibits requesting approval of its voluntary green pricing (“VGP”) MIGreenPower program, conversion of its Large Customer MIGreenPower Pilot from a pilot to a program, certain revisions to its Rider 17 and Rider 19 tariffs, approval of its VGP build plan, approval of tax equity as a possible form for transactions and corresponding accounting treatment, a financial compensation mechanism, amendment of its approved REP to incorporate its VGP build plan, approval of the Freshwater Solar BTA, White Tail Solar BTA and Calhoun County Solar PPA, and seeking various other forms of relief, and the MPSC Staff and intervening parties filed testimony and exhibits addressing various issues.

NOW THEREFORE, for purposes of settlement of Case No. U-20713 and Case No. U-20851, the undersigned Parties agree as follows:

1. The settlement will be a full settlement of Case No. U-20851 and partial settlement of Case No. U-20713; this agreement does not address the financial compensation mechanism (“FCM”), and the Commission will be asked to decide whether to grant DTE Electric’s requested FCM following briefing on that topic only by the Parties.
2. The Parties agree on the following VGP build plan:¹ 2022: 420 MW; 2023: 62 MW to 162 MW (including small scale solar procurement); 2024: 183 MW to 623 MW;² and 2025: 132 MW. These amounts are as proposed in DTE Electric’s Application for Approval of its biennial voluntary green pricing review except where otherwise specifically noted in this Agreement.
3. DTE Electric will include an updated sales forecast in the second quarter and fourth quarter filings of its semi-annual VGP report. The report will include data related to the weighted average contract length and current total MW subscribed. DTE Electric will also make the subscribed MW by forecast year available for Staff review.
4. Tax equity financing is an allowable utility financing structure available as an option for all future BTAs and self-developed projects including those currently submitted for review in U-20851, as proposed in the Company’s Applications including relevant accounting treatment, with the following clarifications:
 - 4.1. Tax equity partners will not be DTE affiliates;

¹ The build plan does not include customer-requested projects with the exception of the Ann Arbor landfill solar project discussed below in section 9.1.3.2. DTE Electric does not need to adjust the current build plan to accommodate this project.

² The increase of 440 MW from what DTE Electric requested in its Application is dependent upon execution of a contract with Ann Arbor for a 440 MW customer-requested project. DTE Electric commits to work with Ann Arbor to maximize tax credits for the proposed landfill solar project, and also to explore maximizing tax credits for the build plan set forth in section 2, through various start-of-construction methodologies.

- 4.2.** When ranking request for proposal (“RFP”) bids, any tax equity costs will be added to BTA bids and DTE Electric self-developed projects so that the bid amount used for comparison with PPAs is an all-in number; and
- 4.3.** In its annual REP reconciliation cases, DTE Electric will include an updated analysis, comparable to DTE Electric’s Exhibit A-44 filed in this proceeding, demonstrating the expected total cost of the Freshwater Solar Build-Transfer and White Tail Solar Build-Transfer using tax equity financing compared with other short listed projects with CODs in the same year responsive to DTE Electric’s 2019 RFP for VGP projects (see Exhibit A-6 filed in this proceeding). If additional VGP projects used to meet DTE Electric’s build plan as filed in this case will be financed using a tax equity structure DTE Electric will include similar analyses and comparisons in its annual REP reconciliation cases demonstrating the expected total cost of the project(s) using tax equity financing compared with other short listed projects with CODs in the same year responsive to DTE Electric’s relevant RFPs for VGP projects. The updated analyses described herein are limited to one post-contracting analysis for each project after all the terms are set.
- 5.** The Parties agree that the REP will be amended as proposed in DTE Electric’s application in U-20851, except the recovery of all costs associated with the REP (including the costs of unsubscribed VGP resources included in the REP) will be consistent and comply with the relevant provisions of 2008 PA 295 (MCL 460.1001 et seq). No REP costs recovered through the power supply cost recovery (“PSCR”) factor will exceed the relevant Transfer Price applicable to each REP resource. All costs in excess of the relevant Transfer Price associated with those REP resources will be recovered by drawing down the Company’s REP regulatory liability. In the event that drawing down the Company’s REP regulatory liability exhausts that

regulatory liability, the Company will not be required to institute a surcharge unless the regulatory asset is projected to continue for more than 12 months. In the event the regulatory liability is exhausted and DTE Electric's regulatory asset is projected to continue for less than 12 months, DTE Electric will immediately notify the Commission per MCL 460.1047(4), and DTE Electric will not collect any costs in excess of the relevant Transfer Price associated with its unsubscribed VGP and REP resources through its PSCR factor or any other retail rate charge and will instead maintain an accounting of said costs until it acquires a REP regulatory liability from which to draw those costs, or otherwise elects or is required to institute a REP surcharge. Parties reserve their rights to further address unsubscribed VGP and REP cost recovery in future proceedings.

6. The Parties agree that the Commission should approve the White Tail Solar BTA, Freshwater Solar BTA, and Calhoun County Solar PPA Contracts, as proposed in the ex parte application filed in docket U-20851.

7. DTE Electric's Rider 17, as proposed in its application and modified below, including the new fixed-price offering and all tariff sheet amendments, meets the requirements of MCL 460.1061.

The following modifications are made to DTE Electric's Rider 17 program:

7.1. DTE Electric will revise its proposed MIGreenPower Low-Income Donation Pilot to allow donations from DTE customers and non-DTE customers, not just Rider 17 subscribers.

7.2. Going forward, Rider 17 and Rider 19 programs will not have separate projects; the Rider 17 and Rider 19 programs will be supported by the same pool of combined VGP projects.

Doing this will eliminate the need for the wind-only and solar-only products. The project merger will occur as follows:

- 7.2.1. Pinnebog wind park and the Lapeer and O’Shea solar parks (72.65 MW) will move out of Rider 17 and into the REP as compliance projects. Assembly solar park PPA (79 MW), planned originally as a compliance project, will move to the VGP, and DTE Electric will not seek an FCM on Assembly.
- 7.2.2. Energy and capacity credit methodology will be based upon a version of the current Rider 19 credit structure and will take into account existing contractual obligations to Rider 19 customers. DTE Electric will work with Staff to finalize energy and capacity credit calculations.
- 7.2.3. Customers seeking to enroll 2,500 MWh or greater on an annual basis will be required to sign at least a five-year contract. Customers seeking to enroll less than 2,500 MWh annually must participate in a month-to-month subscription.
- 7.2.4. DTE Electric expects that changes will be effective by the second quarter of 2022.
- 8.** DTE Electric’s Rider 19, as proposed in its application and as modified in section 7.2 above, including the Flexible Pre-Payment Option, use of net premium as the evaluation basis for cost-averaging new renewable energy projects into the program, and all tariff sheet amendments, meets the requirements of MCL 460.1061.
- 8.1.1. DTE Electric will work with Staff and intervenors on potential incentives for customers to enter into contracts that are 10 years or longer.
- 8.1.1.1. DTE Electric commits to filing an ex parte tariff amendment to amend the Rider 19 tariff to add these incentives if the parties have reached agreement on them within six months of a Commission order approving the settlement agreement.

9. DTE Electric will include a Customer-Requested offering in its VGP program according to the following terms:

9.1. Ahead-of-meter customer-requested offering:

9.1.1. These will be individual special contracts, included in the VGP and in the REP, and these contracts will be brought before the Commission on an ex parte basis along with ex parte amendment of the REP to add the contracts. These projects may be customer sited.

9.1.2. The projects associated with customer-requested projects shall utilize a specialized competitive bidding process for all contracts above \$100,000 other than a contract with the anchor tenant. The details of the competitive process will be agreed upon with the customer and will incorporate any competitive bidding rules specific to the customer. Competitive bidding for customer-requested projects remains subject to Commission Staff audit.

9.1.3. DTE Electric will offer an Anchor Tenant Pilot as part of the ahead-of-meter customer-requested offering. Any Anchor Tenant Community Solar offering within the pilot with a project of more than 1 MW will be implemented as either its own tariff sheet or a separate pricing tranche within MIGreenPower by amending the Rider 17/19 tariffs to include the pilot, allowing easy participation by any DTE Electric customer.

9.1.3.1. These special contracts will be brought before the Commission on an ex parte basis along with ex parte amendment of the REP to add the contracts. These projects may be customer sited.

9.1.3.2. DTE Electric and Ann Arbor commit to work together on a potential landfill solar project according to the terms of the contemporaneously executed Memorandum of Understanding between DTE Electric and Ann Arbor.

9.1.3.3. The intent is that the Ann Arbor landfill solar project will be such a project and will be a DTE-owned asset. Both DTE Electric and Ann Arbor commit to work in good faith to implement the Anchor Tenant Pilot for the landfill solar project (24 MW) with the goal of ensuring the project would be eligible for the 26% ITC (i.e., would need to begin construction before the end of 2022).

9.1.3.4. Anchor Tenant Community Solar pilot:

9.1.3.4.1. In this offering, there will be a levelized subscription fee and corresponding Rider 19-based credit that is reflective of the benefits of the project, calculated as set out under section 7.2.2.

9.1.3.4.2. The Anchor Tenant will be a “subscriber of last resort.” A “subscriber of last resort” is a party who agrees, in the Special Contract, to bear all costs and receive all benefits (including RECs and credits) for the portions of the project for which there is not another participant during the life of the project.

9.1.3.4.3. An Anchor Tenant is required to meet certain criteria, including but not limited to: 1) being credit-worthy; and 2) signing a long-term contract with acceptable terms for the life of the asset with a termination clause. Before entering into a contract with a potential Anchor Tenant, DTE Electric shall consult with Staff.

- 9.1.3.4.4. MWhs from the project could be subscribed to by other participants (through DTE Electric), which would proportionately displace Anchor Tenant subscription costs and associated credits and RECs for the amount of MWh subscribed. If subscription terminates, anchor tenant's responsibility for those MWhs resumes.
- 9.1.3.5. The pilot will not require special contracts be executed by any participant other than the Anchor Tenant. However, participants enrolling at 2,500 MWh annually may be required to sign a traditional MIGreenPower contract with DTE Electric.
- 9.1.3.5.1. DTE Electric will work with the pilot anchor tenant and Staff to develop a low-income option within the program that can be implemented while minimizing IT costs. DTE Electric will work with Staff for the appropriate cost recovery of any IT costs.
- 9.1.3.6. DTE Electric will hold at least one information session prior to filing an ex parte application for a customer-requested project. If the project has an anchor tenant, the Anchor Tenant shall be consulted prior to scheduling any meeting regarding the project to ensure the Anchor Tenant is able to attend.
- 9.1.3.7. Any marketing materials for the program must be approved for legal compliance by both DTE Electric and the Anchor Tenant prior to use.
- 9.1.3.8. DTE Electric will not be doing any specific marketing for the anchor tenant project; the Anchor Tenant would have full responsibility for that specific activity subject to DTE Electric's review and approval for legal compliance. DTE Electric will, however, make subscription to the Anchor Tenant's project

an option available for customers to select when choosing VGP options on DTE's web site.

9.2. Behind-the-meter customer-sited offering:

9.2.1. For the Ann Arbor landfill solar pilot only, Ann Arbor may offset on-site electricity use from the project assuming it is connected behind the meter.

9.2.2. DTE Electric will wait for the conclusion of the MPSC MI Power Grid New Technologies and Business Models collaborative and may address behind-the-meter customer-sited offerings in a future regulatory proceeding thereafter.

10. DTE Electric will conduct a Low-Income Solar Pilot as follows:

10.1. DTE Electric will use reasonable efforts to construct and launch three projects with commercial operation dates in 2022 thru 2024. DTE Electric will target one project per year. DTE Electric's commitment depends upon the availability of suitable projects that meet minimum requirements.

10.2. The pilot will focus on delivering benefits to low-income customers and low-income communities. Low-income is defined as persons who are at or below 200% of the federal poverty level.

10.3. During 2023 and 2024, DTE Electric will analyze the data and will file a case with the MPSC no later than the first quarter of 2025 in which DTE Electric will propose either termination of the pilot, commencement of a low-income solar program, or continuation of the pilot on different terms.

10.4. Pilot Terms:

10.4.1. The pilot projects will be constructed in Detroit, River Rouge, and Highland Park.

10.4.2. The pilot projects will be a minimum of 250 kW per project.

10.4.3. DTE Electric will form a Low-Income Solar Council according to the terms of the contemporaneously executed Memorandum of Understanding amongst the interested parties.

10.4.4. Project funding

10.4.4.1. DTE Electric will agree to provide 30% of the upfront capital funding for one project per year of the pilot, 2022-2024, up to \$300,000 per project, for a total of \$900,000. DTE Electric will not earn a return of or on this investment. DTE Electric's investment must be used to fund the engineering, procurement, and construction of a solar array.

10.4.4.2. Voluntary contributions made via the MIGreenPower Low-Income Donation Pilot (see 7.1 above), up to 25% of total contributions, can be routed to fund subscriptions to locally sited arrays in communities of need. These voluntary contributions may only be used to fund the engineering, procurement, and construction of a solar array as well as the ongoing operation, maintenance, and any other cost incurred by DTE Electric required for the projects.

10.4.4.3. The remainder of the required funds will come from direct donations, grants, or other sources of funding that do not include any form of ratepayer subsidization of the projects.

10.4.4.4. Costs for feasibility or interconnection studies will be paid by project dollars collected as set forth in 10.4.4.2-10.4.4.3. DTE Electric will charge no more than its actual costs for any such necessary studies.

10.4.4.5. DTE Electric will work with the Staff on the treatment of costs associated with upfront IT/billing requirements.

10.4.5. DTE Electric will own the three pilot projects. Other ownership models will be considered for future projects after conclusion of the pilot.

10.4.6. DTE Electric will conduct RFPs on the same terms as applied to customer-sited projects, and DTE Electric will meet with the three pilot cities to make sure that local RFP requirements are met if the cities will be providing any funding.

10.4.6.1. DTE Electric will be responsible for final selection of the winning bid and will oversee construction.

10.4.7. Bill credits

10.4.7.1. Credits to low-income participants in the projects will be calculated based upon LMP and PRA, reflecting the same general terms as the new Rider 17/Rider 19 credit mechanism, which DTE Electric anticipates would result in a \$25-\$30 credit on each monthly bill.

10.4.7.2. For the first project, no additional benefit will be available.

10.4.7.3. For the second project, participants will be required to agree to participate in a free energy assessment. With this agreement, customers will receive a monthly participation benefit, the additional benefit will be funded from donation dollars.

10.4.7.3.1. DTE Electric will work with the council to determine the appropriate amount of the benefit given the amount of donations received, so long as addition of the monthly participation benefit does not cause the total of the credit and benefit to exceed 80% of the customer's bill.

10.4.7.3.2. The volumetric LMP + PRA credit will not change even if it alone exceeds the 80%.

10.4.7.4. For the third project, participants will be required to agree to receive and to install a free energy data device and install the free DTE Insight App. With this agreement, customers will receive a monthly participation benefit, and the additional benefit will be funded from donation dollars.

10.4.7.4.1. DTE Electric will work with the council to determine the appropriate amount of the benefit given the amount of donations received, so long as addition of the monthly participation benefit does not cause the total of the credit and benefit to exceed 80% of the customer's bill.

10.4.7.4.2. The volumetric LMP + PRA credit will not change even if it alone exceeds the 80%.

10.4.7.5. DTE Electric will consider other market-based credit valuation models for inclusion in future projects after the conclusion of this pilot.

10.4.8. DTE Electric will be responsible for subscribing participants to the project and providing on-bill credits.

10.4.9. It is intended that low-income individuals, once subscribed, may remain subscribed even if they move and transfer their service to another address, so long as they do not move out of the city and they remain low-income.

11. RFP Methodology for upcoming VGP build plan:

11.1. DTE Electric will arrange all VGP resources, including utility self-build projects, procured through 2025 as a result of approvals in Case No. U-20851, through competitive procurement.

11.1.1. Bidding processes may be tailored based on the specific energy resource purpose or need.

11.1.2. Customer-requested projects shall be competitively bid according to the process set forth in section 9.

11.1.3. The small-scale solar procurement will not be governed by these terms, but rather by the terms set forth below in section 12.

11.2. DTE Electric commits to open, non-discriminatory treatment of resources:

11.2.1. DTE Electric will conduct an open, non-discriminatory procurement process that fairly considers different ownership structures, VGP qualifying resource types, sizes/capacities, and locations with transparency on how they will be evaluated (see minimum requirements below).

11.2.2. Bidding will be open to all VGP qualifying resources and solutions that can meet relevant system and program needs (e.g., fuel source, Renewable Energy Credits (RECs), etc.)

11.2.3. DTE Electric will not set a minimum project size threshold.

11.3. DTE Electric will provide the minimum RFP requirements and specification of evaluation criteria:

11.3.1. The RFP will set forth minimum eligibility requirements for bidders and resources.

11.3.2. Price and non-price factors and weighting to be used for project selection (RFP to include scoring sheets with applicable weighting of evaluation factors). Price factors should include energy, capacity, RECs, and interconnection costs to include reimbursable and non-reimbursable expenses. Non-price factors may include

consideration of bonus factors like ancillary environmental and community benefits (brownfield redevelopment, pollinator habitat, local jobs, etc.)

11.3.2.1. Each non-price factor and its criteria, value, score, quantification, relative importance, or weighting must be, to the extent possible, standardized, determined, and clearly specified, defined, and explained before bidding begins such that respondents to a request for proposal (RFP) are advised of the criteria on which their bids will be evaluated.

11.3.2.2. If DTE Electric utilizes non-price factors beyond those intended to measure safety and quality, project management abilities, creditworthiness, financial strength, and experience of a developer or the feasibility and technological quality of a project, or similar, the utility will designate these factors as bonus factors. In the RFP documents, the utility must describe in detail how each non-price bonus factor provides an observable or identifiable ratepayer benefit. In the absence of such description the applicable non-price factor may not be used in evaluating and selecting competitive solicitation responses.

11.3.3. Pro forma PPA and BTA contracts with terms and conditions.

11.3.4. As applicable, identify the parameters for inclusion of any financial compensation mechanism approved by the Commission prior to issuance of RFP, terminal value analysis or any other adjustment factor for all projects.

11.3.4.1. DTE Electric will notify participants that it will conduct a terminal value analysis unless the developer submits a bid for a for a 35-year PPA.

11.3.4.2. DTE Electric will calculate terminal value for each project using the simple average of the following items:

11.3.4.2.1. At least three forward curves estimating MISO market clearing prices for energy and capacity from third-party market sources that are publicly available,

11.3.4.2.2. A NREL (or similar publicly available 3rd party source) renewables replacement value calculation, and

11.3.4.2.3. The LCOE price of the project bid in the RFP (similar to Colorado Annuity method).

11.3.4.3. DTE Electric will provide developers with the terminal value calculations for 11.3.4.2.1 and 11.3.4.2.2 with the RFP materials.

11.3.5. As applicable, assumptions for federal tax credit treatment for all projects (i.e. ITC eligibility and amount);

11.3.6. To the degree practical, the terms and conditions for PPA bids should mirror those for BTA contracts or utility self-build projects.

11.3.7. The RFP and PPA will not include terms and conditions which would violate code of conduct rules against undue discrimination in favor the utility's or its affiliate's competing projects.

11.4. Oversight and independence of bidding process:

11.4.1. DTE employees and affiliates who have responsibility for bidding projects will be held separate from the group who will be involved in designing the RFP, conducting the RFP and evaluating the bids, and bidder information will not be shared with those employees or affiliates.

- 11.4.2. DTE Electric will host a pre-RFP meeting with Staff to lay out the timeline associated with each solicitation and provide Staff an opportunity to review and comment on RFPs prior to public release.
- 11.4.3. DTE Electric shall provide Staff access to all proposals, score sheets, justification for deviations from scoring, and any other information necessary for Staff to audit the process.
- 11.4.4. DTE Electric will use an independent third-party evaluator to oversee the competitive solicitation process if utility self-build or affiliate project bids or proposals will be considered for the utility's competitive solicitation.
- 11.4.5. If utility self-build or affiliate project bids or proposals will not be considered and an evaluator is not utilized, DTE Electric will adhere to the Commission's December 12, 2008 Order in Case No. U-18500, Attachment D, *Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy*, in particular Section 4 titled "Each Provider shall develop a bid evaluation methodology in consultation with the Commission Staff to evaluate proposals received"
- 11.4.6. When an independent third-party evaluator is used, the following shall apply:
- 11.4.6.1. Consistent with the oversight principles set out in *Allegheny Energy Supply Co, LLC*, 108 FERC 61082 (2004), the independent evaluator will (1) work with DTE Electric to design the solicitation, (2) oversee administration of the bidding, and (3) evaluate bids for minimum qualifications as described in the RFP documents, prior to DTE Electric's selection.
- 11.4.6.2. DTE Electric shall arrange a post-RFP meeting between Staff and the independent evaluator in which the selection process is detailed.

11.4.6.3. DTE Electric will provide access to all information for the independent evaluator to effectively carry out its roles and responsibilities.

11.4.6.4. Independent evaluator will be available and responsive to Staff throughout the process.

11.4.6.5. The independent evaluator will oversee DTE Electric's assessment and scoring of the proposals to ensure it complies with selection criteria described in Section 3 - "Minimum RFP requirements and specification of evaluation criteria."

11.4.6.6. Should DTE Electric deviate from the prespecified minimum RFP requirements and specifications of evaluation criteria it shall state the reason(s) for the deviation.

11.4.7. At the completion of the competitive solicitation the independent evaluator will deliver to the Commission a report that summarizes the solicitation process to include the level of DTE Electric's adherence to the RFP pre-specifications, and any exceptions to the pre-specifications.

11.5. DTE Electric will comply with the Code of conduct:

11.5.1. All code of conduct rules shall be followed. DTE Electric shall document compliance with the Code of Conduct for any award to an affiliate and shall include such documentation when it files for approval.

11.5.2. RFP clearing price shall be used to determine "market price" in affiliate transactions for resource supply pursuant to MPSC code of conduct rules.

11.6. MPSC Staff and stakeholder involvement:

11.6.1. Prior to conducting an RFP, DTE Electric will work with Staff and stakeholders as follows:

11.6.1.1. At least 45 days before the competitive solicitation is issued DTE Electric will conduct pre-RFP conference in which it will present draft solicitation documents (including an explanation of each non-price factor to be considered as well as its definition, criteria, value, score, quantification, relative importance, or weighting) and allow developers, Staff and stakeholder to ask questions of the utility and provide comments or suggested edits to the solicitation documents. DTE Electric will consider refinements to the RFP suggested by Staff and stakeholders.

11.6.2. DTE Electric will consider refinements to the bidding processes over time based on feedback from bidders, the Commission, and stakeholders

12. DTE Electric Small-Scale Solar Procurement:

12.1. DTE Electric will solicit 100 MWac of small-scale solar (less than 25 MWac and greater than 550kWac) build-transfer projects and will acquire projects that meet the guidelines set forth below.

12.2. Participation in the procurement will be limited to projects with a pending interconnection application as of the date the Commission approves the settlement agreement. No projects by DTE or its affiliates may participate.

12.3. Small-Scale Solar Procurement Process:

12.3.1. Within 30 days following Commission approval of the settlement agreement, DTE Electric will send non-disclosure agreements to all developers with a pending interconnection application for a project of appropriate size.

12.3.2. Within 65 days following Commission approval of the settlement agreement, DTE Electric will conduct an informal developer meeting, which may be attended by any developer who has executed a non-disclosure agreement.

12.3.2.1. Five (5) days before the informal developer meeting, DTE Electric will provide the following information to all developers who have executed a non-disclosure agreement:

12.3.2.1.1. Maximum possible price for BTAs is equal to the highest bid selected in the Fall 2019 RFP, which was \$53 per MWh, plus an additional \$1 per MWh for network upgrade costs, for a total maximum MWh price of \$54.

12.3.2.1.2. LCOE plug-in model for developers to use in calculating bids, which will at a minimum include a confidential portion that applies DTE Electric's estimated tax equity benefits (net of tax equity costs) and O&M assumptions.

12.3.2.1.3. Standard contract.

12.3.2.1.4. Prequalification requirements.

12.3.2.1.5. Competitive bid details, including bid evaluation criteria.

12.3.2.1.6. Batch-study costs.

12.3.2.1.7. Technical specifications and standard of work requirements.

12.3.3. Following the informal developer meeting, developers will have 30 days to provide prequalification documentation in Power Advocate.

12.3.4. Following the informal developer meeting, developers will have 30 days to update their applications in Powerclerk under the developer's existing DE number. Project

changes will be limited to updating equipment information (e.g., change in inverter models).

12.3.4.1. Existing applications will all be updated to the current Interconnection application form, which will retain data that was previously entered where form fields have not changed, but will also require some new information to conform to the requirements for any new application submitted.

12.3.4.2. All developers who want to have their projects included in this small-scale solar procurement process will have to check a box on their applications indicating they want to proceed in this process.

12.3.5. Following the application update period, DTE Electric will conduct an initial review over the next 45 days, which will include review of updated applications choosing to participate and prequalification documents. Developers will be given one opportunity to cure any defects identified by DTE Electric and answer any questions DTE Electric may have within 5 days of notification via email. This may but need not include individual meetings (virtual) with developers at DTE Electric's request.

12.3.5.1. If there are more than 100 projects, DTE Electric will have an additional 15 days for each 50 additional projects.

12.3.6. Following the initial review, DTE Electric will provide each developer that indicated it wanted to proceed in this process, and who met all prequalification requirements, with a high-level estimate of minimum interconnection costs for each developer/project via email. This may but need not include meetings (virtual) with developers at DTE Electric's request.

12.3.7. Following communication of high-level minimum interconnection cost estimates, the developers will have 21 days to make further changes to their applications, which will be limited to the following:

12.3.7.1. Developer may reduce the size of the proposed project; and

12.3.7.2. Developer may respond to any option provided by DTE Electric in the high-level estimate.

12.3.8. Bids, in the form of the completed LCOE plug-in model, will be due immediately following the 21-day change period. Bids should include all project costs except interconnection and network costs.

12.3.9. Following submission of bids, DTE Electric will identify its short list and notify bidders of the results within 14 days. During this period DTE Electric may, but is not required to, reach out to any developer if DTE Electric has a question regarding any of the developer's LCOE inputs.

12.3.10. DTE Electric will shortlist 150 MWac-200 MWac to allow for projects that may drop out during the study period. If more than 50MWac drop out during the study process or exceed the price cap once costs are known, DTE Electric will not include additional projects that were not included in the study process.

12.3.11. Payment of the study fee is due within 14 days of short list notification.

12.3.12. DTE Electric will begin the batch study 15 days after announcing the results of the bid selection and will include short listed projects that have paid the study fee.

12.3.12.1. Sixty³ (60) business days into the study, DTE Electric will provide preliminary information regarding any grid impacts identified during the study, interactions with other projects, and the likelihood of substantial upgrades.

12.3.12.1.1. Developers will have 14 business days to determine whether they wish to withdraw from the study. A developer who withdraws from the study will be refunded 30% of the study fee paid.

12.3.12.1.2. If the study has identified non-interconnection costs that are the developer's responsibility, the developer may update its LCOE plug-in model and resubmit to DTE Electric within the 14-day withdrawal period.

12.3.12.2. The study will be completed within 134 business days, after which DTE Electric will provide a redacted Final Study Report and Network Costs within 14 days. If the number of projects exceeds 50, then 30 days will be added to the timeline for each additional 50 projects, with 15 additional days added to each study period.

12.3.12.3. If a project triggers an affected system study (ITC/MISO), the project will be removed from this process if ITC/MISO determines the project has to go through the MISP Definitive Planning Phase (DPP) or if the affected system indicates there is a study required that will exceed 30 days.

12.3.12.4. Network Costs will be allocated as proposed by Staff in the new rules. DTE Electric will provide allocated and potential total costs.

³ Presumes 50 projects. If the number of projects exceeds 50, then 15 days will be added for each additional 50 projects.

12.3.13. In order to comply with existing interconnection rules, DTE Electric will provide all projects with construction agreements for interconnection costs within 14 days after providing the study results. Provision of a construction contract does not indicate a winning bid, but rather acknowledges that a developer may wish to develop its project even if it does not receive a contract via this procurement process.

12.3.14. DTE Electric will rank the projects on the basis of LCOE incorporating study estimated interconnection cost, network costs and bid price on a per MW basis and announce winning bids within 14 days.

12.3.14.1. In the case of a tie, equal bids will be selected in the order of application date, with the earliest application dates being selected first for the purpose of breaking any ties.

12.3.15. Following announcement of winning bids, DTE Electric will work with winning developers to get contracts signed and any necessary additional documents completed so DTE Electric may submit the executed contracts for approval to the Commission, ex parte.

12.4. The MPSC Staff will be provided access to all information related to the small-scale solar procurement process, including access to the confidential portion of the LCOE plug-in model.

13. DTE Electric will participate in a Carbon Offset and Reduction Work Group, wherein DTE Electric commits to work with Ann Arbor, MI-MAUI, Staff and other interested stakeholders to evaluate potential carbon offset and reduction products, including for example Virtual Power Reduction, with the goal of proposing such products in the Voluntary Green Power filing in 2022.

- 14.** DTE Electric will report on its pilots approved in this case as follows: In the February 8, 2021 Order in Case No. U-20645, the Commission provided guidance to utilities relative to criteria that will be used to evaluate proposed pilots submitted to the Commission for funding approval. DTE Electric commits to reporting in this docket consistent with the Commission's guidance for the pilots included in this settlement for which ratepayer funding is requested, and also for the low-income solar pilot.
- 15.** This Settlement Agreement is entered into for the sole and express purpose of reaching a compromise among the parties. All offers of settlement and discussions relating to this settlement are, and shall be considered, privileged under MRE 408. If the Commission approves this Settlement Agreement without modification, neither the parties to this Settlement Agreement nor the Commission shall make any reference to, or use, this Settlement Agreement or the order approving it, as a reason, authority, rationale, or example for taking any action or position or making any subsequent decision in any other case or proceeding; provided, however, such references may be made to enforce or implement the provisions of this Settlement Agreement and the order approving it.
- 16.** This Settlement Agreement is based on the facts and circumstances of this case and is intended as the final disposition of all issues in Commission Case No. U-20851 and all issues other than DTE Electric's financial compensation mechanism request before the Commission in Case No. U-20713. So long as the Commission approves this Settlement Agreement without any modification, the parties agree not to appeal, challenge, or otherwise contest the Commission order approving this Settlement Agreement. The Parties agree and understand that this Settlement Agreement does not limit any party's right to take new and/or different positions on similar issues in other administrative proceedings, or related appeals.


17. This Settlement is not severable. Each provision of the Settlement Agreement is dependent upon all other provisions of this Settlement Agreement. Failure to comply with any provision of this Settlement Agreement constitutes failure to comply with the entire Settlement Agreement. If the Commission rejects or modifies this Settlement Agreement or any provision of the Settlement Agreement, this Settlement Agreement shall be deemed to be withdrawn, shall not constitute any part of the record in this proceeding or be used for any other purpose, and shall be without prejudice to the pre-negotiation positions of the parties.
18. The parties agree that the approval of this Settlement Agreement by the Commission would be reasonable and in the public interest.
19. The parties agree to waive Section 81 of the Administrative Procedures Act of 1969 (MCL 24.281), as it applies to the issues resolved in this Settlement Agreement, if the Commission approves this Settlement Agreement without modification.
20. This Settlement Agreement may be executed in any number of counterparts and by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but such counterparts together shall constitute one and the same instrument.

WHEREFORE, the undersigned parties respectfully request that the Commission approve this Settlement Agreement on an expeditious basis and make it effective in accordance with its terms by final order.

**MICHIGAN PUBLIC SERVICE
COMMISSION STAFF**

By: _____
 Amit T. Singh(P75492)
 Assistant Attorney General
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 Dated: April __, 2021

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PROOF OF SERVICE

STATE OF MICHIGAN)

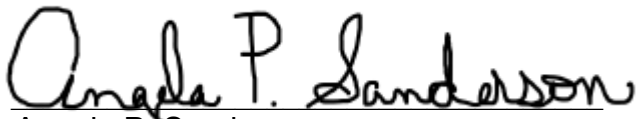
Case No. U-20713 *et al.*

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on June 9, 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 9th day of June 2021.



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

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Phil Forner