STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR 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 CONSUMERS ENERGY COMPANY to comply with Section 61 of 2016 PA 342. | ) | Case No. U-21374 |

## 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 May 21, 2024.

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 June 11, 2024, or within such further period as may be authorized for filing Exceptions. If Exceptions are filed, replies thereto may be filed on or before June 25, 2024.

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

James M. Varchetti

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| May 21, 2024 | James M. Varchetti |
| Lansing, Michigan | Administrative Law Judge |

STATE OF MICHIGAN

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**PROPOSAL FOR DECISION**

**I.**

**PROCEDURAL HISTORY**

Consumers Energy Company ("the company") filed its Application for Approval of Revised Voluntary Green Pricing (VGP) Programs and a Renewable Energy Plan Amendment in this docket on September 22, 2023. The timing of this filing complied with the Commission's Order in Case No. U-18349[1] directing the company to file its next VGP plan review in this docket in accordance with the biennial cycle for review of VGP programs under Section 61 of 2016 PA 342.[2]

At the November 14, 2023, prehearing held by the undersigned Administrative Law Judge, the company and Staff appeared, and intervention was granted to petitioning parties including the Michigan Energy Innovation Business Council, the Institute for

[1] See Case No. U-18349, February 23, 2023, Order, p 6.

[2] This PFD notes that the company's previous VGP-related case, case No. U-21134, was filed in October of 2021 and disposed of through a settlement agreement approved in July of 2022.

Energy Innovation, and Advanced Energy United (collectively “MEIU”), and the Ecology Center, the Environmental Law and Policy Center, and Vote Solar (collectively the Clean Energy Organizations or “CEO”). At the prehearing, a consensus schedule for this matter was adopted.

Consistent with the schedule established on November 14, 2023, Staff and the intervening parties filed testimony on January 25, 2024. In turn, on February 20, 2024, the Company, Staff, and MEIU filed rebuttal testimony. On April 3, 2024, the parties filed their initial briefs, and on April 24, 2024, the parties filed reply briefs.

## II.

## OVERVIEW OF THE RECORD

As discussed below, a total of 14 witnesses provided testimony in this matter. Based upon the schedule established at the prehearing conference, a cross-examination hearing was held on March 13, 2024; however, the parties waived cross-examination of the witnesses and presented testimony and evidence to be bound into the record. During the hearing, the company entered the testimony of five witnesses:

1. Marc R. Bleckman, Executive Director of Financial Planning and Analysis, (Direct);
2. Eric W. Clinton, Director of Renewable Products, (Direct and Rebuttal);
3. Brittani A. Gray, Tariff Analyst, (Direct);
4. Kenneth D. Johnston, Director of Regulatory Compliance, Electric Supply Regulatory Strategies, (Direct and Rebuttal); and
5. Chibuzo Obikwelu, Engineer Technical Analyst, (Direct).

Through these witnesses, the company entered Exhibits A-1 through A-15.

The Michigan Public Service Commission Staff entered the testimony of six witnesses:

1. Marceline Champion, Public Utilities Engineer in the Resource Optimization and Certification Section, (Direct);
2. Jonathan DeCooman, Public Utilities Engineering Specialist in the Resource Optimization and Certification Section, (Direct and Rebuttal);
3. Zachary Heidemann, Public Utilities Engineer in the Resource Optimization and Certification Section, (Direct and Rebuttal);
4. Megan Kolioupoulos, Departmental Analyst in the Resource Optimization and Certification Section, (Direct and Rebuttal);
5. Kevin Krause, Gas Cost of Service Specialist within the Regulated Energy Division, Rates and Tariff Section, (Rebuttal); and
6. Cody Matthews, Public Utilities Engineer Specialist in the Interconnection and Distributed Energy Resources Section, (Rebuttal).

Through these witnesses, Staff entered Exhibits S-1.0 through S-1.2, S-2.0 through S-2.2, S-3.0 and S-3.1.

The CEO entered the direct testimony of two witnesses: Sergio Cira-Reyes[3] and Boratha Tan. Through these witnesses, CEO entered Exhibits CEO-1, CEO-3, CEO-4, CEO-6 through CEO-20, CEO-22, CEO-23, and CEO 26 through CEO-30.

Finally, MEIU entered the direct and rebuttal testimony of a single witness, Dr. Laura S. Sherman. Through Dr. Sherman, MEIU entered Exhibits MEIU-1 through MEIU-12.

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[3] This PFD notes that the direct testimony of Mr. Cira-Reyes was refiled with corrections.

The evidentiary record in this matter is contained in the testimony and exhibits described above that were bound into the record during the March 13, 2024, hearing. Pertinent aspects of the evidentiary record are discussed in greater detail below.

## III.

## DISCUSSION

The company's application included proposals for the modification of existing VGP programs, proposals for new VGP programs or initiatives, amendments to the company's renewable energy plan, and other topics. Certain topics, such as calculations regarding the incremental cost of compliance and transfer price, and the company's renewable energy credit forecast, were not disputed and therefore are not discussed in this PFD. However, disputed topics will be addressed below:

### A. VGP Combined Asset Pool

#### 1. Testimony

Mr. Clinton testified that the company proposed to combine all VGP assets into one renewable energy generation asset pool that will be used to establish product pricing and aggregate energy and capacity credits.[4] He contended that combining assets would provide all customers with affordable and equitable access to renewable energy regardless of customer class.[5] Mr. Clinton testified that existing Large Customer Renewable Energy Program (LC-REP) and Solar Gardens resources will be rolled into the VGP asset pool, and any future assets would be automatically added to the VGP asset pool.[6] With regard to the inclusion of Solar Gardens in the asset pool, he stated that

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[4] 2 Tr 47.
[5] 2 Tr 47.
[6] 2 Tr 48.

it would represent only 0.7% of the generation pool, which he described as "de minimis and immaterial to the overall asset pool price yet will deliver significant benefits to accelerate the development of utility-based community solar."[7]

He stated that the pooled price for the VGP products will be based upon the existing approach approved in Case No. U-21347, i.e., a flat program subscription fee based on the weighted average levelized cost of service of the available generation of the renewable energy facilities in the VGP program plus other program costs.[8] Mr. Clinton provided an example of the calculation of such subscription fees:

> First, the program determines the unrecovered asset pool cost by subtracting existing contracted subscription revenue recovery from the total cost of all designated renewable energy facilities. Then, the unrecovered asset pool cost is divided by the remaining, available renewable energy generation (unsubscribed kWh) plus a marketing and administration fee to arrive at the new pooled subscription fee per kWh. Existing LC-REP and Solar Gardens customers' contracts and corresponding subscription prices will not change.[9]

However, Mr. Clinton testified that the company proposed to modify the fee calculation methodology in three ways. First, he proposed that the annual subscription fees for residential and small business customers would be calculated in the manner described above, but contracted customers would continue to follow the methodology approved in Case No. U-21347.[10] Second, he proposed that the subscription fee methodology should be expanded to include the pricing of "planned projects"[11] to account for instances when

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[7] 2 Tr 67.
[8] 2 Tr 48.
[9] 2 Tr 48-49.
[10] 2 Tr 49.
[11] Mr. Clinton defined "planned projects" as "a wind or solar development that has been awarded out of a VGP Program competitive solicitation and approved by the Company's Board of Directors and/or Finance Committee to support VGP Program growth." 2 Tr 49.

the program is adding new renewable energy resources to meet demand.[12] Third, he requested that the company be allowed to remove tariff language stating that the subscription fee will be established for contracted customers at the time of contracting because the price should actually be reconciled at the time of enrollment to reflect the planned renewable resource pool when service commences.[13]

Mr. Clinton explained that energy and capacity credits will be based on the forecasted energy and capacity methodology approved in Case No. U-21347 for LC-REP; however, it will be expanded to include Solar Gardens facilities.[14] He added that despite the proposed combined asset pool, the Solar Gardens, Renewable Energy Program (REP), and Green Giving program will be marketed as distinct programs to showcase their unique value propositions.[15] He also testified that the environmental attributes for the company's pre-existing Solar Gardens program will remain independent, and the company's newly proposed REP and Green Giving subscriptions will be matched with environmental attributes generated by the remaining non-Solar Gardens assets in the combined pool.[16]

Mr. DeCooman raised concerns about the proposal to combine all VGP assets into a single pool. He testified that the levelized cost of energy (LCOE) for Solar Gardens assets is significantly higher than the LCOE for other VGP assets such that VGP subscribers would pay higher costs to fund Solar Garden assets to which the customer is

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[12] 2 Tr 49.
[13] 2 Tr 49.
[14] 2 Tr 50.
[15] 2 Tr 50.
[16] 2 Tr 47.

not subscribed and from which the customer does not receive a benefit.[17] Mr. DeCooman opined that, "under the Company's proposal to pool resources, there would be a disconnect between the cost of developing a Solar Gardens resource and the subscription fee charged to subscribing participants, creating an improper price signal."[18] He opined that the expansion of the company's REP to all customers would be better than the Solar Gardens program in terms of providing equitable access to renewable energy given the low enrollment numbers in the Solar Garden program.[19] Mr. DeCooman recommended rejecting the proposal to combine all VGP resources into a single asset pool because it subsidizes Solar Gardens resources, and the company's proposed REP is superior at expanding access to renewable energy.[20]

Regarding the change to fee calculations, Ms. Champion recommended approving the company's proposal to utilize an annual fixed price for non-contracted customers; she explained that this would not affect contracted customers and would provide clarity for customers seeking to join the program.[21] She also opined that the company's proposal to include future planned projects in the fee calculation should be approved because it would provide customers with "a more accurate picture of what their subscription fee will actually be."[22] For similar reasons, she also recommended approval of the company's proposal to update tariff language for contracted customers to state that their fees will be reconciled at the time of enrollment rather than established at the time of contracting.[23]

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[17] 2 Tr 231.
[18] 2 Tr 232.
[19] 2 Tr 233.
[20] 2 Tr 234.
[21] 2 Tr 217.
[22] 2 Tr 217, 218.
[23] 2 Tr 218.

Dr. Sherman initially expressed support for the company's proposal to combine VGP assets into one pool to better control costs.[24]

In rebuttal, Mr. Clinton downplayed Mr. DeCooman's concerns that pooling VGP assets would unfairly subsidize Solar Gardens. He testified that the proposal does not include any cross-subsidization between the VGP program and utility rates because participation in VGP programs is voluntary.[25] Mr. Clinton emphasized that Solar Gardens will have minimal impact because it would represent just 0.7% of assets in the generating pool.[26] In fact, Mr. Clinton testified that if the company built all proposed Solar Gardens capacity and all proposed REP capacity, then it would only increase the price for REP by 2.9%, but it would decrease the cost for Solar Gardens customers by 47%.[27] Mr. Clinton also emphasized that if Solar Garden assets are not pooled, then the company may need to reduce emphasis on expanding the Solar Garden program "given the program's limited economic viability and affordability."[28]

In her rebuttal, Dr. Sherman qualified her support for pooling assets noting that it was premised upon "the existence of a relatively small Solar Gardens program whereby adding those assets to the total renewable generation pool would have a de minimis impact on the overall asset pool price".[29] After reviewing Staff's concerns, she agreed that concerns regarding subsidization could become more pronounced as the Solar Gardens program expands.[30] Dr. Sherman stated that Staff's concerns regarding subsidization

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[24] 2 Tr 302.
[25] 2 Tr 98-99.
[26] 2 Tr 99.
[27] 2 Tr 99.
[28] 2 Tr 100.
[29] 2 Tr 343.
[30] 2 Tr 344.

"are well founded" such that she no longer wished to offer her full support to the proposal to pool VGP assets.[31]

2. Positions of the Parties

The company's initial brief repeats the testimony of Mr. Clinton and emphasizes that there is no cross-subsidization between VGP programs and non-participating customers because the resource costs will only be paid through voluntary VGP subscriptions.[32]

Staff reiterates Mr. DeCooman's concern that pooling would create a disconnect between the high cost to develop a Solar Gardens resource and the price charged to the customer, which would be artificially lowered because of subsidization.[33] Staff acknowledges that the Company's proposal to pool VGP assets does not result in subsidization of VGP assets by non-participating customers, but Staff clarifies that its concern is that REP customers will be subsidizing Solar Gardens.[34] Staff argues that the subsidization would initially be small, but could balloon in the future, particularly if there is no price difference between the REP and Solar Gardens despite the significantly higher cost of developing Solar Gardens resources.[35]

MEIU specifies that it does not oppose Staff's objections regarding the proposal to pool all VGP assets, but MEIU also states that "[t]hough this one solution to the problem [i.e., pooling assets] may not ultimately be preferable, others must be found."[36]

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[31] 2 Tr 244.
[32] See generally, Consumers p 22-24.
[33] Staff p 4.
[34] Staff p 6.
[35] Staff p 6.
[36] MEIU p 5.

The company replies that "Staff's concern is unfounded" because pooling the resources "will create price parity, removing the obstacle of cost while allowing customers a choice between supporting larger utility scale wind and solar resources or smaller, local, solar resources at the same subscription price."[37] The company also cautions that failure to pool the resources could put the future of Solar Gardens at risk because of its limited economic viability and affordability concerns.[38]

Staff replies that the company's arguments do not address Staff's concerns regarding subsidization and an improper price signal such that the company's arguments should be discounted.[39]

3. Findings, Conclusions, and Recommendations

This PFD recommends allowing the company's proposed updates to the subscription fee methodology given that they were not opposed by any party and approved by Staff.

However, this PFD agrees with Staff's concerns regarding the pooling of VGP assets in that such pooling would unduly subsidize the cost of Solar Gardens and would send an improper price signal. Indeed, while seeking to downplay such subsidization, Mr. Clinton's testimony essentially established that the addition of Solar Gardens assets to the proposed pool would largely subsidize the high cost of the Solar Gardens program at the expense of all other customers enrolled in VGP programs.[40] While such subsidization may be de minimis at first, any growth of the Solar Gardens program—

[37] Consumers Reply p 13.
[38] Consumers Reply p 13.
[39] Staff Reply p 4-6.
[40] See 2 Tr 99.

particularly given the company's proposed removal of the program cap—could make the subsidization more pronounced. This PFD believes that asset pooling and the resulting subsidization only masks the high cost of developing Solar Gardens resources and is not an appropriate solution to the problem of high costs. Accordingly, this PFD recommends that the Commission reject the company's proposal to pool all VGP assets.

**B. Renewable Energy Program**

1. Testimony

Mr. Clinton testified that the company proposes to rename its LC-REP to "Renewable Energy Program" (REP) and to open the program to include all full-service electric metered customers in good standing, including residential and small business customers.[41] Mr. Clinton explained that existing LC-REP customers will transition to the REP, and Mr. Johnston explained the company sought to expand its renewable resources beyond the 1,000 MW previously approved to accommodate significant growth in customer interest.[42] Mr. Johnston specified that the company sought the ability to solicit utility-scale solar projects and receive *ex-parte* approval of any resulting contracts provided that the levelized cost of energy (LCOE) of such a project was below $63.27/MWh.[43] Mr. Clinton stated that this program expansion was necessary to provide all customer segments with fair access to cost-effective, utility-scale renewable energy resources.[44]

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[41] 2 Tr 50-51.
[42] 2 Tr 58; see also 2 Tr 118-119.
[43] 2 Tr 123.
[44] 2 Tr 51.

The REP will have two enrollment options associated with annual enrollment volume: (1) annual subscriptions of less than 1 million kWh per year, and (2) annual subscriptions greater than or equal to 1 million kWh per year.[45] Program conditions would differ depending upon the enrollment option to ensure proper cost recovery and asset planning.

Subscriptions for less than 1 million kWh would be marketed to the public and would have an open enrollment period and online enrollment; further, the subscription would be for a minimum of 12 months and month-to-month thereafter with the subscription level based upon an average of household usage or historical usage.[46]

Subscriptions for greater than 1 million kWh would be promoted through energy solutions consultations, customers would be required to execute an enrollment contract, and there would be a deadline of September 30th to apply to be included in annual program expansion.[47] Further, customers enrolling more than 1 million kWh would have a subscription level determined by either a percentage of annual usage or a fixed volume, and the standard term lengths would be 5, 10, 15, or 20 years; however, 25% of generation would be eligible to be subscribed for shorter 3- or 4-year terms.[48]

Mr. Clinton testified that the company proposed eligibility requirements based upon consumption to align the REP with how the program is contracted, billed, and supplied, as well as to align it with the utility's other programs.[49] He explained that the company selected 1 million kWh as the separating point between the two enrollment options

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[45] 2 Tr 52.
[46] See table 3 at 2 Tr 52.
[47] See table 3 at 2 Tr 52.
[48] See table 3 at 2 Tr 52.
[49] 2 Tr 53.

because it assured that large customers would be required to enter into long-term contracts to foster program stability and mitigate the risk that assets would become unsubscribed.[50] He also testified that the company proposed a fixed-volume subscription level for large customers because it may better suit their needs if their load fluctuates over time, if they sought to acquire a defined amount of renewable energy, or if they valued bill consistency.[51]

Mr. Clinton explained that the proposal for a standard 5-year option for large customers aligned with DTE Energy's MiGreenPower 5-year offering such that customers of both utilities could align contract lengths.[52] He also explained that the company proposed shorter 3- and 4-year contracts limited to 25% of generation because some potential customers had governing bodies that limited contract length to periods less than 5 years.[53] Mr. Clinton opined that limiting these shorter contracts to 25% of generation minimized the risk that assets would become unsubscribed.[54]

Mr. Clinton testified that the company proposed a 2% subscription fee increase for renewed service agreements with a term less than 10 years to incentivize large customers to select long-term commitments.[55] He also stated that the company sought to update its tariff to specify that contracted customers would have the right of first refusal on available supply if the supply was insufficient to satisfy their full subscription.[56] Finally, he stated that for large business customers the company proposed abolishing the open

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[50] 2 Tr 54.
[51] 2 Tr 54.
[52] 2 Tr 55.
[53] 2 Tr 55.
[54] 2 Tr 55-56.
[55] 2 Tr 56.
[56] 2 Tr 56.

enrollment period and instead instituting an annual September 30 deadline to enroll in new plan expansion.[57]

Mr. Clinton explained that as new customers commit to the REP, new resources would be competitively bid via an independent third-party administrator and added to the program based upon customer demand.[58] Mr. Johnston asserted that the company will "continue to be flexible in its implementation of competitive solicitation for VGP[,]" and that the company "has not yet established a date for any future VGP solicitations."[59] Mr. Johnston testified that the company's VGP solicitations will be consistent with prior solicitations for renewable energy plan assets, the Commission's 2008 guidelines for competitive request for proposals issued in Case No. U-15800, and the Commission's competitive procurement guidelines for rate-regulated electric utilities issued in Case No. U-20852.[60]

For Staff, Ms. Champion reviewed the company's proposed REP and recommended approval of most proposed changes. She recommended approving the opening of the program to all customers and opined that there was "great value" in opening the program to residential and small business customers that are currently restricted to the high-cost Solar Gardens program.[61] Similarly, she recommended approval of the company's plan to consolidate the LC-REP into the REP because it was merely a nominal change reflective of the program's new scope.[62]

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[57] 2 Tr 57.
[58] 2 Tr 52.
[59] 2 Tr 124.
[60] 2 Tr 125.
[61] 2 Tr 215.
[62] 2 Tr 215-216.

Ms. Champion recommended approving the company's proposal to update eligibility for REP to be based upon annual energy consumption and stated that it "will align all aspects of the company's offerings on an energy basis."[63] She recommended approval of the proposal to establish a fixed volume enrollment option for non-residential subscribers with at least 1 million kWh annually because such an option would be appealing to customers that value consistency or whose load fluctuates over time.[64] Ms. Champion opined that the Commission should approve the proposal to offer a standard 5-year option and to make 25% of generation eligible to be subscribed at shorter term lengths of 3 or 4 years for contracted subscribers. She asserted that DTE Electric offered 5-year terms, and that shorter 3- and 4-year terms would allow some companies to "test the waters" without signing on to a long-term obligation.[65] She also recommended approving the company's proposal to add a 2% price increase for re-enrollment terms of 10 years or less because it only applies to large contracted customers and disincentives re-enrollment for short terms while still permitting customers the option to re-enroll for shorter terms.[66]

Ms. Champion also supported the company's proposal to give contracted customers the right of first refusal on available supply if supply was insufficient to satisfy their full subscription.[67] Additionally, Ms. Champion supported the proposal to change from an open enrollment period to have an annual enrollment deadline of September 30th because it would remove the current start date of June 1st and allow enrollment at any

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[63] 2 Tr 219.
[64] 2 Tr 219.
[65] 2 Tr 219.
[66] 2 Tr 220.
[67] 2 Tr 220-221.

time of the year.[68] Finally, she recommended approving the proposal to add a monthly contract term option for participants enrolled in REP or Solar Gardens because it offers subscribers wishing to receive environmental attributes right away the ability to do so prior to those resources coming online.[69]

Dr. Sherman voiced general support for the company's proposal to expand the LC-REP to include residential and small business customers.[70] However, she testified that the company has only sought company-owned resources to fulfill demand for the VGP program, and through discovery responses, the company indicated its intent to continue to seek only company-owned renewable energy assets.[71] She testified that this practice differed from the solicitation process for the company's last integrated resource plan (IRP), Case No. U-21090, in which the company agreed to procure roughly half of new capacity through power purchase agreements (PPAs) or third-party agreements that do not result in company ownership.[72] Dr. Sherman asserted that the company should seek the lowest cost projects and that historically PPAs have been less expensive than company-owned resources.[73] Accordingly, she opined that the company should allow third-party owned projects to compete in the competitive bidding process and that the company should seek roughly equal amounts of company and third-party owned resources to fulfill the needs of the VGP program.[74] Dr. Sherman acknowledged that there are financial incentives for utilities to own resources, but she argued that the passage of

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[68] 2 Tr 221.
[69] 2 Tr 221-222.
[70] 2 Tr 303.
[71] 2 Tr 308 (citing Exhibit MEIU-2).
[72] 2 Tr 308.
[73] 2 Tr 310.
[74] 2 Tr 310, 312.

Act 235 of 2023 (PA 235), which makes any PPA eligible for a financial compensation mechanism (FCM) and changes the calculation of the FCM, should make the company "more agnostic as to ownership of VGP resources."[75]

In rebuttal, Mr. Johnston asserted that the company "is not opposed to including PPAs in its solicitations for renewable energy resources to satisfy the demand of its Renewable Energy Program."[76] He stated that "[i]f a subscription rate that reflects the PPA cost plus the financial compensation mechanism (FCM) is competitive with the subscription rate resulting from a Company-owned project, the Company would consider revising its future solicitations for renewable energy resources for its Renewable Energy Program and Solar Gardens to include PPAs."[77] However, Mr. Johnston opposed Dr. Sherman's proposal to require roughly equivalent levels of PPA and company ownership; he contended that the company should be able to select the lowest cost resource whether through a PPA or company ownership.[78] However, he also opined that the lowest cost option was "not necessarily" the best option because timing and certainty of delivery were also important measures to consider.[79] Further, he asserted that company-owned assets had some inherent advantages including economies of scale and having a terminal value, i.e., additional value that the company may obtain from owning an asset beyond the 30-year term of a PPA.[80]

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[75] 2 Tr 311.
[76] 2 Tr 140.
[77] 2 Tr 140.
[78] 2 Tr 141.
[79] 2 Tr 142.
[80] 2 Tr 142.

2. Positions of the Parties

In initial briefing, the company argues that the Commission should accept the proposed new REP noting that both Staff and MEIU supported the program and raised no objections to its substantive terms.[81] The company states that it "will consider" including PPAs in future VGP solicitations, but it argues that the Commission should not mandate that a certain percentage of resources must be derived from PPAs.[82]

Staff's brief reiterates support for the REP and its various associated terms and conditions discussed above.[83]

MEIU reiterates its general support for the REP, but also repeats the arguments presented by Dr. Sherman and reiterates its recommendation to direct the company to procure roughly equivalent amounts of renewable energy from PPAs and company-owned resources.[84]

In reply, the company responds that it "is not opposed to including PPAs in its solicitations for renewable energy resources to satisfy the demand of its Renewable Energy Program" although the company still opposes any set ratio as requested by MEIU.[85] Staff provides no further briefing on REP-related issues. MEIU's reply reiterates its support for the REP and notes that Staff's brief was incorrect in stating that no intervenor commented on the REP because MEIU specifically supported the expansion of the program to all customers.[86]

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[81] Consumers Energy p 17.
[82] Consumers Energy p 19.
[83] Staff pp 15, 21-26.
[84] MEIU pp 2, 20-21.
[85] Consumers Reply p 19.
[86] MEIU Reply p 8.

3. Findings, Conclusions, and Recommendations

a. Approval of REP Program Provisions

This PFD recommends approval of the REP and its various associated terms and conditions as proposed by the company, including removal of the 1000 MW limit on additions to the program. Indeed, both Staff and MEIU have voiced support for the REP and its terms, and no party has raised objections or concerns about the substantive merits of the company's REP proposal.

b. Competitive Procurement in the REP Program

This PFD agrees with MEIU's sentiment that PPAs should be considered and included in the company's future solicitations for renewable energy resources to meet the needs of the VGP program. The company has stated that it "is not opposed to including PPAs."[87] This PFD views such language as reflecting a somewhat noncommittal posture toward the inclusion of PPAs in the company's solicitations. This PFD believes that the Commission should affirmatively state that it expects the company to include and seriously consider PPAs in its solicitations for resources to meet the future needs of the VGP program.

However, this PFD does not agree with MEIU's recommendation to mandate that the company acquire roughly equivalent amounts of energy resources from PPAs and company-owned resources. While the FCM required by Act 235 may be expected to help level the playing field for PPAs when compared to company-owned resources, company-owned resources may sometimes have lower costs or other more desirable qualities

[87] 2 Tr 140.

overall. This PFD believes that PPAs and company-owned resources should be compared and selected based upon their individual merit and qualities, especially cost, and that it would be premature to mandate an artificial ratio between them without some indication that the company failed to evaluate the merits of PPAs in good faith.

## C. Solar Gardens & The Community Solar Straw Proposal

### 1. Testimony

In the settlement of its last rate case, the company agreed to "evaluate and provide a strawman recommendation on community solar in its Voluntary Green Pricing Program filing no later than October 2023."[88] Mr. Clinton explained that the company proposed its preexisting Solar Gardens pilot program, with several modifications discussed below, to fulfill this aspect of the settlement agreement.[89]

Mr. Clinton explained that the Solar Gardens pilot program allows customers to subscribe to company-owned solar farms; subscribers pay a subscription fee and receive bill credits proportional to their subscription level.[90] He opined that this utility-owned approach to solar farms located in communities prioritized customer protection, offered an established process for dispute resolution, and allowed all customers to voluntarily access locally-produced solar energy.[91] Mr. Clinton suggested that the Solar Gardens program fell within the definition of a community solar program under guidelines provided by the U.S. Department of Energy (DOE) because the program addresses shared solar

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[88] Case No. U-21224, January 19, 2023, Adopted Settlement Agreement, p 12, ¶ 27.
[89] 2 Tr 61.
[90] 2 Tr 61.
[91] 2 Tr 61.

infrastructure, accessibility and inclusivity, community engagement and benefits, and financial and environmental benefits.[92]

Mr. Clinton testified that the company was proposing several modifications to the Solar Gardens Pilot Program, including: (1) removing its “pilot” designation and establishing it as a permanent program; (2) pooling Solar Gardens assets into a combined renewable energy asset pool with other VGP resources;[93] (3) converting the program’s capacity-based (i.e., kW) block subscriptions to an energy-based (i.e., kWh) block subscriptions; (4) offering block sizes of 400 kWh to provide greater customization; (5) aligning the energy and capacity credit methodology using the current LC-REP credit structure; and (6) removing upfront, three-year and seven-year payment options.[94] Additionally, the company proposed to remove the 10 MW program cap because it estimated that an additional 32.5 MW of generation resources will be needed to meet future demand.[95]

Mr. Clinton opined that removing the program’s pilot designation would signal the company’s long-term commitment to the program and reassure customers of the program’s stability.[96] He also testified that the rationale for converting subscription blocks from capacity to energy was because customers found capacity to be a difficult concept to understand whereas energy, i.e., kWh as found on a customer’s bill, allowed customers to “quickly translate how many Blocks will be required to offset their usage[.]”[97] He also

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[92] 2 Tr 62-64.
[93] Notably, the company’s proposal to pool Solar Gardens assets with other VGP programs was separately addressed elsewhere in this PFD.
[94] 2 Tr 66.
[95] 2 Tr 74.
[96] 2 Tr 71.
[97] 2 Tr 71.

opined that the program should remove the upfront and contracted subscription payment options because 96% of customers preferred the month-to-month option over upfront payments.[98] Mr. Clinton also testified that the company proposed to modify the Anchor Tenant pilot within Solar Gardens by expanding its eligibility beyond municipalities and schools.[99]

For Staff, Mr. DeCooman testified that the company's Solar Gardens proposal was "not an appropriate community solar offering" because it does not address "certain aspects of a community solar program that Staff finds essential[.]"[100] Mr. DeCooman explained that the two aspects of community solar lacking from the company's proposal were third-party ownership of solar arrays and the locational proximity of solar arrays to customers.[101] He explained that the company owned all Solar Gardens resources, and enrolled customers do not subscribe to a specific solar resource in their community but rather subscribe to a certain level of solar generation that could be produced anywhere across the state.[102] Mr. DeCooman opined that locational proximity to customers "appears to be fundamental to community solar" whereas non-utility ownership was less so and had "both advantages and limitations."[103]

He asserted that Staff's own community solar pilot proposal (previously proposed in Case No. U-21224) acknowledged concerns about consumer protection regarding non-utility ownership of community solar resources, and Staff proposed a set of protective

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[98] 2 Tr 72.
[99] 2 Tr 75.
[100] 2 Tr 235.
[101] 2 Tr 236.
[102] 2 Tr 236, 237 (citing Exhibit S-2.0)
[103] 2 Tr 237.

requirements for developers to participate in such a program. Nevertheless, he opined that utility ownership of solar assets "would provide the greatest assurance that these requirements related to consumer protection are followed[.]"[104] He added that Staff's previous community solar proposal also contained a locational requirement, and that without such a requirement, there is little difference between Solar Gardens and traditional VGP offerings that could provide energy from an asset anywhere in the state.[105] Mr. DeCooman opined that the company's REP, i.e., its expansion of the LC-REP to all full service customers, was better at providing equitable access to renewable energy compared to Solar Gardens.

Mr. DeCooman asserted that if the company intended to pursue a community solar concept, then the company's Anchor Tenant provision of its Solar Gardens program would provide a more appropriate template.[106] He explained that the anchor tenant provision allowed municipalities and schools to become subscribers-of-last-resort and pay all costs associated with a solar facility that is constructed and owned by the company, but the anchor tenant would conduct outreach and encourage subscriptions that would be administered by the company.[107] He expressed concern regarding the company's proposal to expand the anchor tenant option to all customers instead of only municipalities and schools; he explained that if the anchor tenant unsubscribes or defaults on subscription fees then these costs would be recovered through Power Supply Cost Recovery charges under the transfer price mechanism and the renewable energy

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[104] 2 Tr 237.
[105] 2 Tr 238.
[106] 2 Tr 238, 239.
[107] 2 Tr 239.

regulatory liability account.[108] Mr. DeCooman asserted that there are some protections in place to prevent this, such as early termination fees and credit checks, but he questioned whether these measures would be sufficient if the program were expanded to all customers.[109] Accordingly, he recommended that the Commission require the company to present its review and due diligence of a prospective anchor tenant to Staff before initiating a contract with the anchor tenant.[110] He also recommended that the company commit to performing additional outreach for anchor tenants targeting site hosts in environmental justice (EJ) communities.[111]

Overall, Mr. DeCooman recommended rejecting the company's proposed modifications to the Solar Gardens pilot because it is not an appropriate community solar offering and because it provides similar benefits to the REP but at a significant price premium.[112]

Mr. Cira-Reyes raised concerns that the company's reference to the DOE's high-level definition of "community solar" was misleading because it omitted community ownership.[113] He contended that other materials published by the DOE emphasized the importance of community ownership in community solar projects.[114] Mr. Cira-Reyes defined "community solar" as community-owned solar projects; he further asserted that such projects have significant benefits particularly for low-to-moderate income (LMI)

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[108] 2 Tr 240.
[109] 2 Tr 240.
[110] 2 Tr 241.
[111] 2 Tr 241.
[112] 2 Tr 242.
[113] 2 Tr 172.
[114] 2 Tr 172-173 (citing Exhibit CEO-8, a Community Solar Best Practices Guide published by the U.S. Department of Energy).

communities and Black, Indigenous, and people of color (BIPOC) communities.[115] Mr. Cira-Reyes opined that community solar fostered capacity, distribution, financial, environmental, and community benefits; he described each type of benefit in detail.[116]

Mr. Cira-Reyes also asserted five broad objections to the company's Solar Garden proposal. First, he contended that the proposal lacks community ownership, and therefore, does not satisfy the settlement agreement reached in Case No. U-21224. He opined that the settlement agreement was reached in the context of advocacy for community-owned solar and that the utility's proposal for continued utility ownership shows that it is "not serious with engaging communities on the topic."[117] He opined that without community ownership, customers were asked to fund solar infrastructure through subscription costs while the utility would own and profit from the resulting infrastructure.[118] He also asserted that utility ownership denies communities the energy autonomy associated with community ownership; he further questioned whether utility ownership provided consumer protection given the utility's "history of providing unreliable service at high prices[.]"[119]

Second, Mr. Cira-Reyes asserted that the proposal does not provide sufficient details to ensure the proposed benefits of the project will materialize.[120] He testified that the company does not make any specific or firm commitments to providing community

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[115] 2 Tr 173.
[116] 2 Tr 173-177; see also Exhibits CEO-10, CEO-11, CEO-12, CEO-13, CEO-15, CEO-16, CEO-17, CEO-19, and CEO-20.
[117] 2 Tr 179.
[118] 2 Tr 178.
[119] 2 Tr 179.
[120] 2 Tr 180.

benefits, and the company only provided vague references to community engagement.[121] He further contended that there was no guarantee that customers would receive financial benefits from the program, and that the company admitted that the program was not designed to reduce electric bills.[122] Mr. Cira-Reyes also asserted that the proposal provided insufficient details to ensure that it would benefit LMI and BIPOC communities; he further opined that the company should commit to establishing 50% of future resources in EJ communities.[123]

Third, Mr. Cira-Reyes stated that program's subscription increments are too high and inflexible. He testified that the 400 kWh blocks may be too highly priced, especially for customers of limited means; he opined that the company should offer pro rata subscription options that would allow customers to maximize their subscription within their financial means.[124] He also asserted that the company's proposal to remove underutilized payment options could harm LMI and BIPOC customers and that that company should focus on providing additional payment flexibility.[125]

Fourth, Mr. Cira-Reyes contended that the program's credit amount does not adequately compensate subscribers. He asserted that the credits do not compensate subscribers for the company's avoided transmission costs, avoided distribution costs, and reduced line losses.[126] He contended that the company's credit proposal for Solar Gardens stood "in stark contrast" to the company's treatment of DG customers and denies

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[121] 2 Tr 180-181.
[122] 2 Tr 182 (citing Exhibit CEO-22).
[123] 2 Tr 184.
[124] 2 Tr 185.
[125] 2 Tr 185-186.
[126] 2 Tr 188, 189.

Solar Gardens subscribers equal treatment with DG customers that consume power behind the meter.[127]

Fifth, Mr. Cira-Reyes testified that Solar Gardens lacked adequate capacity in both the short term and long term. He opined that aside from its inadequacy as a true community solar program, the Solar Gardens program had "extremely limited capacity" and called into question whether the company would invest in a plan that would make a meaningful difference in the community.[128] He critiqued the program's current 4.5 MW of capacity and the projected additional 32.5 MW of capacity by 2027 as "modest" and he compared Solar Gardens to community solar programs in other states that already have several times the capacity of Solar Gardens.[129]

In sum, Mr. Cira-Reyes proposed that the company should be required to put forth a new strawman proposal for community solar that addresses his concerns, features community ownership, and focuses on the needs of LMI and BIPOC customers.[130]

Dr. Sherman opined that the settlement agreement reached in Case No. U-21224 requiring the company to propose a "strawman recommendation on community solar" implied that the company should have proposed a new program with fundamentally different attributes than the preexisting Solar Gardens program.[131] She testified that it made "no logical sense" that the parties in Case No. U-21224 would have sought for the company to simply propose an already existing program with minimal modifications.[132]

[127] 2 Tr 190.
[128] 2 Tr 191.
[129] 2 Tr 191, 192; See also Exhibits CEO-26, CEO-27, and CEO-28.
[130] 2 Tr 193, 194.
[131] 2 Tr 321.
[132] 2 Tr 321.

She took issue with the company's definition of community solar derived from the DOE, and she asserted that the DOE itself and other organizations also had broader definitions of community solar programs that referenced third-party ownership of solar resources.[133] Dr. Sherman contended that the Solar Gardens proposal was not truly a community solar program given its lack of third-party ownership and lack of emphasis on providing economic benefits to participants.[134] Dr. Sherman emphasized that several parties, including Staff, put forward community solar proposals in Case No. U-21224 that would better fit the description of a community solar program.[135]

Dr. Sherman opined that third-party owned community solar projects would provide numerous benefits and cost savings for the utility, including reduced transmission-related costs, deferred distribution system upgrades, avoided generation costs, avoided line loss costs, and upgrades to the distribution system paid for by third parties.[136] She added that third-party community solar could now take advantage of federal tax credits.[137] Dr. Sherman acknowledged that the Commission would not necessarily be able to regulate non-utilities that owned solar arrays; nevertheless, she opined that consumer protections could be provided through certain program requirements and that the competitive market and customer choice would offer protections as well.[138] She also asserted that customer protections could be enforced by the Attorney General under the Michigan Consumer Protection Act, MCL 445.901 *et seq*.[139]

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[133] 2 Tr 322-323.
[134] 2 Tr 323-324.
[135] 2 Tr 324-326.
[136] 2 Tr 326.
[137] 2 Tr 326.
[138] 2 Tr 329.
[139] 2 Tr 329.

Dr. Sherman raised concerns about the company's explanation of its plan for soliciting bids to construct resources for Solar Gardens. She testified that bidding should be conducted using an independent administrator and should follow the Commission's competitive bidding guidelines.[140] She also expressed concern that that company indicated that it would allow both community solar projects (i.e., those of 5 MWac or less) and larger utility-scale projects to compete in solicitations for solar gardens resources. She opined that utility-scale projects would naturally be less costly because of economies of scale, but community solar is supposed to provide access to local, small-scale community solar projects.[141] Accordingly, she opined that Solar Gardens projects should be limited to 5 MWac or less to ensure that the program is truly supports smaller community solar projects.[142]

Dr. Sherman asserted that the company's Anchor Tenant pilot portion of solar gardens is relatively new, has no participants, and should not be adopted as part of a permanent program because it is untested.[143]

Overall, Dr. Sherman recommended that the Commission should determine that the company's proposal to make Solar Gardens permanent does not satisfy its obligation under the settlement agreement in Case No U-21224; she further opined that the Commission should direct the company to propose a new community solar program like the one proposed by Staff witness Baldwin in Case No. U-21224.[144] In any event, she recommended that the Commission reject the proposal to make Solar Gardens

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[140] 2 Tr 331.
[141] 2 Tr 332.
[142] 2 Tr 332.
[143] 2 Tr 332.
[144] 2 Tr 333.

permanent, and she reiterated her recommendations regarding competitive bidding and the Anchor Tenant pilot.[145]

In rebuttal, Mr. Clinton asserted that the settlement agreement contained no requirement that the company's proposal had to include third-party ownership of solar arrays or that the proposal had to be a completely new offering.[146] Mr. Clinton asserted that the company's proposal "fits the Department of Energy definition for community solar" and that it is a community solar proposal consistent with the Settlement Agreement.[147] He opined that third-party ownership is not a necessary component for community solar programs, and he also testified that a locational requirement "creates barriers to the development of community solar[.]"[148] Mr. Clinton explained that locational requirements would exclude customers that live in communities that, for various reasons, could not host solar arrays.[149]

Mr. Clinton responded to Staff's suggestion that the Anchor Tenants program should be the basis for the company's community solar program by asserting that Solar Gardens "is a more viable option for the development of small scale solar in Michigan[.]"[150] He acknowledged that the Anchor Tenant program offered the locational aspect that Staff prefers, but he contended that Solar Gardens and the Anchor Tenant offering are complementary and work best when they exist simultaneously together.[151] He also rejected Staff's reluctance to make Solar Gardens a permanent offering stating that

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145 2 Tr 334.
146 2 Tr 89.
147 2 Tr 90.
148 2 Tr 91.
149 2 Tr 92.
150 2 Tr 82-93.
151 2 Tr 93.

making the program permanent would allow customers to have confidence in the program.[152]

Mr. Clinton rejected Dr. Sherman's recommendation to require the company to propose a community solar program allowing third-party ownership aligned with the one Staff witness Baldwin proposed in Case No. U-21224. He asserted that there is nothing preventing third-party developers from developing solar projects under PURPA,[153] and he emphasizes that in the current case even Staff did not recommend adopting Staff witness Baldwin's previous community solar proposal.[154] Mr. Clinton explained that utility subsidization of solar arrays owned by third-parties would shift risk from the third-party developer to the utility and its ratepayers, and it would also introduce consumer protection concerns.[155]

Mr. Clinton responded to Dr. Sherman's concerns about competitive procurement for Solar Gardens by stating that the company is supportive of using competitive solicitations, "but also would reserve the right to identify and self-develop other projects[.]"[156] He explained that the company "would issue a Request for Proposal for all major components, engineering, and design in excess of $100,000 to ensure that the project is cost competitive."[157] He also sought to allay Dr. Sherman's concerns about allowing community solar projects and larger utility-scale solar projects to compete in

[152] 2 Tr 98.
[153] The Public Utility Regulatory Policies Act of 1978
[154] 2 Tr 94.
[155] 2 Tr 95.
[156] 2 Tr 101.
[157] 2 Tr 101.

solicitations by stating that "[i]t is not the Company's intent to utilize utility-scale projects to support the Solar Garden Program expansion."[158]

Mr. Clinton stated that the concerns raised by Mr. Cira-Reyes do not support rejection of the company's proposal. He reiterated that third-party ownership was not necessary and that the concern regarding subscription increments being too high was addressed by the company's proposal to pool VGP assets.[159] Mr. Clinton asserted that the credit amount for the program is properly determined by the market value of energy and capacity, and he explained that the company would use customer demand to adequately scale the Solar Gardens program, which could be more or less than the projected 32.5 MW expansion.[160]

Mr. Clinton rejected the criticism that subscription increments for Solar Gardens are too high by explaining that that the company proposed to simplify subscription offerings starting at 5% of an average customer's annual usage scaling up to 100% in increments of 5%.[161] Mr. Clinton testified that the proposed energy and capacity credits are adequate and that "[i]ncluding transmission and distribution offsets in the outflow credit would compensate a community solar customer for a service they are not providing or offsetting resulting in utility customers subsidizing VGP customers."[162] He explained that Solar Gardens customers rely on both the transmission and distribution system for access both to the utility's energy supply and the supply of the solar array. He further explained that solar was intermittent such that at any time a Solar Gardens customer

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[158] 2 Tr 102.
[159] 2 Tr 96.
[160] 2 Tr 96.
[161] 2 Tr 97.
[162] 2 Tr 97.

could require all energy to be delivered through the company's transmission and distribution system; he opined that this required the company to maintain the same or similar level of investment regardless of whether a customer participates in Solar Gardens.[163] Mr. Clinton also testified that the company's proposals did benefit LMI and BIPOC communities because the company's proposed Green Giving Program and the use of surplus Green generation funds would be used to support those customers.[164]

In rebuttal, Mr. DeCooman addressed concerns regarding consumer protection under third-party ownership structures. He questioned Dr. Sherman's contention that competitive markets would provide a degree of consumer protection opining that "[t]he existence of a competitive market . . . is not a proxy for consumer protections."[165] Mr. DeCooman asserted that customers would be at risk of entering exploitative arrangements with sophisticated third parties absent robust protections in both the contracting and administration of a community solar program.[166] Mr. DeCooman disputed the contention by Mr. Cira-Reyes that community solar provided benefits relating to "political autonomy" that eclipsed the value of consumer protection of utility ownership because Mr. Cira-Reyes failed to describe or quantify the benefits of the ostensible autonomy that community solar provided.[167]

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[163] 2 Tr 97.
[164] 2 Tr 98.
[165] 2 Tr 248.
[166] 2 Tr 248-249.
[167] 2 Tr 249.

However, Mr. DeCooman supported allowing third-party development and ownership of solar assets in the Anchor Tenant pilot if five conditions were satisfied.[168] He specified that these five conditions were the same conditions that Staff proposed in its own community solar proposal in Case No. U-21224.[169]

Also providing rebuttal for Staff, Mr. Krause partially disagreed with many of the ostensible benefits of community solar listed by Mr. Cira-Reyes and Dr. Sherman. He asserted that most of the capacity, distribution, financial, and environmental benefits touted by those witnesses are also provided by utility-owned projects.[170] For various reasons, he testified that community solar would "not necessarily" provide all the reliability and resilience benefits touted by Mr. Cira-Reyes.[171] Similarly, he opined that the various financial benefits and bill savings touted by Mr. Cira-Reyes and Dr. Sherman would "not necessarily" materialize, and that it was therefore inappropriate to suggest a bill savings target or savings guarantee.[172] Mr. Krause testified that the environmental or health costs of energy listed by Mr. Cira-Reyes are not actually paid by the company, and may require legislation to include or consider in rates.[173]

Mr. Krause objected to Mr. Cira-Reyes' proposal to award additional capacity and energy credits to LMI and BIPOC customers on low performing circuits both because a

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168 To wit, the five conditions are: (1) Set aside funding to cover the costs of decommissioning the project and returning the site to its original condition at the end of project life; (2) Agree to participate in an informal customer compliant resolution process with MPSC Staff; (3) Submit marketing materials and customer contracts to the Staff for review prior to presenting to potential customers and agree to address Staff concerns; (4) Agree to the terms of the power purchase contract and subscription activities with the utility; and (5) Provide updated subscriber information to the utility within 30 days of subscribing a new customer. 2 Tr 250-251.
169 2 Tr 250.
170 2 Tr 279.
171 2 Tr 279-281.
172 2 Tr 281, 282.
173 2 Tr 282.

credit may not be warranted and because "[n]o compelling reason has been provided to award credits to LMI and BIPOC customers on poorly performing circuits that participate in the community solar program while not providing any benefit to LMI and BIPOC customers on poorly performing circuits that do not participate in the community solar program."[174]

Mr. Krause rejected the suggestion by Mr. Cira-Reyes that community solar subscribers should be compensated for the full value of their outflow both because no showing has been made of avoided costs and because doing so would provide no benefit to other customers or the utility, making them indifferent to community solar.[175] He also disagreed with the suggestion that community solar should be compensated like behind-the-meter DG because community solar customers use the utility's distribution system to varying degrees.[176]

In her rebuttal, Dr. Sherman voiced general support for Staff's concerns regarding Solar Gardens, but she stated that "Staff's overemphasis on locational proximity could have unintended consequences."[177] She explained that requiring locational proximity to a community solar array may unintentionally exclude low-income urban customers if there are no suitable locations to construct solar arrays in their communities.[178] Dr. Sherman stated that a critical aspect of community solar that "cannot be overemphasized" is the provision of financial benefits to subscribers, but she opined that Solar Gardens is a

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[174] 2 Tr 283.
[175] 2 Tr 283-284.
[176] 2 Tr 284.
[177] 2 Tr 346.
[178] 2 Tr 346.

premium program that is not designed to provide any financial benefit.[179] She also opined that a bill credit mechanism was crucial for community solar programs.[180]

Dr. Sherman disagreed with Staff's suggestion that utility ownership (and accompanying Commission oversight) was often preferable to third-party ownership, at least regarding available consumer protection. Dr. Sherman reiterated the competitive market provides inherent protection, the Commission could establish additional requirements for community solar programs, and the Attorney General could provide protection through enforcement of the Michigan Consumer Protection Act, MCL 445.901 *et seq*.[181] Dr. Sherman repeated the ostensible benefits of third-party ownership, including the use of private capital to provide grid upgrades and cost savings for customers.[182]

Dr. Sherman testified that she did not believe the Anchor Tenant program, as currently structured, would promote the development of community solar projects.[183] She asserted that the program will be limited to only those subscribers willing to take on the financial risk for an entire project, and Staff's locational preference will limit the pool of subscribers to those in proximity to the project.[184] She opined that Staff's proposal to financially vet potential anchor tenants would likely shrink the pool of interested non-government applicants, and she expressed hesitancy to open the program to non-government entities given that the Anchor Tenant pilot has not been utilized yet.[185]

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[179] 2 Tr 347.
[180] 2 Tr 347.
[181] 2 Tr 349.
[182] 2 Tr 350.
[183] 2 Tr 351.
[184] 2 Tr 351-352.
[185] 2 Tr 352.

Overall, Dr. Sherman reiterated her agreement with Staff that the Solar Gardens proposal did not satisfy the Settlement Agreement in Case No. U-21224, but she disagreed that the Anchor Tenant pilot provided a better template and instead suggested Staff witness Baldwin's community solar proposal in Case No. U-21224.[186]

2. Positions of the Parties

In its initial brief, the company insists that it complied with the Case U-21224 Settlement Agreement, and that in interpreting a contract, the intent of the parties should be determined by examining the language of the contract according to its plain and ordinary meaning if the language is unambiguous.[187] The company asserts that it provided a strawman recommendation on community solar as required by the Settlement Agreement and that Solar Gardens fits the DOE's definition of a community solar program.[188] The company contends that Staff, MEIU, and CEO are improperly attempting to read various requirements into the agreement that are not in the plain text. Accordingly, the company argues that there is no basis for the proposal to require the company to submit another strawman proposal for community solar.[189] The company largely responded to criticism of the various aspects of its Solar Gardens proposal by referencing the relevant direct and rebuttal testimony of Mr. Clinton.[190] Notably, in response to MEIU's concerns about competitive bidding, the company argues that it could pursue select projects for Solar Gardens without a competitive bidding process under MCL 460.1028(6)

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[186] 2 Tr 353.
[187] Consumers p 30 (citing *In re Smith Trust*, 480 Mich 19, 24; 745 NW2d 754 (2008)).
[188] Consumers pp 30, 31.
[189] Consumers p 32.
[190] See generally Consumers pp 19-22; 24-28.

if the Commission determined that the unsolicited proposal provided opportunities that may not otherwise be available or practical through a competitive bidding process.[191]

Regarding its Anchor Tenant proposal, the company agreed to Mr. DeCooman's proposal that the company should present its due diligence of a prospective anchor tenant to Staff before contracting.[192] Nevertheless, the company requests that this due diligence review "be limited to the Company presenting its review and due diligence to Staff without a formal approval process" and that the review only cover potential anchor tenants other than municipalities and schools.[193] The company notes that for the first time in rebuttal, Mr. DeCooman voiced support for third-party ownership of assets in the anchor tenant pilot. However, the company argues that third-party ownership should not be required both because third parties do not need a program to build third-party solar and because there needs to be additional considerations as to how third-party ownership would fit into the pilot program's structure and administration.[194]

Staff's briefing argues that the Commission should reject the company's Solar Gardens proposal as its community solar program and should direct that the company to use the anchor tenant pilot as a template for a community solar program.[195] Staff contends that Solar Gardens lacks critical components for a community solar program, including locational proximity and third-party ownership, such that it is not an appropriate community solar offering.[196] Staff asserts that the anchor tenant pilot is the most attractive

[191] Consumers p 27.
[192] Consumers p 28.
[193] Consumers p 28-29.
[194] Consumers p 29.
[195] Staff p 7.
[196] Staff p 8.

option for a community solar program because of its inherent locational requirement.[197] Staff rejects arguments by the company and MEIU that it overemphasizes a locational requirement because a locational requirement is “foundational to a community solar program” and is “a necessary element[.]”[198] Staff insists that without a locational requirement, then there is little meaningful difference between a community solar subscription and an REP subscription, since both would effectively draw solar energy from distant solar arrays.[199]

Staff argues that the company was receptive to its proposed modifications for the anchor tenant program.[200] Staff agreed to limit its involvement in the evaluation of new anchor tenants to reviewing the company’s due diligence if this occurred before the finalization of a contract; however, Staff did not support excluding all municipalities and schools from this review arguing that all potential anchor tenants, even schools or municipalities, located in EJ communities should trigger such review.[201] Finally, Staff recommended allowing third-party ownership in the anchor tenant program if developers are required to comply with the consumer protections identified by Mr. DeCooman.[202]

Staff argues that, for the reasons stated in Mr. Krause’s testimony, many of the purported benefits of community solar regarding capacity, reliability, resiliency, downward pressure on rates, and bill reduction have not been supported on the record.[203] Staff also repeats Mr. Krause’s arguments opposing suggestions by MEIU or CEO that community

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[197] Staff p 8.
[198] Staff p 10.
[199] Staff p 10.
[200] Staff p 13.
[201] Staff p 13-14.
[202] Staff p 15 (citing 2 Tr 250).
[203] Staff p 16-19.

solar subscribers should be compensated for avoided environmental costs, that community solar subscribers should be compensated at full value or the same as behind-the-meter DG, and that LMI/BIPOC subscribers should receive additional credits.[204]

The CEO brief repeats and expands on the key arguments presented by Mr. Cira-Reyes, including that the Solar Gardens does not comply with the Settlement Agreement because it lacks a community ownership option, that Solar Gardens fails to provide LMI and BIPOC communities with economic benefits, and that various aspects of the proposed program are inappropriate.[205]

MEIU's brief also repeats the key arguments presented by Dr. Sherman, including that the Solar Gardens proposal fails to satisfy the Settlement Agreement and that the company should be required to submit a new community solar proposal within 90 days based upon Staff's community solar proposal in Case No. U-21224.[206] Notably, MEIU addresses Staff's concerns regarding consumer protection. MEIU faults Staff for claiming that Dr. Sherman suggested that the mere presence of a competitive market would provide consumer protection. Instead, MEIU emphasizes that there are multiple layers of consumer protection, including competitive market forces, Attorney General regulation, and participation or tariff-based requirements, such that consumer protection is possible in a community solar program with third-party-owned projects.[207] MEIU's brief also reiterates Dr. Sherman's opposition to making the anchor tenant program permanent,

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[204] Staff p 19-21.
[205] See generally CEO pp 15-27.
[206] See generally MEIU pp 5-13.
[207] MEIU p 13, 14.

and urges the Commission to include competitive bidding requirements for the Solar Gardens program.[208]

The company's reply argues that a locational requirement is not required for community solar because all customers should be able to participate, and customers will know that they are supporting small-scale solar arrays throughout Michigan.[209] The company contends that the lack of a locational requirement is a beneficial feature, not a flaw, and that the Anchor Tenant pilot can complement Solar Gardens by allowing customers to subscribe to small-scale solar in specific communities.[210] The company also continues to oppose Staff's requests to include third-party ownership in the Anchor Tenant program and to review the company's due diligence for municipalities and schools in EJ communities.[211]

The company reasserts that its proposal complies with the Settlement Agreement in Case No. U-21224 and that the parties to the agreement did not dictate any specific community solar requirements such that Staff, MEIU, and CEO are improperly reading terms into the Settlement Agreement that are not contained in its plain text.[212] The company also repeats arguments regarding the propriety of its updated terms for Solar Gardens and the company's ability to build solar resources itself.

Staff's reply reiterates that a locational requirement is a foundational aspect of community solar and that without such a requirement any program is simply small-scale

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[208] MEIU p 16-19.
[209] Consumers Reply p 4.
[210] Consumers Reply p 5.
[211] Consumers Reply p 6.
[212] Consumers Reply p 11.

solar.[213] Staff asserts that review of due diligence in the anchor tenant program should extend even to municipalities and schools in EJ communities "given the challenges to providing service to customers in these communities."[214] Staff also challenges the company's opposition to allowing third-party ownership in the Anchor Tenant pilot explaining: "The question is not whether a third-party developer needs access to the anchor tenant pilot to develop a community solar offering; rather, it is whether allowing the participation of third-party owned solar resources would be beneficial to an anchor tenant seeking a solar project to host."[215] Staff contends that third-party ownership could be beneficial, and that Staff's proposal would harness that benefit while providing consumer protections.[216] Staff contends that the various benefits and bill savings proposed by MEIU have not been proven to exist and that contrary to CEO's suggestion, community solar should not be treated similarly to DG programs.[217]

CEO replies that community ownership is a critical component of community solar that is necessary to provide certain benefits that cannot be obtained through utility ownership, such as community governance and wealth generation.[218] CEO also asserts that a locational requirement is necessary for community solar because certain benefits, like distribution-related benefits, do not accrue unless the solar array is cited in a local community.[219] CEO recommended that the Commission direct that community solar resources should be cited in the communities that they serve, and that to ensure equitable

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[213] Staff Reply p 8.
[214] Staff Reply p 11.
[215] Staff Reply p 11.
[216] Staff Reply p 11-12.
[217] Staff Reply p 20-21.
[218] CEO Reply p 5.
[219] CEO Reply p 5-6.

citing, at least 50% of community solar resources should be cited in LMI and BIPOC communities.[220] CEO also contends that the Solar Gardens straw proposal does not fulfill the terms of the Settlement Agreement because it does not incorporate any of the elements advocated for by intervenors and Staff that led to the Settlement Agreement itself.[221]

CEO provides several detailed arguments countering those presented by the company to support its proposed credit amounts for Solar Gardens.[222] CEO also contends that Staff misunderstands various aspects of its arguments and testimony.[223] CEO argues that the company should provide subscription increments in blocks smaller than the 400 kWh to provide more flexibility for customers.[224]

MEIU replies that the company did not comply with even the “plain and ordinary meaning” of the text of the Settlement Agreement in Case No. U-21224 because Solar Gardens is not a “community solar” program because it does not fit the generally accepted definitions of that term.[225] MEIU rejects arguments by the company and Staff that its proposal for community solar (i.e., Staff witness Baldwin’s proposal from Case No. U-21224) relies on subsidies; instead, MEIU contends that it merely argues that the value created by subscribers should be credited back to them.[226] MEIU also argues that the company’s position is hypocritical because it proposes to subsidize the high cost of Solar

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[220] CEO Reply p 6.
[221] CEO Reply p 6-7.
[222] CEO Reply p 7-13.
[223] CEO Reply p 13, 14.
[224] CEO Reply p 15.
[225] MEIU Reply p 2.
[226] MEIU Reply p 3.

Gardens by combining its assets with those of the new REP program.[227] Finally, MEIU reiterates its opposition to the anchor tenant program expansion because no customer has yet come forward to participate in it, it is untested even as a pilot, and it does not appear to offer more favorable economics than the Solar Garden program.[228]

3. Findings, Conclusions, and Recommendations

The parties disputed a myriad of issues concerning the Solar Gardens proposal, each of which this PFD will endeavor to address *ad seriatim*:

a. Fulfillment of the Settlement Agreement in Case No. U-21224

In the settlement of its last rate case, the company agreed to "evaluate and provide a strawman recommendation on community solar in its Voluntary Green Pricing Program filing no later than October 2023."[229] The parties dispute whether the Solar Gardens proposal fulfills this clause of the Settlement Agreement. More specifically, the parties dispute whether a community solar program must necessarily have each of the following characteristics: (1) a locational requirement for solar arrays; (2) third-party ownership of solar arrays; and (3) financial benefits, like a bill credit, for subscribers.

The Commission recently addressed two of these disputes in Case No. U-21172 involving peer utility DTE Electric. In that case, a dispute arose over whether DTE Electric's community solar proposal complied with a Commission directive to file a straw proposal for a community solar program.[230] Several parties disputed whether third-party ownership or on-bill crediting were required for a proposal to constitute community solar.

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[227] MEIU Reply p 5.
[228] MEIU Reply p 6.
[229] Case No. U-21224, January 19, 2023, Adopted Settlement Agreement, p 12, ¶ 27.
[230] Notably, the Commission's direction to DTE Electric to file the community solar straw proposal can be found in Case No. U-20836, November 18, 2022, Order, p 456.

The Commission suggested that these aspects were not strictly required stating that "[t]he Commission agrees with Staff that there is not one model for community solar in that, absent any controlling statutory requirements, a viable community solar option does not require third-party ownership and on-bill crediting and that Section 61 does not mandate the inclusion of a community solar option."[231] The Commission ultimately concluded in that case that DTE Electric complied with the directive to file a community solar straw proposal.[232] Given the Commission's reasoning in that case, this PFD concludes that the absence or presence of third-party ownership or financial benefits like an on-bill credit is not dispositive regarding whether the company complied with the Settlement Agreement's requirement to present a strawman community solar proposal.[233]

Given the Commission's reasoning in Case No U-21172 discussed above, this PFD also concludes that a locational requirement for solar arrays is not strictly required for a community solar proposal. This PFD is persuaded by MEIU's argument that, while an ideal community solar project would be near its subscribers to justify distribution-related credits, it should not necessarily be expected of every community solar project or program. This PFD also notes that the definition of community solar provided by the DOE, which was cited by the company and other parties, is broad enough that it could encompass the Solar Gardens program.[234]

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231 Case No. U-21172, April 25, 2024, Order, p 35-36. Notably, the Commission nevertheless ordered DTE to include on-bill crediting because DTE committed to on-bill crediting in a previous settlement agreement but failed to include that aspect in its straw proposal.

232 Case No. U-21172, April 25, 2024, Order, p 35.

233 Notably, in this case the company's Solar Gardens proposal is entirely utility-owned and has no third-party ownership option for solar arrays; however, it does offer customers a monthly bill credit. See Exhibit MEIU-5, p 1.

234 That definition states that community solar is "any solar project or purchasing program, within a geographic area, in which the benefits of a solar project flow to multiple customers such as individuals, business, nonprofits, or other groups." See Exhibit CEO-6, p 1.

Ultimately, this PFD concludes that the company complied with the terms of the Settlement Agreement in Case No. U-21224 by proposing to expand the Solar Gardens program with modifications because such a proposal constitutes a strawman recommendation for a community solar program even if intervening parties are frustrated by its contents. However, while this PFD finds that the company complied with the letter of the Settlement Agreement, the company perhaps paid less heed to the agreement's spirit by proposing the expansion and slight modification of a preexisting program that the other parties to the agreement knew of and undoubtedly found lacking as a community solar option.

This PFD finds that as with DTE Electric's community solar straw proposal in Case No. U-21172, the company's Solar Gardens straw recommendation should be considered "a mere starting point" for the consideration of a community solar program such that the proposal's shortcomings identified by Staff and intervenors should be considered and addressed in future cases.[235] Indeed, because the purpose of a straw proposal is to generate discussion and serve as a starting point, this PFD recommends directing the company to propose a community solar recommendation in its next biennial VGP case that should address some of the shortcomings identified in this case. Specifically, this PFD recommends directing the company to provide an improved proposal that addresses common aspects of many community solar programs that are absent from Solar Gardens: (1) an option for third-party solar array ownership in addition to utility ownership, and (2) a locational requirement for at least some community solar projects that could justify

[235] See Case No. U-21172, April 25, 2024, Order, p 36-37 (Stating that the Commission accepted DTE Electric's proposal "as a mere starting point" and encouraging the company to consider intervenor feedback and other ownership models).

providing subscribers with distribution/transmission related credits for avoided costs. Additionally, this PFD recommends directing that the company's next proposal, if it intends to use Solar Gardens as a template, should propose a different way to address the high cost of developing Solar Gardens assets, i.e., a method other than asset pooling and the resulting subsidization.

b. Removal of the Pilot Designation

This PFD agrees with Staff that the Commission should reject the company's request to remove the pilot designation from the Solar Gardens program. This PFD views the Solar Gardens straw proposal as a mere starting point for community solar such that it would be imprudent to make the program permanent at this juncture.

Further, aspects of the current or proposed program raise concerns about the program's structure. The company's proposal to form a combined asset pool for Solar Gardens and REP resources should be rejected for the reasons stated elsewhere in this PFD, i.e., pooling would use other VGP programs to subsidize Solar Gardens and send an improper price signal to customers. However, the company expressed serious doubts about the future of Solar Gardens if such pooling was rejected. Indeed, Mr. Clinton testified that absent such pooling the company "may need to reduce emphasis on growing the Solar Gardens Program in the future given the program's limited economic viability and affordability."[236] This PFD suggests that the limited economic viability and affordability of the program as currently structured is cause for concern and weighs against removal of the pilot designation. This PFD further agrees with Staff that, as currently structured,

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[236] 2 Tr 100.

the purpose and goals of the Solar Gardens program appear to be better served from other offerings such as the new REP.

c. Removal of the 10 MW Program Cap

This PFD recommends against removing the 10 MW program cap because doing so would allow the program to expand in its current form when the company itself questions the program’s long-term viability without subsidization from other VGP customers. The company estimated that an additional 32.5 MW of generation resources would be needed for future Solar Gardens demand, but this PFD suggests that it would be imprudent to allow the pilot program to more than triple in size when the company itself questions the program’s viability and affordability without subsidization. This PFD recommends that the company should be required to propose reforms or modifications to Solar Gardens to address its long-term viability before permitting the program to significantly expand in size.

d. Changes to Program Provisions

The company proposed various changes to the Solar Gardens program provisions including: (1) converting the program’s capacity-based (i.e., kW) block subscriptions to an energy-based (i.e., kWh) block subscriptions; (2) offering block sizes of 400 kWh to provide greater customization; (3) aligning the energy and capacity credit methodology using the current LC-REP credit structure; and (4) removing upfront, three-year and seven-year payment options.

This PFD recommends approving the conversion of capacity-based subscriptions to energy-based kWh subscriptions and the approval of subscription block sizes in increments of 400 kWh. This PFD rejects the idea that blocks of this size are an undue barrier to LMI participation in the program because the company explained that individual blocks would be priced at $4.75 per month under the current structure of the program without asset pooling.[237] This PFD also recommends allowing the company to end accelerated and upfront payment options given apparent lack of customer interest and strong customer preference for month-to-month participation.[238] This PFD recommends maintaining the current energy and capacity credit methodology structure rather than converting to the LC-REP credit structure given that this PFD does not recommend pooling Solar Gardens assets with assets from the LC-REP program.

For the reasons stated by the company and Staff, this PFD rejects arguments by CEO/MEIU that Solar Gardens energy and capacity credits are too low because they do not compensate outflow at full value or credit subscribers for reduced or avoided transmission and distribution costs. Further, arguments regarding avoided transmission and distribution costs appear, at times, to assume a proximity between solar arrays and subscribers (and the attendant avoided or reduced use of the transmission and distribution systems) that is simply not present in the Solar Gardens program.[239] This PFD also agrees with Staff that, to the extent CEO asserted generalized transmission and distribution benefits attributable to community solar, such benefits again seem to presume a locational requirement, appear largely theoretical, and no calculations for these ostensible benefits have been provided or proposed.

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[237] 2 Tr 69-70.
[238] See e.g. 2 Tr 72.
[239] However, this PFD does agree with Staff, see 2 Tr 284, that different rate or credit treatment could be appropriate in a situation where all production of a community solar project is consumed without being delivered elsewhere by the company's distribution system. However, it is unclear from the record whether any such circumstance currently exists in the Solar Gardens program.

This PFD also rejects the suggestion by CEO that Solar Gardens customers should be treated similarly to DG customers that consume power behind the meter because Solar Gardens customers do not consume electricity generated on site.

This PFD agrees with Staff that the Commission should reject proposed additional capacity and energy credits for LMI and BIPOC Solar Gardens participants on low-performing circuits because no compelling reason has been provided to award credits to those customers compared to LMI and BIPOC customers that do not participate in the program.

e. Project Solicitation for Solar Gardens

This PFD agrees with the company that for small, community-focused Solar Gardens projects, the company might have the option to work directly with communities and pursue unsolicited solar projects under MCL 460.1028(6) if the Commission "determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical through a competitive bid process." MCL 460.1028(6). Accordingly, this PFD declines MEIU's recommendation to strictly mandate a competitive bidding process for all Solar Gardens projects.

f. Anchor Tenant Pilot Program

This PFD recommends approving the company's proposal to expand eligibility to participate as an anchor tenant beyond schools and municipalities to all full-service customers because this would allow for additional possible anchor tenants. This PFD further recommends adopting the safeguards proposed by Staff including requiring the company to present its review and due diligence on potential anchor tenants to Staff prior to signing a contract to allow for Staff's input. This PFD agrees with Staff that this review should generally exclude municipalities and schools given their relative financial stability, except for those located in EJ communities where there may be additional challenges and Staff's review may be warranted. This PFD also agrees with Staff's recommendation to encourage the company to support outreach efforts by potential anchor tenants in EJ communities while allowing the anchor tenant to lead and pay for such outreach.

This PFD agrees with Staff that an option for third-party ownership of solar resources in the Anchor Tenant pilot should be included with the caveat that third-party developers should be required to comply with the five conditions identified by Staff.[240] Regarding this proposal, this PFD rejects the company's arguments and agrees with Staff that the question is not whether third-party developers need access to the Anchor Tenant pilot to develop a solar offering, but whether allowing third-party ownership of solar resources could be beneficial to an anchor tenant seeking to host a solar project.

This PFD specifies that because it does not recommend removing the pilot designation from Solar Gardens, it likewise does not recommend removing the pilot designation from the Anchor Tenant pilot within Solar Gardens. Indeed, as pointed out by MEIU, the Anchor Tenant pilot is relatively new and untested since no customer has yet come forward to become an anchor tenant.

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[240] The five conditions proposed by Staff were: (1) Set aside funding to cover the costs of decommissioning the project and returning the site to its original condition at the end of project life; (2) Agree to participate in an informal customer compliant resolution process with MPSC Staff; (3) Submit marketing materials and customer contracts to the Staff for review prior to presenting to potential customers and agree to address Staff concerns; (4) Agree to the terms of the power purchase contract and subscription activities with the utility; and (5) Provide updated subscriber information to the utility within 30 days of subscribing a new customer. See 2 Tr 250-251.

**D. Renewable Energy Credit Program**

1. Testimony

Mr. Clinton testified that the company proposed to consolidate four renewable energy credit (REC) options (Michigan REC, Michigan REC New, National REC, and National REC new) under one REC program tariff to simplify the offering. He added that the company proposed to remove the block enrollment option from the Michigan REC program to align it with the other enrollment options with per kWh fees.[241]

Ms. Champion supported the company's proposal to consolidate all four REC options under one tariff program because it is an organizational change that does not alter the function of the four offerings.[242] She also recommended approving the proposal to remove the block enrollment option in favor of a per kWh methodology because it "brings the Michigan REC offering into alignment with the other REC options, as well as with the REP and Solar Gardens offerings."[243]

Dr. Sherman testified that the company should be required to purchase RECs from DG customers at the customer's discretion.[244] Dr. Sherman explained that a similar directive was proposed and approved in a PFD in relation to DTE Electric's voluntary green pricing programs in Case No. U-21172, although a final Commission order had not yet been issued.[245] Dr. Sherman made further recommendations:

> The Company should also bear the responsibility and costs of REC certification and allow a customer to install a bi-directional meter instead of requiring an additional generation meter. Additionally, I recommend that the Commission specify that the Company must recognize all RECs produced

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[241] 2 Tr 76.
[242] 2 Tr 221.
[243] 2 Tr 221.
[244] 2 Tr 317.
[245] 2 Tr 317.

> by a DG system if an inverter complying with ASNI C.12 (or its successor) is used, rather than just accounting for RECs associated with output to the grid.[246]

Dr. Sherman testified that the company should pay DG customers the cost of the net premium (calculated as a five-year rolling average) paid by customers to participate in the REP.[247] She also opined that the company should share with interested parties a standard contract form for REC purchases within 90 days, provide for input, and file the contract form with the Commission for approval.[248]

For the company, Mr. Johnston rejected Dr. Sherman's recommendation to require purchase of RECs from DG customers because the recent passage of Public Act 235 (PA 235) changed the calculation for the renewable portfolio standard (RPS) such that RECs would provide no additional value to the company and could not be double counted.[249] He explained that MCL 460.1028(2)(b)(i)-(ii) now provides that the sales upon which the company must achieve the RPS excludes generation from DG customers, including outflow, such that RECs would provide no additional value in achieving RPS compliance.[250] Mr. Johnston opposed as inappropriate Dr. Sherman's other REC-purchase related recommendations, including her recommendation to value RECs at the five-year rolling average of the net premium.[251]

In rebuttal, Staff witness Heidemann also expressed concern that the recent passage of PA 235 undercut the proposal to require the company to purchase RECs from

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[246] 2 Tr 317.
[247] 2 Tr 318.
[248] 2 Tr 319.
[249] 2 Tr 143.
[250] 2 Tr 143.
[251] 2 Tr 144, 145.

DG customers, which Staff previously supported. Mr. Heidemann examined the new mathematical formula for calculating RPS compliance and concluded:

> Because PA 235 already accounts for the RECs that would have been generated it is inherently assuming the DG RECs are already retired on their behalf; therefore, there is nothing left to sell. Because of this, Staff's position is that MEIU witness' Shermans proposal, if approved, would result in double counting of DG-generated RECs in the RPS calculation regardless of whether they went towards compliance or were used for VGP.[252]

He recommended that the Commission should not approve any proposal to require the company to purchase RECs from DG customers at this time.[253] Staff witness Matthews provided similar testimony opposing the requirement to purchase RECs from DG customers because of changes implemented in PA 235.[254] Mr. Matthews added that if the Commission determined that RECs should be purchased from DG customers, then the net premium price suggested by Dr. Sherman should not be used.[255]

2. Positions of the Parties

In briefing, the company reiterates Mr. Johnston's arguments that PA 235 undercuts the need for the company to purchase RECs from DG customers and that the other aspects of MEIU's proposal are unreasonable or otherwise moot.[256]

Staff reaffirms support for the company's REC-related proposals and reiterates that the Commission should not approve of the purchase of DG RECS by the company because of the passage of PA 235.[257]

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[252] 2 Tr 359
[253] 2 Tr 359, 360.
[254] 2 Tr 291.
[255] 2 Tr 291.
[256] Consumers p 32-34.
[257] Staff p 35-38.

MEIU disputes the position taken by the company and Staff by arguing that PA 235 makes DG REC purchases more necessary. MEIU argues:

> Both of witness Heidemann's conclusions rest on an assumption regarding how the RPS is intended to function, specifically that it applies to electricity *consumed* in the state in the first instance rather than simply applying to electricity *sold by* electric providers in the state. This is the only way that his arguments and conclusions as to how DG outflow and, more particularly, DG energy consumed on site, would make sense (i.e., that the statute is "assuming that whatever RECs that would have been generated are being retired" and that "RECs that would have been generated are retired on behalf of the DG customer for the portion of load supplied by the generation onsite").
>
> The statute is not framed in terms of consumption, however, but in terms of power sold by electric providers in the state. Section 28(2)(b)(i) & (ii) speaks in terms of "megawatt hours of electricity *sold by* the electric provider" (emphasis added). Behind-the-meter and self-generation is simply excluded, in that no renewable portfolio requirements apply to things like industrial self- generation or co-generation using fossil fuel resources. No reasonable person could argue that these things are excluded from the RPS because they are deemed to produce RECs that are assumed to be retired on behalf of the customers generating them. Rather, these things are simply outside the scope of the RPS.[258]

MEIU argues that similarly DG energy produced and consumed onsite is excluded simply because it is by definition not part of the power sold by an electric utility, and the statute simply does not express an opinion as to whether or not this self-generated power must be (or remain) renewable or not.[259] MEIU argues that DG customers certifying RECs associated with on-site generation therefore remain free to sell their RECs, and there would be no double counting of RECs as claimed by the company and Staff.[260] Further, MEIU argues that Staff's interpretation of PA 235 would deprive DG customers of RECs associated with their outflow without just compensation in violation of the Fifth

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[258] MEIU p 23.
[259] MEIU p 24.
[260] MEIU p 24.

Amendment of the U.S. Constitution and Article X, Section 2 of the Michigan Constitution.[261]

MEIU asserts that "[a] better reading of PA 235 would require electric providers purchasing DG outflow under their DG programs and receiving credit for such outflow as renewable energy under the RPS to compensate customers generating those RECs and to make them whole."[262] MEIU also repeats Dr. Sherman's arguments regarding valuing the REC credits using a five-year rolling average new premium and the provision of a standard contract for REC purchases.[263]

In reply, the company largely repeats the arguments presented by Mr. Johnston and reiterates that the language of PA 235 excludes from calculations the outflows from DG customers.[264]

Staff replies that a decision on this issue is outstanding in Case No U-21172, DTE Electric's VGP case, which could provide guidance. Staff agrees with MEIU that energy produced and consumed onsite is excluded from the RPS calculation in PA 235; however, Staff disagrees that this means that the statute does not express an opinion as to whether the self-generated power is renewable.[265] Staff contends that the DG program falls under Public Act 295 and that definitions in that act require DG to be renewable.[266] Staff further critiques MEIU's position arguing:

> If the RECs associated with the electricity produced by DG that was consumed onsite were sold, selling the associated RECs to the Company would mean that the customer is selling the generation's renewable

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[261] MEIU p 24.
[262] MEIU p 25.
[263] MEIU p 25, 26.
[264] Consumers Reply p 22-23.
[265] Staff Reply p 13.
[266] Staff Reply p 13-14.

> attribute. If the Company is forced to buy RECs already consumed onsite and retired by the DG producer, it defeats the purpose of the act to encourage the production of more renewable energy, outside of the prior requirements by displacing additional renewable generation for resources that no longer have a renewable attribute. The result is that the DG resource would no longer have a renewable energy benefit for that customer. For this reason, RECs associated with the DG generation that are produced and consumed onsite must stay with that generation and avoided load. If the DG produced and consumed onsite is outside of the RPS it means that the RECs associated with that production are outside consideration as well and cannot be used for compliance nor does it have an alternative use as part of VGP and, thus, is not useful to the Company.[267]

Staff also reiterates that the company should not be forced to purchase RECs from DG outflow because that outflow is already accounted for in the RPS calculation in PA 235.[268] Staff faults MEIU for presenting a new and unsupported argument in its brief that DG customers should be financially compensated if their outflow is already accounted for in the RPS calculation. Staff also maintains that if the Commission were to require the purchase of RECs, the price should not be the five-year rolling average of net premium but rather should be based on the cost of RECs the company can purchase.[269]

MEIU replies that PA 235 does not render RECs generated by DG systems already retired, meaning that the RECs are available for sale by the DG customer.[270] MEIU argues that Staff's interpretation of PA 235 would deprive DG customers of the value of their RECs such that adopting this interpretation would not be just and reasonable.[271]

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267 Staff Reply p 14-15.
268 Staff Reply p 15.
269 Staff Reply p 18.
270 MEIU Reply p 7.
271 MEIU Reply p 7-8.

3. Findings, Conclusions, and Recommendations

This PFD recommends approving the changes to the REC program proposed by the company because Staff found them appropriate, and no intervenor objected to the proposals.

This PFD does not recommend requiring the company to purchase RECs from DG customers at this time. The Commission recently addressed the issue of purchasing REC credits after the passage of PA 235 in DTE Electric's VGP plan, Case No. U-21172. There, the Commission shared the same concerns expressed in this case by the company and Staff, and the Commission directed an outreach session to examine the issue. Indeed, the Commission stated:

> However, the Commission is now concerned that requiring the purchase of RECs by the electric provider results in a double counting of the REC associated with the DG outflow because the renewable attribute has already been taken into account in the utility's RPS calculation.
>
> Therefore, in light of changes in Act 235, the Commission finds that it is not appropriate to impose a requirement for DTE Electric to purchase RECs from DG customers at this time. As the Commission works to implement the new 2023 energy legislation, the Commission is interested to hear from parties as to whether a mechanism for the purchase of RECs from DG customers can be implemented in harmony with Act 235. Therefore, the Commission directs DTE Electric to hold an outreach session with the parties to this case and its most recent rate case to solicit proposals for purchasing RECs from DG customers in compliance with Act 235 within 60 days from the date of this order.[272]

This PFD notes that aside from the company, the parties to the current case were also parties in Case No. U-21172 such that they will be present at the outreach session referenced by the Commission's order. This PFD recommends that, to avoid any action

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[272] Case No. U-21172, April 25, 2024, Order, p 28.

inconsistent with the course taken in Case No. U-21172, the Commission should not currently require the company to purchase RECs from DG customers. Instead, this PFD recommends awaiting the outcome of the outreach session in Case No. U-21172, or alternatively, directing a second outreach session between the parties to the current case and the company because the company will not be present at the outreach session in DTE Electric's VGP case.

**E. <u>Green Giving Program</u>**

1. Testimony

Mr. Clinton testified that the Green Giving program would allow subscribing participants to pass along the benefits of renewable energy to other people (i.e., sponsored recipients).[273] In Green Giving Option 1, if a subscribing participant chooses to sponsor more than 25 recipients, the subscribing participant can either keep the bill credits but pass along the value of environmental attributes, or the subscribing participant can pass along both the bill credits and environmental attributes to their sponsored recipients.[274] Under this option, the subscriber must prepay for the subscription for a minimum of one year.[275] Mr. Clinton opined that this option would be appealing to landlords or corporations seeking to provide environmental benefits to tenants or employees.[276]

Mr. Clinton testified that in Green Giving Option 2, an individual would sponsor a subscription for a random, low-income sponsored recipient through a one-time payment

[273] 2 Tr 77.
[274] 2 Tr 77.
[275] 2 Tr 77.
[276] 2 Tr 78.

or a recurring monthly payment.[277] The sponsored recipient will not be eligible for the credit if they are currently enrolled in Low Income Assistance Credit (LIAC), Consumers Affordable Resource for Energy (CARE), and Percent of Income Payment Plan (PIPP).[278] The Company randomly chooses the sponsored recipients once every quarter and requires that a sponsored recipient is receiving support via Residential Income Assistance (RIA), has past due balances, and has received a home energy audit via the Company's income qualified Energy Waste Reduction (EWR) program.[279]

Ms. Kolioupoulos testified that Staff supported Green Giving subscriptions coming from the REP's resource pool if the Commission denied the company's request to pool REP and Solar Gardens assets into one resource pool.[280] Ms. Kolioupoulos testified that, regarding Green Giving Option 1, the intent of the program could be frustrated by allowing a subscribing participant to retain bill credits that, for those who have purchased less than 25, would otherwise be required to be purchased on behalf of the sponsored recipient.[281] She raised concerns that this would allow the value of participating in the VGP program to be realized by the owners of multi-unit properties that could use the program as a marketing tool while then simply passing along the costs to the tenants.[282]

Regarding Green Giving Option 2, she testified that 40% of funds collected from subscribing participants and from the Green Generation fund should be directed toward qualifying customers in EJ communities[283] so that benefits reach customers in areas

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[277] 2 Tr 78, 80.
[278] 2 Tr 80.
[279] 2 Tr 81, 82.
[280] 2 Tr 265.
[281] 2 Tr 267
[282] 2 Tr 267.
[283] I.e., those customers in census tracts that are above the 80th percentile on the MiEJScreen tool.

where participation in voluntary green programs may otherwise be financially unattainable.[284] Ms. Kolioupoulos recommended that the company should be required to include the following metrics regarding Green Giving Option 2 in the VGP annual report: (1) the number of subscribing participants; (2) the number of sponsored recipients; (3) the amount of money collected on a monthly basis; (4) Green Generation funds used; (5) the average bill credit dollar amount; and (6) the percentage of bill chosen by the company to credit sponsored recipients.[285]

Dr. Sherman testified that income-qualified customers often remain on assistance programs for over a year such that it "seems inappropriate to provide income-qualified customers with access to bill credits through the VGP program for only one year without consideration of additional need extending beyond that one-year subscription."[286]

In rebuttal, Mr. Clinton testified that bill credits are not the primary benefit of the company's VGP programs because generally there is an overall cost to participation; instead, he opined that the main benefit to the subscribing participant is a reduction in carbon emissions.[287] He asserted that the subscribing participant is primarily gifting the use of green energy, not a financial benefit.[288] Mr. Clinton opposed Staff's proposal to require that 40% of funds collected go to EJ communities. He explained that the company does not oppose prioritizing customers in impacted communities, but he opined that Staff's recommendation could hinder the company's ability to quickly deploy funds to

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[284] 2 Tr 269.
[285] 2 Tr 266.
[286] 2 Tr 226-337.
[287] 2 Tr 104.
[288] 2 Tr 105.

vulnerable customers.[289] He specified that the requirement could hinder the ability to support income qualified customers in rural areas given the large number of rural communities in the company's service territory.[290] Mr. Clinton responded to Dr. Sherman's recommendation by stating that the company agreed that sponsored recipients should be eligible to participate in the programs for up to two years.[291]

In rebuttal, Ms. Kolioupoulos rejected Dr. Sherman's suggestion to extend Green Giving subscriptions beyond one year to account for ongoing financial assistance needed by low-income beneficiaries of the program. She testified that Green Giving is designed to pass along environmental benefits and that "[i]t is not designed to be a long-term, low-income assistance program."[292] She opined that the structure of the program, with sponsors paying on a yearly or monthly basis, made it difficult to predict if the following year's balance would support extending a sponsorship past a one-year timeframe.[293]

2. Positions of the Parties

The company reiterates that there is no issue with Green Giving Option 1 because even if the subscribing participant retains bill credits, the subscribing participant is still paying an overall net fee to pass on the environmental benefits of renewable energy.[294] The company repeats that the requirement for 40% of funds to be directed to EJ communities would hinder the ability to deploy the program in rural areas.[295] The company also agrees to report on the metrics suggested by Staff and states that the

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[289] 2 Tr 105.
[290] 2 Tr 105.
[291] 2 Tr 106.
[292] 2 Tr 273.
[293] 2 Tr 273.
[294] Consumers p 35.
[295] Consumers p 36.

company would not object to extending the eligibility for recipients in the Green Giving program to 2 years.[296]

Staff acknowledges that its proposal to require 40% of funds to be spent in EJ communities will primarily direct those funds to densely populated areas, but Staff emphasizes that the remaining 60% of funds would be directed to customers in any part of the company's service territory.[297] Staff also disagrees with the company and MEIU regarding the extension of sponsorship beyond a year. Staff argues that Green Giving is designed to pass along environmental benefits, is not a low-income assistance program, and extending sponsorship beyond a year conflicts with the goal of providing support to as many income-qualified customers as possible.[298]

MEIU merely reiterates that sponsorships should be extended according to need beyond the initial one-year period without providing further argument.[299]

In its reply, the company emphasizes its opposition to Staff's proposal regarding EJ communities stating that it will hinder the company's ability to maximize the number of income-qualified households to support, hinder rapid deployment, and hinder support for rural areas.[300] Staff and MEIU provide no further briefing on issues surrounding the Green Giving program.

3. Findings, Conclusions, and Recommendations

This PFD agrees with the company that there is minimal concern about allowing subscribing participants to keep bill credits in Green Giving Option 1 because the program

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[296] Consumers p 36.
[297] Staff p 29-30.
[298] Staff p 30-31.
[299] MEIU p 28.
[300] Consumers Reply p 20.

is primarily designed to gift environmental benefits rather than financial benefits. Indeed, Staff opposes MEIU's recommendation to extend sponsorships (under Green Giving Option 2) beyond one year in part because the program is not intended to provide any meaningful financial support. This PFD agrees with Staff that it is not necessary to extend sponsorships beyond one year because Green Giving is primarily offering an environmental benefit rather than financial assistance.

This PFD agrees with Staff that 40% of funds should be directed to EJ communities such that customers who normally would be unable to participate in green pricing programs will nominally receive the environmental benefits of the program.

Finally, this PFD notes that in briefing the company agreed to provide, in the VGP annual report, the reporting metrics for Green Giving Option 2 requested by Staff. Thus, the Commission should direct that the company uphold that commitment.

## F. <u>Green Generation Surplus</u>

### 1. Testimony

Mr. Clinton testified that the company's Green Generation program, which allowed customers to voluntarily select green energy choices, was closed to new enrollments in 2019 and will cease operation in 2028.[301] He explained that the program is projected to have a $40 million surplus when it concludes in 2028.[302] He requested approval for the company to: (1) leave $3 million in the Green generation program account for unforeseen contingencies; (2) shift a portion of the surplus, up to $40 million, into the RE Plan regulatory liability account to support the development of renewables in the future; and

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[301] 2 Tr 82-83.
[302] 2 Tr 83.

(3) to establish a new regulatory liability account and shift a portion of the $40 million surplus, up to $20 million, to be designated for income-qualified subscriptions to the Green Giving and Solar Gardens programs exclusively for EJ communities.[303] He testified that shifting the surplus to the RE Plan regulatory liability would help prevent it from becoming a regulatory asset.[304]

Mr. DeCooman testified that it was more appropriate for the entire $40 million surplus to be used to fund income-qualified subscriptions under the Green Giving Option 2 program.[305] He explained that this allocation would best support equitable access to green energy, and he opined that the company's proposal to shift a portion of the surplus to the REP account was premature because the company has not forecasted that the REP account is at risk of becoming a regulatory asset.[306] Ms. Kolioupoulos provided testimony and a recommendation aligned with that of Mr. DeCooman.[307]

Dr. Sherman testified that the surplus of Green Generation funds should ideally be returned to customers; however, if that was not feasible, she recommended using the entirety of the surplus to provide income-qualified subscriptions to Green Giving or Solar Gardens, with subscriptions to extend beyond one year according to need.[308]

Mr. Tan raised concerns that the company did not propose a pathway to assist customers to transition away from the Green Generation program when it shuts down. He opined that the company should provide Green Generation customers with help

[303] 2 Tr 83-84.
[304] 2 Tr 84.
[305] 2 Tr 244.
[306] 2 Tr 244.
[307] 2 Tr 265-266.
[308] 2 Tr 337.

understanding other VGP programs that are available.[309] Mr. Tan also recommended that the company commit the surplus funds to low-income based renewable development through Green Giving or Solar Gardens.[310]

In rebuttal, Mr. Clinton testified that the company has plans to promote VGP programs through direct marketing to Green Generation subscribers before that program ends in 2028.[311] Mr. Clinton further testified that the company agreed to establish a new regulatory liability account and shift the $40 million surplus to support income-qualified subscriptions.[312] However, he specified that the company continued to support its idea that the surplus should be used to support both Green Giving and Solar Gardens subscriptions starting in 2025.[313]

2. Positions of the Parties

The company reiterates that it agrees to use the $40 million surplus for income-qualified programs, but it disagrees with Staff that funding should be limited to Green Giving and concurs with the CEO that it should include Green Giving and Solar Gardens. Further, because the company agrees to utilize all $40 million, it proposes that it should have “additional flexibility to provide for income-qualified Solar Gardens subscriptions both within and outside of EJ communities.”[314] The company emphasizes that it will use direct marketing to promote its VGP programs to Green Generation customers before Green Generation terminates.[315]

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[309] 2 Tr 203.
[310] 2 Tr 205.
[311] 2 Tr 103.
[312] 2 Tr 102.
[313] 2 Tr 102.
[314] Consumers p 35.
[315] Consumers pp 34, 35.

Staff emphasizes that funds from the Green Generation surplus should go exclusively to Geen Giving Option 2 instead of Solar Gardens because of Staff's concerns about Solar Gardens including the lack of a locational requirement and subsidization if assets are pooled with other VGP programs.[316]

The CEO states that they support the company's proposed allocation of the surplus to Green Giving and Solar Gardens. Regarding a pathway to help customers transition away from Green Generation, the CEO criticizes the company's plan to promote other VGP programs as "ambiguous and noncommittal."[317] The CEO argues that the company should commit to: (1) providing Green Generation customers with targeted information on other VGP offerings; (2) expedite enrollment for these customers; and (3) provide them with a right of first refusal to participate in VGP programs before offering the program to others.[318]

MEIU supports the company's decision to redirect the entire surplus to support low-income subscriptions to renewable energy programs, but MEIU "expresses no opinion on the exact nuances of such a redirection[.]"[319]

The company replies that the surplus should also be used for Solar Gardens subscriptions because it provides a community solar option. The company argues that its planned outreach to Green Generation customers to inform them of VGP programs is adequate and that it should not be directed to expedite their enrollment into VGP programs or provide them with a right of first refusal.[320]

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[316] Staff p 28.
[317] CEO p 28-29.
[318] CEO p 29.
[319] MEIU p 28.
[320] Consumers Reply pp 20, 21.

The CEO argue that the surplus funds should only be used for income-qualified subscriptions within EJ communities as originally proposed, and "only for a true community solar program."[321] The CEO assert that the company's request for flexibility in allocating the benefits both within and outside of EJ communities is "unclear and unjust."[322] Staff and MEIU provide no reply briefing on this topic.

3. Findings, Conclusions, and Recommendations

This PFD agrees with Staff that the $40 million Green Generation surplus should be used exclusively for Green Giving Option 2 and should not be used for Solar Gardens subscriptions, at least not currently given the concerns raised elsewhere in this PFD regarding Solar Gardens, its current structure, and its future.

This PFD agrees with the company that it should have some degree of flexibility in allocating benefits both within and outside of EJ communities now that it has agreed to utilize the entire $40 million surplus (as opposed to an originally proposed $20 million sum) to provide low-income customers with renewable energy subscriptions. Notwithstanding this flexibility, this PFD recommends requiring that a minimum of $20 million of those funds should be directed to benefit customers in EJ communities in alignment with the company's original proposal.

This PFD does not recommend directing the company to "expedite" the enrollment of Green Generation customers into VGP programs (should they choose to join them) or to provide them with a right of first refusal for new VGP resources. This PFD agrees with the company that it has not been shown that the VGP enrollment process is unduly time

[321] CEO Reply p 16.
[322] CEO Reply p 16.

consuming or that it needs to be expedited, nor has a reason been proposed that would justify providing a right of first refusal. Similarly, the company has already stated that it plans to use direct marketing to inform Green Generation customers about VGP programs before the Green Generation program ends. Accordingly, it is unclear how the CEO's recommendation that the company provide Green Generation customers with targeted information on other VGP offerings meaningfully differs from the course of action that the company already plans to undertake.

## G. <u>Integrated Resource Plan Modeling</u>

### 1. Testimony

Mr. Heidemann testified regarding the interaction of the company's IRP modeling, IRP solicitations, VGP solicitations, resources, and load. He testified that load and its associated VGP resources should be examined in the IRP because it would allow for a holistic model of the company's needs and its generating portfolio.[323] However, Mr. Heidemann cautioned that recently passed Act 235 poses a challenge in this regard because it altered the formula for calculating the RPS by essentially taking VGP load and customers outside of the RPS requirements.[324] Mr. Heidemann recommended that the company should continue to include VGP resources and load in the IRP model, but should "have a RPS constraint in the model that excludes the VGP resources and load when solving to meet the future RPS requirements under Public Act 235 of 2023."[325] He also opined that the company should determine the proper resource mix for VGP renewable

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[323] 2 Tr 258.
[324] 2 Tr 258, 259.
[325] 2 Tr 259.

resources as part of its IRP because, up to the present, most VGP resources have been exclusively solar.[326]

In rebuttal, Mr. Johnston testified that he did "not necessarily" agree with the recommendation to include a RPS constraint in IRP modeling. He explained:

> The Company plans to include both VGP load and known VGP resources in its future IRP modeling and the modeling will be agnostic to source of the resources (IRP vs. VGP). In accordance with Act 235, the Company plans to solve for future RPS compliance in its RE Plan Amendments based upon reducing total sales for compliance by VGP sales, amongst other exclusions.[327]

Mr. Johnston opposed the recommendation to determine the proper resource mix for VGP programs in the IRP. He stated that VGP solicitations already request both solar and wind resources, but recently the results have only yielded solar resources.[328] He testified that, "[t]he Company would propose to only model the renewable requirements in the IRP and utilize VGP load and known VGP resources to inform the IRP resource requirements."[329]

2. Positions of the Parties

The company's brief argues that it is unnecessary to include a RPS constraint in the IRP model or to determine the VGP resource mix in the IRP for the reasons stated by Mr. Johnston.[330]

Staff argues that contrary to the company's belief that it is unnecessary, there must be a RPS constraint that excludes existing VGP load and VGP resources in the IRP while still having those same resources and load in the model.[331] Staff contends that absent a

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[326] 2 Tr 259.
[327] 2 Tr 146-147.
[328] 2 Tr 147.
[329] 2 Tr 147.
[330] Consumers p 36-38.
[331] Staff p 33.

RPS constraint, the IRP model may solve for resource portfolios that are divorced from the requirements of PA 235. Staff also argues that absent an RPS constraint the company's Renewable Energy Plan would be out of alignment with what is recommended in the IRP.[332] Staff asserts that the IRP is a plan for all resources, of which the REP is a subset, and that the company should include equation 1.3 presented in Mr. Heidemann's testimony[333] in the company's next IRP.[334]

Staff states that its main concern regarding using the IRP to inform planning for VGP resources "is that as the relative percentage of renewable generation increases and the VGP program gets larger, the average, non-VGP subscribed ratepayer will be subsidizing the reliability of VGP customers, when all ratepayers should support reliability first."[335] Staff explains that the growth in renewables will require an optimal mixture of renewable sources to operate reliably, and if the company only constructs the cheapest form of renewable generation for the VGP program then regular ratepayers must pay more for other forms of renewable generation to maintain the overall reliability of the grid.[336] For this reason Staff contends that the IRP should be used to inform the VGP generation portfolio to ensure that the VGP portfolio mix does not "get too far out of alignment with the renewable generation portfolio of the average ratepayer."[337]

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[332] Staff p 33.
[333] While not mentioned in Staff's brief, equation 1.3 can be found at 2 Tr 358.
[334] Staff p 33.
[335] Staff p 34.
[336] Staff p 34.
[337] Staff p 35.

In reply, the company contends that it addressed Staff's concerns in its initial brief and that IRP modeling should be addressed in other dockets that the Commission established to consider IRP-related issues such as Case No. U-21570.[338]

Staff replies that if the company is allowed to construct only the lowest cost renewables for VGP programs then general rate payers will be forced to pay for more expensive renewables to balance the overall generation portfolio which Staff asserts would violate MCL 460.1061.[339] Staff argues that this issue has been raised by other parties in Case No. U-21568 (seeking comments on the interpretation and implementation of PA 235).[340]

3. Findings, Conclusions, and Recommendations

For the reasons articulated by Staff, this PFD agrees with Staff that the company should include an RPS constraint in the company's next IRP. Nevertheless, this PFD notes that because this specific topic primarily concerns the broader issue of IRP modelling and the effects of recent legislation, it may be better raised or addressed in a separate docket for that purpose. To that end, this PFD notes that the company is correct that the Commission opened Case No. U-21570 in part to determine how to implement recent legislation like Public Acts 231 and 235, as well as how to align the requirements of those acts with REPs and IRPs.[341]

For the reasons articulated by Staff this PFD recommends directing the company to use the IRP to inform the proper mixture of resources for VGP programs to ensure that

[338] Consumers Reply p 21.
[339] Staff Reply p 19.
[340] Staff Reply p 19.
[341] See generally Case No. U-21570, February 8, 2024, Order, pp 6, 7.

the VGP portfolio does not select only the least-costly renewable sources while leaving other ratepayers to shoulder the cost of more expensive renewables needed to provide overall reliability. Staff is correct that this issue was raised in Case No. U-21568 which sought comments on how the Commission should interpret and implement PA 235. In responding to comments about the mixture of assets between VGP programs and a utility's renewable energy program, the Commission recently stated that "the Commission agrees that more expensive assets should be allocated to VGP programs while less expensive assets should always be reserved for RPS compliance."[342] Accordingly, this PFD believes it would be appropriate to use the IRP to inform the generation mix for the VGP portfolio.

## IV.

## CONCLUSION

In considering the whole record and based upon the foregoing discussion of the disputed issues, this PFD recommends that the Commission adopt the findings, conclusions, and recommendations set forth above.

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

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James M. Varchetti
Administrative Law Judge

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[342] Case No. U-21568, April 25, 2024, Order, p 24.