

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of ) <b>Dale Klein</b> against ) <u>DTE Electric Company.</u> )	Case No. U-20657
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**NOTICE OF PROPOSAL FOR DECISION**


The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 18, 2020.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before April 8, 2020, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 22, 2020.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

**Kandra K.  
Robbins**

 Digitally signed by Kandra K. Robbins  
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Date: 2020.03.18 12:27:09 -04'00'

March 18, 2020  
Lansing, Michigan

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Kandra K. Robbins  
Administrative Law Judge

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of	)	
<b>Dale Klein</b> against	)	Case No. U-20657
<u>DTE Electric Company.</u>	)	

**PROPOSAL FOR DECISION**

I.

**PROCEDURAL HISTORY**

On October 25, 2019, Dale Klein (Complainant) filed a formal complaint with the Michigan Public Service Commission alleging violations of MCL 460.1183 or tariff provision by DTE Electric Company (DTE). On October 25, 2019, the Commission's Regulatory Affairs Division determined that the formal complaint set forth a prima facie case as required by Rule 442 of the Rules of Practice and Procedure before the Commission, Mich Admin Code, R 792.10442.

An evidentiary hearing was scheduled for January 16, 2020. On December 12, 2019, Nicholas Q. Taylor, Assistant Attorney General, filed an appearance on behalf of Commission Staff. On January 8, 2020, Attorney David S. Maquera filed DTE's answer and affirmative defenses to the formal complaint.

An evidentiary hearing in the matter was convened on January 16, 2020. Mr. Klein appeared on his own behalf, Mr. Maquera appeared on behalf of DTE, and Assistant Attorney General Taylor appeared on behalf of Commission staff.

## II.

### OVERVIEW OF THE RECORD

The evidentiary record consists of one transcript of 33 pages and 8 exhibits submitted by DTE. This section reviews the pleadings and the evidentiary record.

#### **A. Complaint**

Mr. Klein's complaint consists of 3 pages with 4 attachments<sup>1</sup>. Mr. Klein states that he is a residential electric customer of DTE. He contends that in May 2011, he executed a contract with DTE as a participant in the *SolarCurrents* Customer-owned Solar Pilot Program. The *SolarCurrents* Contract has an effective date of June 8, 2011<sup>2</sup>.

Mr. Klein states that the Contract has a term of 20 years obligating him to deliver renewable energy credits (RECs) to DTE and DTE to provide REC payments and compensation for excess energy via net metering under Rider 16 as amended.

Mr. Klein contends that DTE has stated its intention to transition him from net metering compensation under Rider 16 to the inflow-outflow payment method under distributed generation Rider 18 in June 2021, 10 years before the term of the Contract ends.

Mr. Klein indicates that DTE has informed him that the 20-year contract term does not apply to payment for excess energy and indicates its desire to treat *SolarCurrents* Contract holders as regular month-to-month net metered customers who may now elect up to 10 year grandfathering under net metering since enrollment, pursuant MCL 460.1183.

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<sup>1</sup> Attachment A is the executed contract agreement; Attachment B is a net metering customer letter; Attachment C is a DTE Distributed Generation FAQs; Attachment D contains excerpts from the Michigan Compiled Laws.

<sup>2</sup> Complaint Attachment A

## B. Answer

DTE agrees that it entered into a SolarCurrents Contract with Mr. Klein in which DTE agreed to purchase RECs from Mr. Klein for a term of 20 years. However, DTE contends that it is not required to compensate Mr. Klein for excess energy, as defined in paragraph 5 of the contract. Specifically, DTE asserts that paragraph 5 of the contract states that “Customer will receive compensation for Excess Energy generated by the solar photovoltaic (PV) system as set forth in the Detroit Edison’s Standard Contract Rider No. 16 Tariff (referred to herein as “Net Metering”) on file with the MPSC *as modified from time to time.*” (Emphasis added).

Rider No. 16 Tariff provides in pertinent part:

### CONTRACT TERM:

Customers who enroll shall be eligible to participate for a single continuous period up to 10 years. A customer may discontinue taking service under this rider at any time. The Company may terminate service under this rider to Customers with an aggregated capacity greater than 20 KW if it can be established that the facility has not produced energy for a continuous period exceeding eleven (11) billing months. The Company may terminate a customer’s service under this rider if the Customer fails to satisfy the eligibility requirements or the terms of the Interconnection and Parallel Operating Agreement. A customer that elects to discontinue taking service under this rider or whose net metering service is terminated for any reason and subsequently wishes to reenroll must reapply as a new customer subject to program size limitations and outstanding applications.

In addition, DTE states that the Legislature recently enacted 2016 PA 342, which states in pertinent part:

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

Thus, DTE maintains that based on the Contract provisions, Rider 16, and applicable law, Complainant’s opportunity to receive compensation for excess energy at

the rate under Rider 16 is limited to 10 years from the date of enrollment. That time period began in June 2011 and ends in June 2021. DTE contends, however, that the limitation of Complainant's compensation for excess energy under Rider 16 does not affect the Contract's term of 20 years with respect to the purchase of RECs, which is the only purpose of the Contract as evidenced by the fact that the very first paragraph of the Contract concerned REC generation and delivery. Furthermore, the Complainant will receive the full benefit of net metering for 10 years like all other similarly situated customers pursuant to Rider 16 and MCL 460.1183(1).

DTE asserts that the Legislature directed the Commission to "within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act, 208 PA 295, MCL 460.1001 to 460.1211". Accordingly, the Commission approved Rider 18 as the appropriate replacement for Rider 16.

DTE contends that under the Complainant's interpretation of the contract and statutes, the Complainant would receive net metering beyond the 10-year period that both the Legislature and the Commission mandated for similarly situated net metering customers.

### **C. Evidentiary Hearing**

At the hearing, Complainant did not present any witnesses. He requested that his Complaint with attachments be considered as his testimony.

DTE presented one witness, Philip W. Dennis, the Manager of Regulatory Economics for DTE Energy. Mr. Dennis previously testified in the on-going general rate case, Case No. U-20561. In that matter, he sponsored the Company's residential rates and the design of those rates, including Rider 16, which is DTE's net metering program, as well as Rider 18, which is a replacement for that tariff.<sup>3</sup>

Mr. Dennis testified that he was familiar with Mr. Klein's complaint stating that he received an email from MPSC Staff member Julie Baldwin around the end of June or early July wanting to know if he could help Mr. Klein with a question with respect to his *SolarCurrents* Contract as well as the transition from Rider 16 to Rider 18.<sup>4</sup> Mr. Dennis testified that he communicated with Mr. Klein concerning his questions from July 2 through August 6.<sup>5</sup>

Mr. Dennis explained that DTE Electric's *SolarCurrents* Program provides customers an opportunity to sell their RECs generated from their PV system to the Company for a term of up to 20 years. The recent changes to DTE Electric's net metering program (Rider 16) resulting from Public Act 341 and Public Act 342 and the Michigan Public Service Commission's order in U-20162 do not affect the Company's obligation to continue to purchase RECs for the remaining 20-year term of each customer's *SolarCurrents* Program agreement. He explained that the *SolarCurrents* Program agreement does not obligate the Company to provide net metering payments beyond the legislated and Commission approved 10-year term of Rider 16, and the reference in the agreement to net metering merely acknowledges the customer's representation as taking

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<sup>3</sup> Tr. pg. 10

<sup>4</sup> Tr. pg. 11

<sup>5</sup> Tr. pg. 12; Exhibits R-1 and R-2

service under DTE Electric's net metering Rider 16 at the time the agreement was executed. The *SolarCurrents* Program agreement did not modify the term requirements of Rider 16. Because Michigan law changed, the *SolarCurrents* customers will be transitioned from Rider 16 to Rider 18 upon completion of their 10-year term under Rider 16, consistent with all other net metering customers as required by Michigan law, the Company's Rider 16 tariff, and the Commission's order.<sup>6</sup>

Mr. Dennis testified that the Company did a high-level analysis of what the Company believes to be the payback period specific to Mr. Klein's solar PV system. He stated that Line 1 of Exhibit R-5 shows the costs of Mr. Klein's 4.7 kilowatt (kW) solar installation of \$30,100. Line 2 is the federal income tax credit available of 30% or \$9,030. Line 3 is an upfront payment that DTE made to Mr. Klein of \$11,340 resulting in the customer's cost for initial installation of approximately \$9,730. Line 7 is a REC payment pursuant to the *SolarCurrents* Contract. The customer receives 11 cents per kWh for all generation from his solar system. In addition, under the Rider 16 net metering program, Mr. Klein has received about a 13 cent per kWh credit on his bill for excess generation as shown on Line 8. Line 7 and 8 added together reflect the value of 24 cents for each kWh of generation from his solar system. According to Mr. Dennis, Mr. Klein's system generates approximately 5600 kilowatt hours annually; thus, Mr. Klein receives an annual amount of a little over \$1,300.00. To derive the simple payback, Mr. Klein's initial cost of \$9,730.00, divided by annual compensation of \$1,344.00 indicates that the simple payback would occur in a little over seven years. The Company argued, based on the

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<sup>6</sup> Tr. pg. 13 / Exhibit R-3  
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installation of Mr. Klein's system in May of 2011, he would have fully paid back that installation by the middle of the third quarter of 2018.<sup>7</sup>

Staff did not present any witnesses at the hearing.

### III.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

##### **Findings of Fact**

The following findings of fact are based on the preponderance of the evidence in the record.

On May 12, 2011, Mr. Klein signed the Solar*Currents* Customer Owned Solar Pilot Program Contract. The Contract has an effective date of June 8, 2011.

Paragraph 1 of the Contract provides:

REC Generation and Delivery. Customer agrees to sell, and Detroit Edison agrees to purchase from Customer all of the Renewable Energy Credits (RECs) generated by Customer's photovoltaic solar electric generating system (the PV System) as more fully described in the attached Exhibit A-PV System Details. As used in this Agreement, a Renewable Energy Credit or REC means a unit of credit which equals one megawatt-hour of electricity generated by a PV system, including any and all renewable energy attributes and/or benefits derived from such generation or as calculated by the Michigan Public Service Commission (MPSC) operations staff and certified by the MPSC Administrator pursuant to the Clean, Renewable and Efficient Energy Act as modified from time to time and includes all RECs including but not limited to incentive RECs as defined by MCL 460.1039. The PV system meets the requirements set forth on Exhibit A-PV System Details. For delivery and transfer purposes only under this Agreement for every kilowatt-hour generated by the PV system the equivalent kWh of a REC will be deemed delivered and title to such a kWh of a REC will transfer to Detroit Edison.<sup>8</sup>

In addition, Paragraph 2 of the Contract states:

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<sup>7</sup> Tr. pgs. 14-15 / Exhibit R-5

<sup>8</sup> Attachment A, pg. 1 of the Complaint; Exhibit R-4

Term. The term of this Agreement shall commence as of the Effective Date; **provided that Customer's delivery obligations shall be twenty (20) years**, beginning on the Effective Date.<sup>9</sup> (Emphasis added).

Paragraph 5 of the Contract provides:

Excess Energy. Detroit Edison will receive, and Customer will deliver all energy, if any generated by the PV System as the property in excess of Customer's consumption for any period of generation by the PV System (excess energy). Customer will receive compensation for the Excess Energy generated by the PV system as set forth in the Detroit Edison's standard Contract Rider No. 16 Tariff (referred to herein as "Net Metering") on file with the MPSC, as modified from time to time.<sup>10</sup>

Paragraph 15 of the Contract states:

Saving Clause/Independent terms. Each term and condition of this Agreement is deemed to have independent effect and the invalidity of any partial or whole paragraph or article shall not invalidate the remaining paragraphs or articles.<sup>11</sup>

Paragraph 17 of the Contract states:

Governing Law. This Agreement shall be governed by the law of the State of Michigan. **In the event of a conflict between the terms and conditions of this Agreement, and Detroit Edison's Tariff, including any other agreement on file with the MPSC, this Agreement shall control.** The parties agree that any action with respect to this Agreement shall be brought in a court of competent subject matter jurisdiction located in the State of Michigan and the parties hereby submit themselves to the exclusive jurisdiction and venue of such court for the purpose of such action.<sup>12</sup> (emphasis added)

Exhibit C Affidavit with Respect to SolarCurrents Customer Owned Solar Pilot

Program Contract provides in pertinent part:

That pursuant to the Agreement Customer and/or the Property Owner:  
a. assigned to Company all Renewable Energy Credits (RECs) generated during the term of the Agreement by the PV System;  
b. agreed that

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<sup>9</sup> Attachment A, pg. 1 of Complaint; Exhibit R-4

<sup>10</sup> Attachment A, pg. 2 of the Complaint; Exhibit R-4

<sup>11</sup> Attachment A, pg. 4 of the Complaint; Exhibit R-4

<sup>12</sup> Attachment A, pg. 4 of the Complaint; Exhibit R-4

(I) the assignment of RECs to Company, shall be binding upon and inure to the benefit of all of the Company's successors and assigns, (II) the representations, warranties, covenants, obligations and agreements under the Agreement, including but not limited to the assignment of RECs to the Company, shall be binding upon, and the rights of Customer under the Agreement shall inure to the benefit of each person owning the PV System and the Property for the period that such person owns the PV System and the Property during the term of the Agreement, it being agreed by the parties that, among other things, Company shall be entitled to all RECs generated by the PV System at the Property (as that term is defined in the Agreement) during the term of the Agreement notwithstanding any change in the ownership of the PV System and the Property during the term of the Agreement, and;

(c) the PV System and the Property shall be subject to all terms and conditions of the Agreement during the term of the Agreement.<sup>13</sup>

Rider 16 details "Net Metering for Renewable Resource On-site Power Producing Facilities." It provides that the Company may purchase RECs from net metering customers, using generation metering supplied by the Company, under a separate agreement. Additionally, it states that Customers who enroll shall be "eligible to participate for a single continuous period up to 10 years". Finally, the Rider provides that the "terms, conditions, charges and credits provided under this rider are subject to the revision under order of the Commission".<sup>14</sup>

Rider 18, the Distributed Generation Program, provides that the Distributed Generation Program is offered as authorized by 2008 PA 295, as amended by 2016 PA 342, 1939 PA 3, as amended by 2016 PA 341, Section (6)(a)(14), and the Commission in Case No. U-20162. Rider 18 states that a "customer participating in a net metering program approved by the Commission before May 9, 2019 shall have the option to take

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<sup>13</sup> Attachment A, pgs. 7 and 8 of the Complaint / Exhibit R-4

<sup>14</sup> Exhibit R-6

service under this tariff at the time service under the terms and conditions of this pervious net metering program terminates in accordance with MCL 463.0183(1)".<sup>15</sup>

### **Conclusions of Law**

The burden of proof in a complaint cases is assigned in Mich Admin Code, R 792.10446 which provides:

Rule 446. The complainant generally has the burden of proof as to matters constituting the basis for the complaint and the respondent has the burden of proof as to matters constituting affirmative defenses. The burden of proof, however, may be differently placed or may shift, as provided by law or as may be appropriate under the circumstances.

This matter involves a dispute between the parties regarding how Mr. Klein is to be compensated for excess energy generated by his PV system under the *SolarCurrents* Contract. The primary goal of contract interpretation is to honor the parties' intent. *Stone v. Auto-Owners Ins Co*, 307 Mich. App 169, 174; 858 NW2d 765 (2014). "If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties' intent as a matter of law." *Hastings Mut Ins Co v. Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). In determining the meaning of an ambiguous contract, the fact finder gives effect to every word, phrase, and clause in a contract to avoid an interpretation that would render any part of the contract surplusage or nugatory. *Klapp v. United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003). Where a written contract is ambiguous, a factual question is presented as to the meaning of its provisions, requiring a factual determination as to the intent of the parties in entering the contract; thus, the fact finder must interpret the contract's terms, in light of the apparent purpose of the contract as a whole, the rules

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<sup>15</sup> Exhibit R-7  
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of contract construction, and extrinsic evidence of intent and meaning. A contract is ambiguous when its provisions are capable of conflicting interpretation. Ambiguities are to be construed against the drafter after all other conventional means of contract interpretation are used. *Klapp v. United Ins Group Agency, Inc*, 468 Mich 459, 463; 663 NW2d 447 (2003).

Complainant entered into the SolarCurrents Contract with the Company on June 8, 2011 (effective date). Under the Contract, Complainant agreed to sell his RECs to the Company for a period of 20 years. The Contract required that the Company make a One-Time Up Front REC Payment<sup>16</sup> of \$2.40 times the number of DC watts installed, a fixed price of \$0.11 per kWh generated by the PV system, and compensation of excess energy generated by the PV system as set forth in Standard Contract Rider No. 16 Tariff (herein referred to as Net metering) as modified from time to time.<sup>17</sup>

The parties do not dispute that the Contract requires DTE to purchase RECs from Mr. Klein at a fixed price of \$0.11 per kWh generated by the PV system for 20 years and compensate him for the excess energy generated by his system, using the Rider 16 net metering method for a period of at least 10 years. The parties disagree as whether compensation under Rider 16 is for 20 years, as Complainant asserts, or for 10 years as DTE contends.

Complainant claims that the 10-year period for net metering is in conflict with the 20-year term for the delivery of RECs. He argues that the Contract itself states that any conflict between the Agreement and any tariff, the Contract terms control.<sup>18</sup> Therefore,

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<sup>16</sup> Attachment A, pg. 1 of the Complaint

<sup>17</sup> Attachment A, pg. 2 of the Complaint

<sup>18</sup> Paragraph 17, Attachment A, pg. 4 of the Complaint

Complainant contends that he should have his excess energy compensated using the net metering method rather than distributed generation inflow-outflow method for the entire 20 years of the *SolarCurrents* Contract. He argues that DTE's proposed change from Rider 16 to Rider 18 is a taking without just compensation because he will be required to continue providing RECs with reduced payment for the excess energy he generates.

DTE maintains that there is no ambiguity or conflict in the contract, rather it just contains two different timeframes for two different obligations. DTE argues that the primary purpose of the *SolarCurrents* Contract was the purchase of RECs. DTE contends that the term provision in the Contract is limited to the sale of RECs which shall be for 20 years but the net metering provision for the purchase of excess energy is limited to 10 years as stated in Rider 16.

In support of its argument that the net metering provision was always expected to be limited to 10 years, DTE cites the Commission order in Case No. U-20162 which specifically states in pertinent part:

The ALJ agreed with DTE Electric that the tariff provisions in the company's current Rider 16 tariff should prevail and that DTE Electric's net metering program was, from the beginning, only for 10 years. No exceptions were filed. The Commission therefore adopts the findings and recommendations of the ALJ. See MCL 460.1183; MCL 460.6a(14).<sup>19</sup>

Additionally, DTE points out that MCL 460.1183 limits participation in a net metering program for up to 10 years from the date of enrollment should a customer participating in a net metering program choose to continue to participate.

Staff contends that Paragraph 2 of the Contract clearly states that the term of the agreement between DTE and Mr. Klein is 20 years. Staff also acknowledges that the

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<sup>19</sup> In re DTE Electric Co., MPSC Case No. U-20162, Order dated May 2, 2019, Dkt. No. 604, pg. 199  
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Rider 16 Tariff provision states that customers are only eligible to participate for a single period of up to 10 years. Staff contends that the language referring to Rider 16 as net metering could be read as indicating that the Contract will use the net metering method of compensation for the 20-year life of the agreement<sup>20</sup>. Staff argues that if the 20-year and 10-year terms in the Contract and Rider 16 are found to conflict, then Paragraph 17 of the Contract would arguably dictate that the terms of the Contract (the 20-year term) should govern. Staff states that the plain language of the Contract could be viewed to require the use of net metering for excess energy compensation for the full 20-year term of the Contract.

Clearly, there is a conflict regarding the 20-year term stated in Paragraph 2 of the *SolarCurrents* Contract and the Rider 16 limitation of a single 10-year period both now and at the time the *SolarCurrents* Contract was executed. Neither Mr. Klein nor DTE presented any evidence concerning any discussions or explanations given at the time of the execution to explain either parties understanding. It is unclear if this conflict was given any consideration by either party at the time they entered into the contract.

DTE makes no argument as to how any *SolarCurrents* Contract holder was to be compensated for excess energy after 10 years if the Rider 16 limitation was in fact expected to be imposed on *SolarCurrents* Contract holders. It does not seem credible that the expectation by the parties was that there would no longer be any compensation for excess energy after 10 years when the sale of the RECs continues for 20-years. Additionally, Attachment C of the *SolarCurrents* Contract provides that the “PV System and the Property shall be subject to all terms and conditions of the Agreement during **the**

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<sup>20</sup> Staff initial brief, pg. 5.

**term** of the Agreement” (emphasis added)<sup>21</sup>. This language seems to contemplate that there is a single contract term of 20 years for both RECs and excess energy.

Reading the contract as a whole and giving every word and phrase meaning, as required by the general principles of contract interpretation, the logical presumption, considering Paragraph 17 proviso (that in cases of a conflict between the Contract and the tariff, the Contract would prevail), indicates it was the intent of both parties at the time the contract was executed that the net metering would be the method utilized to calculate the excess energy payment for the entire 20 years that Mr. Klein is selling his RECs. This is clearly Mr. Klein’s understanding of the *SolarCurrents* Contract and its provisions. Since DTE drafted the contract, any ambiguities are construed against the drafter.

Rider 16 contemplates that the net metering program provided for in that tariff is separate and distinct from any agreement to supply RECs. The Rider specifically states that “the Company may purchase renewable energy credits under a separate agreement from net metering customers using generation metering supplied by the Company.” It appears that Mr. Klein is a *SolarCurrents* customer who is compensated using net metering as a convenient method for calculation of payment.

Giving effect to every word, phrase, and clause in a contract to avoid an interpretation that would render any part of the contract surplusage or nugatory, based on the *SolarCurrents* agreement, I find Mr. Klein entered into a specific contract for the sale of his RECs. This contract’s expressed terms have a term of 20-years. The Contract requires that Mr. Klein be compensated for the entire 20-years that he is selling his RECs to DTE.

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<sup>21</sup> Attachment A, pg. 8 of the Complaint / Exhibit R-4  
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Again, Paragraph 5 provides:

Detroit Edison will receive, and Customer will deliver all energy, if any generated, by the PV System at the Property in excess of Customer's consumption for any period of generation by the PV System ("Excess Energy"). Customer will receive compensation for the Excess Energy generated by the PV System as set forth in Detroit Edison's Standard Contract Rider No. 16 Tariff (referred to herein as "Net Metering") on file with the MPSC, as modified from time to time.

This paragraph does not require Mr. Klein to enter into any additional agreements for net metering. This paragraph specifically states that Mr. Klein will be compensated for any excess energy generated as set forth in Rider 16 as modified from time to time.

I find based on Paragraph 17, that the intent of the parties was that the 20-year term for the sale of the RECs would prevail over the 10-year limitation for participation in a net metering program in calculating the compensation for Mr. Klein's excess energy generation. To accept DTE's argument, one would have to believe that despite agreeing to sell his RECs for 20 years, Mr. Klein would not have been expecting compensation for any excess energy he generated beyond the first 10 years of the contract.

Under the rules of contract interpretation, Mr. Klein entered into a contract for the sale of his RECs for 20-years. The contract had three<sup>22</sup> separate and distinct provisions for compensation and a provision that the language of the contract would prevail in case of any conflicts. Additionally, Attachment C of the Contract indicates that there is a single term for the contract not two separate time periods as currently argued by DTE.

However, the analysis cannot end at this point. As Staff states, DTE has asserted reasonable defenses and arguments that must be evaluated.<sup>23</sup> Staff argues that if the recently created limits on the application of net metering are found to apply to the

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<sup>22</sup> Upfront REC payment, Fixed Price REC Credit, and Excess Energy

<sup>23</sup> Staff initial brief, pg. 6

agreement, DTE should prevail in this case. Staff indicates that there have been changes to the law and tariffs leading to the phasing out of net metering in favor of the distributed generation program. Staff argues that the language of Rider 16, Rider 18 and MCL 460.1183(1) all contemplate limited application of the net metering program.<sup>24</sup>

Regardless of the conflicting language concerning the terms of the Contract, DTE argues, first and foremost, that the Contract is to be governed by the law of the State of Michigan. DTE contends that in 2016 the law made changes concerning the use of net metering. In its initial brief, DTE states that statutory law expressly limits net metering to "...10 years from the date of enrollment" citing MCL 460.1183(1).<sup>25</sup>

In 2016, Act 295 was amended by Act 342, and now provides in pertinent part:

Within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act<sup>26</sup>.

This amendment specifically required the Commission to conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or disturbed generation program. It also required the Commission to approve "a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy waste reduction act in any rate case filed after June 1, 2018."<sup>27</sup>

MCL 460.1183 provides in pertinent part:

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<sup>24</sup> Staff initial brief, pg. 9

<sup>25</sup> DTE initial brief, pg. 7

<sup>26</sup> MCL 460.6a(14)

<sup>27</sup> MCL 460.6a(14)

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

DTE contends that based on the statutory provision of MCL 460.1183, Mr. Klein is limited to participating in net metering for a term of 10-years from the date of enrollment which, for Mr. Klein, commenced May 2011. Mr. Klein counters that the grandfathering provision of MCL 460.1183 does not apply to *SolarCurrents* contract holders. He contends that there is nothing in the statute to indicate an intent to abrogate existing contracts.<sup>28</sup>

The statute specifically requires the Commission to approve a tariff for inclusion in the rates of **all** customers participating in a net metering or distributed generation program. On May 2, 2019, the Commission approved language to be included in Rider 16 and Rider 18.<sup>29</sup> Rider 16 is currently only available to customers participating in the Rider prior to May 9, 2019,<sup>30</sup> and Rider 16 continues to contain a limitation for participation to a single continuous period up to 10 years.

DTE argues that the *SolarCurrents* Contract provisions specifically require compliance with the laws of the State of Michigan. Under the law of the State of Michigan and the actions of the Commission, net metering is being phased out and replaced with distributed generation. DTE asserts that under the *SolarCurrents* Contract, Mr. Klein is entitled to compensation for his RECs for 20-years at a rate of \$0.11 per kWh generated and to be compensated for his excess energy using net metering for 10-years from his

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<sup>28</sup> Complaint pg. 2

<sup>29</sup> In re DTE Electric Co., MPSC Case No. U-20162, Order dated May 2, 2019, pg. 213

<sup>30</sup> Standard Contract Rider No. 16 Issued under the authority of the Michigan Public Service Commission dated May 2, 2019 in re DTE Electric Co., MPSC Case No. U-20162

date of enrollment (May 2021) and, thereafter, to be compensated for his excess energy using distributed generation as called for in MCL 460.1183, Rider 16 and Rider 18.

DTE reiterates that the primary purpose of the *SolarCurrents* Contract was the purchase of the RECs. DTE contends that the term provision in the Contract specifically references the purchase of RECs shall be for 20 years but the net metering provision for the purchase of excess energy is limited to 10 years from date of enrollment pursuant to MCL 460.1183. DTE contends that from May 2021 through the remainder of the Contract, Mr. Klein would be compensated for any excess energy generated utilizing the distributed generation method according to Rider 16 and Rider 18. This argument bolsters the above conclusion that DTE intended that Mr. Klein would be compensated for excess energy for the entire 20-years of the *SolarCurrents* Contract. If DTE's argument that the purchase of excess energy provision was limited to 10-years, there would be no need to continue compensation using the distributed generation after June 2021 until the expiration of the 20 years of the *SolarCurrents* Contract.

Because the *SolarCurrents* Contract must conform to the laws of the State of Michigan, and because MCL 460.1183 limits net metering to a term of ten years from time of enrollment, the method for compensation for excess energy cannot be net metering beyond ten years from the date of enrollment.

Under the terms of the *SolarCurrents* Contract, Mr. Klein is entitled to be compensated for any excess energy generated according to Rider 16 as amended from time to time. The Commission amended Rider No. 16 effective July 2019 and added Rider 18. Beginning in May 2021, which is 10 years after enrollment, Mr. Klein will no longer be eligible for net metering, however, he is entitled to compensation using the

distributed generation method approved by the Commission for the remaining term of the SolarCurrents Contract barring any future modifications.

**IV.**

**CONCLUSION**

For the reasons set forth above, the undersigned recommends that the Commission adopt the above proposed findings of fact and conclusions of law.

Any arguments not specifically addressed in this Proposal for Decision are deemed irrelevant to the finding and conclusions recited above.

MICHIGAN OFFICE OF ADMINISTRATIVE  
HEARINGS AND RULES  
For the Michigan Public Service Commission

**Kandra K.  
Robbins**

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Kandra K. Robbins  
Administrative Law Judge

March 18, 2020  
Lansing, Michigan