STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, to promulgate rules governing electric interconnection and distributed generation and to rescind legacy interconnection and net metering rules.	)	Case U-20890

COMMENTS OF THE MICHIGAN ELECTRIC AND GAS ASSOCIATION

Pursuant to the Commission's May 26, 2022 Order establishing a second public hearing for the administrative rules governing Michigan's electric interconnection and distributed generation programs, the Michigan Electric and Gas Association[1] ("MEGA" or "the Association") submits these comments in response to the Commission's request for public comment regarding the draft rules.

I. Procedural History

The Commission in its September 9, 2021 order provided a draft update to the Michigan Interconnection for Distributed Generation (MIXDG) rules, setting a public hearing for October 20, 2021 and allowing for submission of written comments until November 1, 2021. On March 17, 2022, the Commission adopted the rules, as revised, and referred the rules to the Michigan Office of Administrative Hearings and Rules and the Legislative Service Bureau for formal approval and transmission to the Joint Committee on Administrative Rules.

On April 14, 2022, Consumers Energy Company (Consumers) and DTE Electric Company

[1] The MEGA member companies are investor-owned natural gas and electric utilities with fewer than 500,000 customers in the state of Michigan, and include: Alpena Power, Citizens Gas Fuel Company, Indiana Michigan Power, Michigan Gas Utilities, Northern States Power Company – Wisconsin, SEMCO Energy Gas Company, Upper Michigan Energy Resources Corporation, and Upper Peninsula Power Company.

(DTE Electric) (together, petitioners) filed a Joint Petition for rehearing of the Commission's March 17, 2022 Order (Joint Petition) pursuant to Mich Admin Code, R 792.10437 (Rule 437).

On May 4, 2022, Indiana Michigan Power Company (I&M), Michigan Electric and Gas Association (MEGA), and Michigan Electric Cooperative Association (MECA) filed answers to the Joint Petition for rehearing. On May 5, 2022, the Environmental Law and Policy Center, Ecology Center, and Vote Solar (together, the Clean Energy Organizations or CEOs) filed an answer to the Joint Petition.

On May 12, 2022, the Commission granted the Joint Petition for rehearing and at its May 26, 2022 hearing set the schedule for the public hearing and submission of written comments based on the draft rules included in the May 26, 2022 Order.

II. Introductory Comments

MEGA thanks the Commission for providing this additional opportunity for public comment on the proposed rules. As the Commission is aware, these rules have far-reaching effects on customer demand, interactions between utilities and their customers, and the safe, reliable operation of the grid.

The Association supported the Joint Petition because its members agreed with certain concerns being expressed by the Joint Petitioners, particularly those related to safety. Further, because our members continue to evaluate their procedures for interconnecting customer-owned distributed generation systems, new issues have arisen that the Association members seek to raise for the Commission's consideration. MEGA's membership is comprised of smaller utilities, and these complex rules have required significant time to develop the draft procedures presented to the Staff Workgroup. Each Association member will continue to refine their individual proposals for submission once the final rules in this docket are adopted.

The opportunity for all parties to review the final draft rules prior to submission to the Office of Administrative Hearings and Rules will benefit stakeholders later in the process as utilities develop their procedures for evaluating potential impacts of interconnecting customer-owned resources to the utility's distribution system.

MEGA members have expressed concerns that the changes being proposed by the draft rules may not adequately resolve certain safety and/or reliability issues that inherently exist with larger, complex customer-owned systems (despite the additional time afforded our members under proposed Rule 908). The Association's members believe these matters are worthy of reconsideration by the Commission.

MEGA will summarize its previous comments that remain applicable to the current draft rules (Section III), discuss new issues that have been identified by its members as they continue to review the rules to determine how they will be implemented (Section IV), and address specific rule comments under Section V.

III. Summary of Previous MEGA Comments

First and foremost, MEGA would like to thank the Commission for recognizing the significant impact the rules and processes contained therein have on utilities and the relationship they maintain with their customers, as the Association noted in its initial comments (MEGA Comments Pages 2-3). MEGA welcomes the addition of Rule 908 (460.908) that provides additional time for the smaller utilities to review and process their customers' requests for interconnection while ensuring reliability and safety are maintained. While this additional time will be beneficial to the Association's members, there are some remaining concerns regarding safety and reliability that are addressed below in Section IV.

As noted in their previous comments (Page 10), MEGA members remain concerned about the costs of implementing the rules. Many of these rules will require additional investments that are not currently contemplated by the Association's members, whether that's potential information technology upgrades or additional staff required to implement the requirements and processes that are set forth in these rules. As an example, some of our utilities will have to create new systems to manage this complex process, while others will have to modify existing systems. In either case, the cost for establishing the new systems and upgrades will be assigned to and recovered from the member's Michigan-based customers.

MEGA is disappointed in the fee cap reductions for impact studies. In our proposed draft filings in the stakeholder workgroups, it was noted that our members will be seeking higher fee caps to ensure adequate cost recovery in their individual cases. MEGA did not lower the fee caps as adopted by the Commission in its final rules for the System Impact Study or Facilities Study to reflect that there will be actual costs that will exceed the proposed caps in the final rules.

IV. Additional Comments Pursuant to Draft Rules Adopted May 26, 2022

The revisions the Commission proposed in the new draft rules have generated additional concerns for MEGA members. Association members are concerned about safety and reliability, and some of the changes could have adverse impacts. The Joint Petition outlined several concerns that MEGA members share, as discussed below.

MEGA agrees with the Joint Petitioners' assessment of the rule promulgation authority granted to the Commission, the scope of which is further defined by MCL 460.1173. The statute's clear focus on maintaining safety and reliability of the grid provides strong guidance that "Michigan law reserves to electric utilities the right to test and approve all proposed interconnections to their

electrical systems." (Joint Petitioners, Page 7). MEGA members have identified some potential issues for the consideration of the Commission.

First, there has been an increase in the number of customers that are proposing to install more generation capacity than is currently allowed under the statute for each system level. These customers have typically purchased "turn-key" installations from an electrician or solar installation contractor and are relying on them to develop and submit the documentation that is required under the Rules. When the issue is raised by the utility during its review of the customer's application, the customer's electrician or solar installation contractor has attempted to utilize the inverter to limit the amount of the export to the utility's distribution system to stay under the statutory cap. This is generally accomplished via programming of the inverter (in the field).

These types of arrangements create both a safety and reliability issue because the inverter can be modified by the customer or its contractor AFTER the installation, inspection, and approval by the utility. This scenario creates a potential safety and or reliability concern without the utility's knowledge. The utility is now tasked with inspecting numerous interconnections to ensure that the customer, developer, or third party has not altered the software or modified the system in a manner that adversely affects the safe and reliable operation of grid. Smaller utilities, like MEGA members, may not have the ability to inspect each the hardware or software settings for each interconnected inverter.

Lastly, it has been the experience of MEGA members that some customers have modified and or added additional equipment that substantially alters the characteristics of their installation after inspection and approval by the utility. This scenario also presents potential safety and or system reliability concerns whenever the utility has not been afforded an opportunity to fully evaluate the customer's modifications prospectively. Consistent with statute, MEGA members believe there is

a strong need for requiring the customer to install disconnecting devices that provide the utility's staff with the ability to visibly confirm all customer-owned sources of energy have been disconnected from the distribution system. This safety precaution helps to ensure the safety of utility workers and the general public.

V. Specific Rule Comments

Part 1. General Provisions

Rule 460.1a(cc) Definitions; A-I and Rules 460.952 and 460.956 Alternative Process

MEGA had previously expressed concern about the overlap between the Regional Transmission Operator (RTO) methodology where MEGA members provide consolidated Distribution Impact System reports that include components of the Feasibility, Impact and Facilities, Studies.

The Association appreciates the Commission's adopting in the draft rules an alternative process (R 460.952 and R 460.956) to create flexibility and reduce duplication of process with the RTO.

Rules 460.901a(bb), 460.901a(gg), and 460.901b(x) Capacity Definitions

The definition of Aggregated Capacity R 460.901(d) states "aggregated ongoing operating capacities of all DERs across multiple points of common coupling" which seems to run counter to the definition of "Generating Capacity" in 460.901(gg). MEGA suggests the Commission should clarify that this definition means the sum of total nameplate capacity for all DERs without the inclusion of export limiting technologies.

The definition of "Generating Capacity" R 460.901(gg) also includes the language; "except that where this capacity is limited by any of the methods of limiting electrical export, generating

capacity shall be the net capacity as limited though the use of such methods not including inadvertent export." This language seems appropriate for the definition of "Export Capacity," but we feel generation capacity should include the total nameplate capacity of a DER(s) so that utilities have full visibility into the assets being installed behind a single metering point. This would prevent developers from "hiding" capacity (i.e., a 20MW solar array with 15MW battery storage system appearing as 5MW to qualify for fast-track review).

Rule 460.1b(s) Nameplate Capacity

MEGA suggested that the Nameplate Rating should also include Ah and kWh ratings for Energy Storage. The Commission declined to modify the definition and instead added kWh (for storage) to the nameplate capacity description in R 460.930(2)(e).

The Association appreciates the Commission's action on this issue.

Rule 460.908 Timelines for electric utilities serving fewer than 1,000,000 in-state customers. (Previous Rule 908 – Appointment of Experts)

Regarding the former Rule 908, MEGA again appreciates the Commission's efforts to streamline the rules and remove burdensome requirements and looks forward to continuing to work with Staff in this regard.

Regarding the new Rule 908 granting additional time for smaller utilities to evaluate and work with their customers on interconnections, the Association members thank the Commission for recognizing the concerns expressed by the smaller utilities. We believe this extra time will be beneficial, particularly as the companies navigate through implementation of these new rules. Further, we believe the additional time will enable increase the ability of the smaller teams at each utility to evaluate interconnection applications and systems.

Part 2. Interconnection Standards

Rule 460.914 Transition non-study group, Rule 460.916 Legacy applications, Rule 460.918 Transition batch study process, Rule 460.918(8)(b) Transition batch study process, Rule 460.918(10) Transition batch study process, Rule 460.918(15) Transition batch study process

While not specifically addressing Association concerns relating to the transition batch process, in removing the rules in their entirety, MEGA's concerns have been addressed. The Association appreciates the Commission's action on this issue to provide greater clarity to both utilities and customers.

Rules 460.926 and 460.928 Initial fees and **Fee and fee cap modifications**

While MEGA understands the benefits of set fees across the board for interconnections, MEGA disagrees with the Commission's reductions imposed on the fee caps for the fast track, system impact study, and facilities study. Association members have experienced widely varying costs associated with studies in applications they have received thus far, as many members are contracting third parties to conduct these studies. Further, MEGA members remain concerned about cost-shifting from the cost-causer (applicant) to other ratepayers in the applicable customer class of the applicant.

While MEGA appreciates that a waiver process has been included in the rules, members are concerned that a waiver process creates two issues. First, the Commission is arbitrarily capping fees from actual costs that are to be incurred by the utility to process the application. In our initial draft process documents submitted to staff in the stakeholder workgroup, we assume higher fees to be proposed by MEGA members to reflect that. Second, MEGA members believe that because cost recovery is limited to actual costs, caps are unnecessary.

MEGA requests that, at a minimum, the Commission revert to the previous fees for the three above studies. Alternatively, the Commission could consider a process for study fees that sets a

deposit amount or requires the utility to provide a good-faith estimate that is later trued-up once all studies are completed. These trued-up costs would have to be paid prior to moving forward in the application process.

This would provide transparency to the applicant on the potential costs for the studies, and ensure full cost recovery of the studies, preventing subsidization of the applicant by other ratepayers.

Rule 460.942 Non-export track review

Association members have expressed concern that the utility may not be informed of potential load offsets in these types of applications. Noting that the rule appears to give discretion to utility in setting some screening criteria, MEGA nonetheless suggest adding a requirement that, at a minimum, the project's nameplate rating must be included in the application and further, that the utility retains the right to determine the load offset. These are critical specifications of the proposed system that should be included in every application so that the proposed system can be properly reviewed.

Rule 460.944 Fast track applicability, Rule 460.946 Fast track; initial review

MEGA has significant concerns with the inability to require additional screens being specifically allowed in the rules. MEGA members have concerns related to safety and reliability. With technology shifting at an increasingly rapid pace, the ability of utilities to respond to the changing dynamics of customer interconnect requests is an important facet of ensuring safety and reliability. Association members believe additional screens would assist in proper evaluation of some of the concerns outlined above, specifically related to situations where overbuilt systems are being applied for interconnect.

In addition, under Rule 460.944 Level 1 - 5 DERs may receive fast track approval and provide for "use of an energy storage device so the export of power meets the requirements of level 1, level 2, level 3, level 4 or level 5 as large as 5 MWac." It remains unclear to MEGA members whether a DER larger than 5MW would qualify for fast-track review if energy storage or some other export limiting technology (that may have its own safety considerations that would need to be independently evaluated) is used to reduce the export capacity to 5MW or less.

Rule 460.984 Modifications to the DER

MEGA appreciates the Commission's commitment to safety by revising the rules to remind applicants that they should proceed with material modifications pursuant to an executed Interconnection Agreement, as experience (noted above) has indicated that this is a growing problem and is generating concern amongst members. As noted earlier, the onus is on the utility to continually inspect equipment that is not utility-owned to ensure safety and reliability, and here, to ensure that customers are not violating their interconnection agreement.

R 460.986 Insurance.

MEGA appreciates the flexibility the rules provide to utilities to ensure that there are adequate insurance policies. While the Association believes this flexibility should extend to all Levels, the requirements for larger projects under Levels 3 – 5 are appreciated.

R 460.988 Easements and rights-of-way.

MEGA members have concerns that the requirement the utility obtain easements for line extensions to serve a DER customer is untenable. After reviewing and considering the proposed changes to Michigan's Rule 460.988, which would require utilities to acquire easements at the request of private entity "applicants" for tie-ins from generating facilities to the larger electric "grid" ("interconnections"), but also requires the applicants to pay for the "cost" of such

acquisitions, MEGA members have identified the following four concerns and considerations that MEGA members would like the Commission to consider with regard to the proposed Rule changes:

Condemnation Rights and Responsibilities

A potentially significant concern for utilities regarding the proposed change to Rule 460.988 and the new requirement that utilities "provide and obtain" easements and rights-of-way for interconnections is that utilities might be required to exercise their condemnation powers to acquire such easements, and in doing so, might be subject to successful objections from property owners during the condemnation process that might ultimately prevent utilities from acquiring the easements needed for the interconnections. In Michigan, electric utilities fall under the Uniform Condemnation Procedures Act (UCPA) (PA 87 of 1980). If a property owner raises an objection during condemnation to a private utility's need or necessity for a proposed taking of property (in this case, an easement), and if the taking is not pursuant to a Certificate of Public Convenience and Necessity, the trial court is given broad discretion to determine whether the requisite "need" exists for the taking. This presents an opportunity for the trial court to scrutinize the route designated for the line in question, and the location of the easement to be acquired. If the trial court determines that an alternative route for the line (and thus an alternative location for the easement) exists and would be preferable/less burdensome/more reasonable, the court could sustain the property owner's objection to the condemnation, which would prevent the utility from acquiring the easement through condemnation.

This is of concern to utilities because, in cases of interconnections, the utility would not have the opportunity to choose the location of the generating facilities, and therefore the line route for the tie-in (that would necessarily run between the generating facility and the utility's

substation/tie-in point) would be generally predetermined by the applicant requesting the interconnection – not the utility. This would leave utilities in the unfortunate position of defending a line route or siting decision in a condemnation of an easement for the interconnection which the utility did not choose and likely will not have an opportunity to vet. If the applicant chooses a non-ideal location for the generating facility, property owners whose land is condemned for easements for the interconnection may be successful in challenging the line route and the need for the easements being condemned, and the utility would be unable to acquire the easement through condemnation.

Not only does the possibility of a successful objection in this regard put the utility in the unfortunate position of defending siting decisions which it did not make, but it also creates the opportunity for utilities to ultimately be unable to fulfill their obligation under Rule 460.988 to acquire the easements needed for an interconnection. It also raises the question of who will incur the costs of an unsuccessful condemnation, given that the utility will initially incur those costs but Rule 460.988 could be interpreted as only requiring the interconnection applicant to reimburse the utility for the costs of successfully acquiring the easements for the interconnection – and not necessarily for the costs of an unsuccessful attempt to acquire the necessary easements.

Cost Recovery and Transparency

Utilities are also concerned that the "costs" of obtaining easements under Rule 460.988, which the applicant is required to pay, are not defined. Utilities will presumably be required to initially incur all of the substantial costs of acquiring/attempting to acquire the easements for the interconnection (including legal and court fees, costs of personnel to negotiate acquisitions, title and survey costs and the actual acquisition costs) and to seek reimbursement from the applicant. However, since the "costs" to be reimbursed do not appear to be defined under the Rules, utilities

may be required to expend additional sums to establish that they are entitled to reimbursement from the applicants for all the substantial costs incurred by the utilities in obtaining/attempting to obtain the easements for the interconnection. If all expenses incurred by the utility on pursuing the needed easements are not recouped by the utility from the applicants, there is the possibility that the utility's rate base will have to absorb the additional costs.

Utilities might also be concerned that their ability to successfully acquire easements outside of condemnation (through informal negotiations with property owners either before or during condemnation proceedings) may be hindered by the fact that the utility is not ultimately responsible for the costs of the acquisition. Because the applicant is ultimately responsible for the costs of the easement acquisitions, the applicant may seek to restrict the utility's ability to informally resolve acquisitions by limiting the compensation that the utility is authorized to offer property owners to resolve the easement acquisition.

Assignment of Acquired Easements and Liability Concerns

Another concern of utilities is that their ability to assign the easements back to the applicants after the easements are acquired may be restricted if the easements are acquired through condemnation. Property owners who are aware that the utility is only exercising its powers of eminent domain to acquire easements for the applicant's interconnection may object to the taking during the condemnation by arguing that the taking is essentially an impermissible taking for a private purpose if the utility intends to assign the easement to a private entity (the applicant) immediately following its acquisition. To avoid this potentially successful objection, utilities may be forced to maintain their ownership of the easements for the interconnection that are acquired through condemnation, even though the utility may not own or operate any of the tie-in facilities that will occupy the easement.

Unfortunately, ownership of the interconnection easements may subject the utilities to additional liabilities and obligations in regard to maintaining the easements. In particular, easement holders are required to maintain their easement areas in a safe condition, Morrow v Boldt, 203 Mich App 324, 330; 512 NW2d 83, 86 (1994). If utilities are precluded from assigning the easements to the applicants in order to avoid a successful objection to the taking if the easements are acquired by condemnation, then this ongoing maintenance obligation would fall upon utilities in regard to interconnection easements, and utilities would be forced to incur ongoing costs and liabilities regarding their maintenance of the easements. These costs would ultimately be borne by the ratepayers of the utility, essentially subsidizing a private entities' assets with no benefit to the ratepayers.

Timing of Acquisition

Utilities are tasked under the proposed rules to perform several tasks on behalf of the customer/applicant, including acquiring necessary easements for the project Acquisition of easements, depending on the nature and need of easement necessary for the project may result in timing issues with the customer's/applicant's application. Utilities may have difficulties in securing these easements delaying a project (outlined above). Smaller utilities have limited resources (which the Commission has recognized by affording additional time for processing applications in proposed R 460.908), but easements could result in additional time and cost that affect other areas of the utility service. Utilities must remain focused on their core mission to deliver safe and reliable service to all customers. Easement acquisition may have elements outside the utility's control that delay interconnection and or could impact core utility services if staffing resources need to be reallocated to meet deadlines in the rules.

VI. Conclusion

MEGA appreciates the Commission's willingness to reopen the comments in the docket for these rules and appreciates the opportunity to provide additional feedback on the changes made. The Association again thanks the Commission for additional time to work with applicants on these agreements.

The Association asks the Commission to consider its comments, particularly relating to control of equipment, safety, and reliability as well as the fee structure and easements outlined above.

Sincerely,

Dated: June 27, 2022

Daniel Dundas
President
Michigan Electric and Gas Association