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April 3, 2024

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: **MPSC Case No. U-21374**

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief of the Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and Advanced Energy United, together with the Proof of Service. Thank you for your assistance in this matter.

Very truly yours,

Justin K. Ooms

Digitally signed by Justin K. Ooms
Date: 2024.04.03 14:32:20 -04'00'

Justin K. Ooms

JKO/srd
Enclosure
c. All parties of record.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*****

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**

INITIAL BRIEF OF THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, THE INSTITUTE FOR ENERGY INNOVATION AND ADVANCED ENERGY UNITED

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INITIAL BRIEF OF THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, THE INSTITUTE FOR ENERGY INNOVATION AND ADVANCED ENERGY UNITED

I. INTRODUCTION

On September 22, 2023, Consumers Energy Company ("Consumers" or the "Company") filed its application in the above-captioned case, requesting the Michigan Public Service Commission's ("MPSC" or the "Commission") approval for revisions to the Company's Voluntary Green Pricing ("VGP") programs and Renewable Energy Plan ("RE Plan").[1] Consumers also included a proposal intended to comply with Section 27 of the settlement agreement approved in Case No. U-21124, which committed the Company to "provide a strawman recommendation on community solar in its Voluntary Green Pricing Program filing no later than October 2023."[2]

[1] Consumers Energy Company Application in U-21374, Filing No. U-21374-0003 (September 22, 2023).
[2] *In the matter of the application of Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief*, order of the Public Service Commission, entered January 19, 2023 (Case No. U-21224), Exhibit A (the "U-21224 Settlement") at 12.

The Michigan Energy Innovation Business Council, the Institute for Energy Innovation, and Advanced Energy United (collectively, "MEIU")[3] were admitted as intervenors on November 14, 2023 by Administrative Law Judge ("ALJ") James M. Varchetti, participating in this proceeding together with the Michigan Public Service Commission Staff ("Staff") and the Ecology Center, Environmental Law and Policy Center, and Vote Solar (collectively the "Clean Energy Organizations," or "CEOs"). MEIU filed direct testimony in this case on January 25, 2024, and rebuttal testimony on February 20, 2024.

This Initial Brief is filed in accordance with the schedule set by ALJ Varchetti and on behalf of MEIU by their attorneys, Potomac Law Group, PLLC. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

II. ARGUMENT

A. The Commission Should Approve the Company's Proposal to Expand its Former LC-REP to a Renewable Energy Program for Which all Full-Service Customers are Eligible.

Company witness Clinton testified to the programmatic changes that the Company wishes to make to its VGP programs in this proceeding.[4] Among those, identified in witness Clinton's Table 1 as the "*New* – Renewable Energy Program" and discussed in part II of this direct testimony, is the proposal to "[e]xpand LC-REP tariff to all customers to give equitable access to utility scale renewable energy subscription pricing."[5]

MEIU witness Dr. Laura Sherman supported this change, noting that "in Case No. U-21134, Caitlin Marquis argued on behalf of MEIU that the Company's VGP program should be extended to all customers, including small and medium-sized businesses" and concluding, "The

[3] The positions expressed in this Initial Brief represent those of the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advance Energy United as organizations and not necessarily the views of individual members of these organizations with respect to any particular issue.
[4] See 2 Tr 44–86.
[5] 2 Tr 45 (Table 1).

establishment of a new Renewable Energy Program open to all customers appears to meet that demand and provide those options for business who cannot contract for more than 1,000,000 kWh/year."[6]

Staff witness Champion likewise expressed support for this change.[7] No party opposed it.

The Commission should therefore approve the Company's request to expand eligibility for its former LC-REP program in the form of the proposed broad new "REP" program to make the benefits of the LC-REP program available to customers previously ineligible for them.

B. MEIU Do Not Oppose Staff's Objection to Combining Solar Gardens and REP Assets Into One Common Asset Pool.

In her direct testimony, MEIU witness Sherman, in line with her recommendations from past cases, supported the Company's proposal to combine all VGP assets into one renewable energy generation asset pool "to provide all customers," whether participating in Solar Gardens or the new REP program, with "affordable and equitable access to renewable energy regardless of customers class—residential, small business or large commercial and industrial customers."[8] Dr. Sherman argued, quoting testimony she filed in the Company's most recent VGP case, Case No. U-21134, that:

> The Company should also consider whether it could use a model similar to that approved by the Commission in the settlement of Case Nos. U-20713/U-20851. Specifically, in the settlement agreement in those cases, the parties agreed that DTE Electric's residential program (under Rider 17) and large-customer program (under Rider 19) would "be supported by the same pool of combined VGP projects." Given the relative size of the programs, this change is not likely to greatly impact the costs of the large-customer program, but is expected to significantly decrease the costs of the residential program. Consumers could similarly merge the assets in the Solar Gardens Program with the Large-Customer Renewable Energy Program ("LC-REP").[9]

[6] 2 Tr 303 (citing Direct Testimony of Caitlin Marquis on behalf of MEIU, Case No. U-21134, pp. 12-15).
[7] See 2 Tr 214–16.
[8] 2 Tr 47.
[9] 2 Tr 302–03 (quoting Direct Testimony of Dr. Laura S. Sherman on behalf of MEIU, Case No. U-21134, pp. 9-10).

Dr. Sherman praised the Company for arriving at a similar conclusion in this case, quoting witness Clinton's testimony that:

> Current and planned Solar Gardens resources to be included in the asset pool will generate approximately 17 GWh annually. This translates to Solar Gardens representing approximately 0.7% of the total generation pool. Therefore, adding Solar Gardens into the asset pool is de minimis and immaterial to the overall asset pool price yet will deliver significant benefits to accelerate the development of utility-based community solar.[10]

Staff witness DeCooman nonetheless questioned the wisdom of pooling the Solar Gardens and REP assets, arguing that that arrangement would result in subsidization between the new REP and Solar Gardens, since "due to certain efficiencies and economies of scale, Solar Gardens resources are significantly higher cost to develop in terms of LCOE than the larger scale resources typically used to supply LC-REP," and thus, customers seeking "renewable energy generated with the characteristics advertised under Solar Gardens are not paying the corresponding costs for these assets under the Company's proposal."[11] Witness DeCooman further argues that the Company's proposal "creat[es] a situation where future Solar Gardens subscriptions aren't reflecting the true costs of developing these resources compared to other VGP options."[12]

In rebuttal to witness DeCooman, Dr. Sherman acknowledged the thrust of many of witness DeCooman's concerns, including the impact of the potential removal of the 10 MW cap on Solar Gardens, a consideration not previously part of her recommendation to merge the assets.[13] She thus "no longer wish[es] to offer [her] full support for that proposal."[14]

At the same time, however, Dr. Sherman noted that she

> remain[s] concerned about the high costs of the Solar Gardens program. As witness DeCooman points out, although there are more than 167,000 customers receiving

[10] 2 Tr 303.
[11] 2 Tr 232.
[12] 2 Tr 234.
[13] See 2 Tr 344.
[14] *Id.*

> bill assistance from the Company, only 71 of the 2,497 subscribers to the Solar Gardens program are receiving bill assistance. It is clear, therefore, that the premium, high cost Solar Gardens program is not benefitting low-income customers or providing access to renewable energy for those customers. As described in more detail below and in my direct testimony, the establishment of a true community solar program with third-party ownership would lower costs for subscribers, enabling the provision of financial benefits, likely including to low-income customers.[15]

The Commission should therefore not interpret Dr. Sherman's modification of her position in response to concerns expressed by witness DeCooman as abandonment of her concerns on the issue of high Solar Gardens costs or as an indication that MEIU no longer sees those high costs as problematic. Though this one solution to the problem may not ultimately be preferable, others must be found.

C. The Commission Should Reject the Company's Solar Gardens Community Solar Proposal and Require the Company to Establish a Community Solar Program Within 90 Days in Accordance with the Proposals Made by Staff Witness Baldwin in Case Nos. U-20836 and U-21224.

MEIU and other, like-minded parties have been advocating for true community solar in Michigan for years.[16] In Case No. U-20836, a DTE Electric Company general rate case, Staff witness Baldwin presented a proposal for a pilot community solar program intended to mimic the benefits provided to customers whose premises were conducive to participation in utility distributed generation ("DG") programs.[17] Witness Baldwin presented a near-identical proposal in the Company's largely contemporaneous general rate case.[18] Broadly speaking, this proposal would permit customers to subscribe to portions of a third-party-owned community solar array and

[15] 2 Tr 344–45.
[16] See, e.g., *In the matter of the application of DTE ELECTRIC COMPANY for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority*, order of the Public Service Commission, entered November 18, 2022 (Case No. U-20836), at 452–56.
[17] See *id.* at 452.
[18] See 2 Tr 324–325.

receive credits against their normal electric bills for their portion of project generation valued at the same rate as the outflow rate under the DG program.[19]

Because witness Baldwin's proposal, in contrast to the Company's proposal here, both satisfies common definitions of community solar and possesses the key characteristics of true community solar, the Commission should reject Consumers' Solar Gardens proposal and require the Company to instead establish a Community Solar program within 90 days in accordance with Staff witness Baldwin's proposals from Case Nos. U-20836 and U-21224.

1. Consumers' Solar Gardens Proposal is Not Responsive to the Straw Proposal Requirement of the U-21224 Settlement Agreement.

Against the background of their previous advocacy for community solar, the parties to Case No. U-21224 entered into a settlement agreement that included the following provision at Section 27:

> Consumers Energy will evaluate and provide a strawman recommendation on community solar in its Voluntary Green Pricing Program filing no later than October 2023.[20]

Purportedly in response to and compliance with this provision of the U-21224 Settlement, the Company in this case presented a slightly modified Solar Gardens program as its "strawman recommendation on community solar."[21] These modifications, MEIU witness Sherman explained, boil down to (1) removing the pilot designation, (2) pooling resources into a combined asset pool with the LC-REP assets, (3) making changes to how subscriptions are calculated, and (4) removing several payment options.[22]

[19] 2 Tr 325.
[20] U-21224 Settlement at 12.
[21] See 2 Tr 60–75.
[22] 2 Tr 321.

Dr. Sherman explained why even a modified Solar Gardens program fails to comply with the U-21224 Settlement, pointing out that by the time the U-21224 Settlement was reached, the Company's Solar Gardens program had been around for at least seven years, having been first approved by the Commission in 2015 in Case No. U-17752 and specifically approved as part of the Company's VGP programs since 2018.[23] She therefore described it as "a well-known and long-standing program" with which "all of the parties involved in Case No. U-21224 were well-familiar."[24] The upshot of this is that, by putting forth its modestly modified Solar Gardens program as its "strawman recommendation on community solar," the Company has essentially boldly claimed that the parties to Case No. U-21224 who negotiated for a strawman recommendation on community solar were simply unaware that such a program in fact already existed but for some minor tweaks. Dr. Sherman therefore argued that it "makes no logical sense . . . that the parties in Case No. U-21224 would have sought for the Company to simply propose an existing program."[25]

2. Consumers' Solar Gardens Proposal Does Not Conform to Standard Definitions and Characteristics of Community Solar Programs.

Dr. Sherman (and CEO witness Cira-Reyes[26]) also raised broader definitional concerns with the Company's Solar Gardens proposal, challenging the Company's right even to label the Solar Gardens program as "community solar." Although Dr. Sherman did not totally discount the Company's attempts to do so, she explained the ways in which it does "[n]ot fully" "accord with [her] understanding of the [Department of Energy's] definition of community solar," quoting it as follows:

[23] 2 Tr 320.
[24] *Id.*
[25] 2 Tr 321.
[26] See generally 2 Tr 170–177.

> The U.S. Department of Energy defines community solar as 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, businesses, nonprofits, and other groups. In most cases, customers are benefitting from energy generated by solar panels at an off-site array.
>
> Community solar customers can either buy or lease a portion of the solar panels in the array, and they *typically receive an electric bill credit for electricity generated by their share of the community solar system—similar to someone who has rooftop panels installed on their home.* Community solar can be a great option for people who are unable to install solar panels on their roofs because they don't own their homes, have insufficient solar resources or roof conditions to support a rooftop PV system due to shading, roof size, or other factors, or for financial/other reasons.[27]

She further referenced the Interstate Renewable Energy Council's "Model Rules for Shared Renewable Energy Programs, which describe the four key characteristics of community solar programs. These programs, according to Dr. Sherman's paraphrase of the Model Rules, should:

(1) Expand access to renewable energy;

(2) Provide participants with "tangible economic benefits on their utility bills";

(3) Be flexible to meet customer energy preferences; and

(4) Be additive and supportive of existing renewable energy programs.[28]

Dr. Sherman then summarized the various definitions and principles she cited, concluding: "It is clear from these various resources that community solar programs involve the purchase or lease directly of locally-situated solar panels, an electric bill credit for electricity generated, often community or third-party ownership, and multiple benefits, including economic and environmental benefits, for customers."[29] Although she recognized that Solar Gardens may involve certain of these characteristics, she faulted it for failing to "allow customers and communities direct access to solar located in their community," failing to be "community-driven,"

[27] 2 Tr 322 (quoting U.S. Department of Energy, Office of Energy Efficiecny and Renewable Energy, Community Solar Basics, available at: https://www.energy.gov/eere/solar/community-solar-basics) (emphasis added).
[28] 2 Tr 323.
[29] *Id.*

and for failing to "provide the same magnitude of economic benefits that could be provided by an expanded program with third-party ownership of the solar assets."[30]

True community solar programs, Dr. Sherman explained, are capable of saving participating customers 10-20% on their electric bills.[31] Consumers' Solar Gardens program, on the other hand, is explicitly marketed by the utility as the opposite—a premium program:

> Please note this program is not designed to reduce your electric bill. Rather, it offers an opportunity to voluntarily participate in a program that generates clean, renewable energy, therefore reducing greenhouse gas emissions by displacing fossil-fueled generation. Although the value of the solar energy credit may increase over the life of the program, there is no guarantee the value will be greater than the subscription payment and ***customers should not participate in this program with any expectation of profit or financial gain***.[32]

Dr. Sherman found this disconnect between true community solar programs as described by the DOE and related definitions discussed above and the Company's Solar Gardens program to be its chief failing and the primary reason why she could not fairly consider it a community solar program: "In addition to the other missing attributes described above, given that the provision of economic benefits is *critical to the definition of a community solar program*, I do not believe that the Solar Gardens Program as it currently exists is truly a community solar program."[33] It is therefore not true, as argued by Company witness Clinton in rebuttal, that there is no "need for the community solar program that Dr. Sherman is recommending."[34]

Staff witness DeCooman also expressed dissatisfaction with the Company's Solar Gardens proposal, albeit on slightly different grounds. Despite explaining that the primary concern animating Ms. Baldwin's proposal in U-20836 and U-21224 was "to promote equity by addressing

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[30] *Id.*
[31] 2 Tr 324.
[32] *Id.* (quoting Exhibit MEIU-5) (emphasis in testimony).
[33] 2 Tr 324 (emphasis added).
[34] 2 Tr 94.

the lack of distributed generation (DG) opportunities for customers unable to participate in the Company's DG program either due to living situations or lack of financial resources," and that "Staff's pilot was designed to make access to an offering similar to the DG program available to more customers," the balance of Mr. DeCooman's testimony on the issue focused chiefly on "locational proximity of solar arrays to customers."[35]

Although Dr. Sherman also expressed concerns about the proposed Solar Gardens program's lack of locational proximity to customers,[36] she found that witness DeCooman's direct testimony represented an "overemphasis on location" that could "impede customer access to community solar."[37] Although an ideal community solar project under Ms. Baldwin's proposal *might* be located on the same site as a group of subscribers and therefore provide a basis on which to justify distribution-related credits by avoiding using the Company's distribution system, locational proximity is not the *sine qua non* of community solar and should not be expected of any particular community solar project or program. As Dr. Sherman explained:

> [T]here may not be suitable locations to site community solar arrays in urban areas, including those with low-income communities. As such, focusing on locationality may unintentionally hinder access to community solar for low-income customers. While the proximity of a community solar project to its subscribers may have some broad economic benefits during construction and the local distribution system will see some benefits, as a technical matter there is no reason that a community solar project must be near its subscribers.[38]

Instead, the provision of financial benefits to subscribing customers and a bill credit mechanism as a means of flowing those benefits through to subscribers are the key, critical characteristics of any community solar program worth the name.[39]

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[35] See 2 Tr 235–40.
[36] See 2 Tr 346 (citing 2 Tr 323–24).
[37] 2 Tr 346.
[38] 2 Tr 346. The Company expressed similar concerns about absolutizing locational considerations. See 2 Tr 91–92.
[39] 2 Tr 346–48.

3. Staff Witness Baldwin's Community Solar Proposal from Case Nos. U-20836 and U-21224 Provides Economic Benefits on Account of Third-Party Involvement and the Availability of On-Bill Credits.

Unlike Consumers' utility-owned premium Solar Gardens program proposed in this case, Staff witness Baldwin's community solar proposal, first introduced in Case Nos. U-20836 and U-21224, conforms far more closely to the models and definitions of community solar identified by MEIU witness Sherman in this case. As Dr. Sherman explained in testimony, under witness Baldwin's proposal:

> a third-party would develop the community-solar project and sell subscriptions to customers. The participating customers would subscribe to a portion of a solar project, pay their full retail rate for electricity they use, and receive a credit for electricity produced by their share of the solar project at the same outflow credit as the DG program with an additional distribution credit provided for projects located on-site.[40]
>
> [. . .]
>
> Such a community solar program would fit the characteristics described above in that it would allow for third parties to develop, build, and own solar projects located in or near communities, it would allow customers to receive an electric bill credit for electricity generated by their share of the community solar system and it would provide economic benefits to customers.[41]

Third-party-owned (i.e., non-utility-owned) community solar can provide many benefits to the utility and the state, including economic, environmental, and grid reliability and resiliency benefits, avoided transmission costs, and avoided distribution upgrade costs (whether in the form of avoided distribution upgrades altogether or upgrades paid for by third parties).[42] When designed properly, a community solar program passes along these benefits to those customers who are providing them—program subscribers.[43] This is, incidentally, why the Company is incorrect when it asserts that third-party community solar arrangements "outside of the utility framework" are

[40] 2 Tr 325.
[41] 2 Tr 326.
[42] *Id.*
[43] *Id.* at 327 (citing New York's Value of Distributed Energy Resources' "Locational System Relief Value").

sufficient and a "community solar program that Dr. Sherman is recommending" is unnecessary.[44] Although it is true that "[t]hird-party community solar projects can access wholesale energy markets to sell energy,"[45] the additional benefits provided by the project would go uncompensated, and participating customers would actually end up subsidizing the utility and non-participating customers by providing those benefits for free.

Staff witness Krause appears to challenge the notion that community solar or DG can or should provide financial benefits to participating customers, arguing in response to certain arguments from CEO witness Cira-Reyes that "Michigan has had an active rooftop solar market for at least the last decade. There is no evidence that solar distributed generation (DG) has resulted in a lowering of electricity prices."[46] Mr. Krause further argued, "As there would be a subscription payment for community solar, there would need to be evidence that subscription plus the new bill is actually lower than the old bill to support any savings."[47] He then made a vague reference to "similar claims" with respect to financial benefits made by MEIU witness Sherman before recommending that her arguments be "rejected for similar reasons."[48] In doing so, Mr. Krause made no mention of the evidence of cost savings *actually provided* by witness Sherman, including real-world examples from New York, Illinois, and Virginia.[49] Mr. Krause's perfunctory treatment of Dr. Sherman's testimony and his flatly incorrect assertion concerning an alleged lack of evidence of cost savings render his summary dismissal of her arguments highly suspect.

Mr. Krause also argued that benefits resulting from community solar projects should not necessarily be passed along to program subscribers responsible for creating them, stating, "If

[44] See 2 Tr 94.
[45] *Id.*
[46] 2 Tr 281.
[47] *Id.*
[48] *Id.*
[49] 2 Tr 327.

community solar is compensated for all benefits, there are no benefits that flow to other customers, so other customers and the Company would be indifferent between community solar and other options."[50] It is unclear why the Company or non-participating customers need *not* be indifferent to third-party developed community solar, however, since the customers driving its development are participants in the program, not the Company or non-participants. Staff has not provided a compelling case for withholding benefits from those responsible for—and paying to produce—them.

The Commission should thus recognize that the model of community solar proposed by Staff witness Baldwin, in contrast to the Company's Solar Gardens proposal, is appropriately designed to provide financial benefits to participating customers. It therefore conforms far more closely to DOE's and other similar definitions of community solar than the Solar Gardens proposal and should be favored by the Commission on that basis.

4. Staff's Apparent View that Commission Jurisdiction is the Only Sufficient Means of Consumer Protection for Community Solar Programs is Unjustifiably Narrow.

Staff in particular have expressed particular concerns with respect to consumer protections in an instance where non-utility ownership of community solar projects is contemplated. Witness DeCooman, in both direct and, more especially, in rebuttal testimony, expressed lukewarm support for third-party ownership of community solar projects, arguing in particular that "utility ownership of community solar assets would provide the greatest assurance that these [consumer protection] requirements related to consumer protection are followed, given their extensive experience interacting with their customers and administering customer programs like VGP and energy waste reduction programs."[51] Mr. DeCooman specifically criticized MEIU witness Sherman for, he

[50] 2 Tr 283.
[51] 2 Tr 237–38.

alleged, claiming that "the presence of a competitive market inherently provid[es] consumer protection"[52]:

> The existence of a competitive market, while potentially helping to lower the price of a product, is not a proxy for consumer protections. When making its community solar pilot proposal, Staff acknowledged the importance, and provided a set of requirements, to ensure consumer protection when considering third-party ownership of community solar assets. Without robust consumer protections in both the contracting and administration of a community solar program, Staff is concerned that customers would be at risk of exploitative arrangements with third-party organizations which may have an advantage in resources and depth of understanding of the technical, financial, or legal aspects of a community solar development.[53]

Dr. Sherman never claimed, however, that the *mere* "presence of a competitive market inherently provid[es] consumer protection." Her direct testimony made explicit reference to multiple layers of consumer protections available besides those inherent in a competitive market, including the Attorney General's own jurisdiction and possible participation- or tariff-based requirements linked to access to utility-administered programs. Examples of the latter included "required disclosure statements signed by the customer at the time of enrollment, maximum subscription charge rates (e.g., charges of no more than the monetary bill credit from the community solar project) and required registration of third-party subscriber organizations."[54]

In her rebuttal testimony, moreover, Dr. Sherman explained exactly why she did not believe that utility-ownership of community solar assets would provide greater assurance of consumer protections:

> Although utility ownership may provide a pathway to ensure direct Commission oversight of consumer protections, I do not agree that consumer protections cannot and would not be provided in the case of third-party-owned community solar assets. As stated in my direct testimony, in addition to the inherent consumer protections afforded by the competitive market, the Attorney General provides consumer protections for markets that are not directly regulated by the Commission. See, e.g.,

[52] 2 Tr 248.
[53] 2 Tr 248–49.
[54] 2 Tr 329.

> the Michigan Consumer Protection Act, 1976 P.A. 331, as amended by 2022 P.A. 153, MCL 445.901, et seq. There is no reason to believe that the Attorney General could not protect consumers in the context of community solar. In addition, the Commission could establish additional requirements for third-party participants in a community solar program such as those established in other states including, as described in my direct testimony, customer-signed disclosure statements, maximum subscription charge rates, and registration requirements. In fact, witness Baldwin proposes a list of such items to ensure consumer protections in Case No. U-21224 including, for example, agreement to participate in an informal customer complaint resolution process with MPSC staff and submission of marketing materials.[55]

In short, while utility ownership would provide direct Commission jurisdiction and oversight of community solar projects, Staff have not established that direct Commission jurisdiction and oversight are necessary conditions for consumer protections.

The Commission should therefore not be swayed by this concern as it weighs the ideal extent of third-party involvement in a community solar program. Adequate consumer protections are clearly possible for both utility-owned and third-party-owned projects.

D. If the Commission Rejects MEIU's Community Solar Recommendations in this Case, it Should Not Endorse Lesser Alternatives as "Community Solar" Simply for Lack of a Better Option.

As detailed elsewhere in this brief, MEIU opposes the approval of the Solar Gardens program as Consumers' community solar offering and urges the Commission to require the establishment of a true community solar program along the lines of that proposed in Case Nos. U-20836 and U-21224. To the extent that the Commission does not do so, however, it should be careful to avoid endorsing flawed alternatives as the Company's community solar offering and thereby cutting short the development and pursuit of better proposals. Furthermore, if the Commission does not require the Company to adopt witness Baldwin's proposal as presented in Case Nos. U-20836 and U-21224 but also rejects the alternatives presented in this case (as MEIU

[55] 2 Tr 349.

advocate) and requires the Company to make another attempt, the Commission should clearly state what its expectations for a community solar program are in order to avoid a repeat of the non-responsive straw proposal presented in this case. Avoiding a repeat of the current scenario is warranted for several reasons, including sparing the Commission and intervenors from spending resources on responding to Company recalcitrance.

1. If the Commission Approves Solar Gardens as a Permanent Program, It Should Nonetheless Not Approve the Anchor Tenant Program as a Part of the Permanent Program.

With little fanfare, Consumers proposed making its "Anchor Tenant" option derived from the U-21134 settlement a part of a permanent Solar Gardens program and broadening eligibility from only municipalities and schools to all full-service customers.[56] Staff took this idea and appear to have made it the cornerstone of their own community solar recommendations in this case, praising it for its perceived ability to achieve locational proximity to subscribers.[57]

As Staff themselves acknowledge, however, this proposal would not offer a third-party ownership option[58] and thus would very likely not escape being the "premium program" it has remained to this point. As Dr. Sherman concluded: "Unfortunately, as they are currently structured, it is possible that none of the VGP offerings, including a future expanded Anchor Tenant model, are likely to produce financial benefits for customers akin to those that would be provided by a true community solar program with third-party ownership."[59] The anchor tenant option also lacks a billing mechanism through which cost savings (if there were any to be had) could be passed on to participants.[60] The anchor tenant option is therefore no reasonable

[56] 2 Tr 75.
[57] See 2 Tr 239.
[58] 2 Tr 239.
[59] 2 Tr 347.
[60] 347–48.

alternative to a true community solar proposal like the Staff proposal from U-20836 and U-21224 and should not be approved as such.

Despite his support for the anchor tenant option in general, Staff witness DeCooman recommended several changes, including requiring that anchor tenants who are not municipalities or schools be made subject to "[a]dditional due diligence and protections" in the form of a requirement that the Company

> present its review and due diligence of a prospective anchor tenant to Staff prior to initiating a contract with an anchor tenant. The information provided to Staff should be adequate to demonstrate that the prospective anchor tenant meets the requirements of all parameters included under part (4) on page 5 of Exhibit A-5, and any additional requirements deemed necessary by the Company.[61]

Dr. Sherman also addressed the viability of the anchor tenant program as a community solar program, explaining that if the past is any indicator, it will not promote community solar development. Community solar project opportunities and developments under the anchor tenant option as modified by the Staff would:

(1) be limited to only those subscribers willing to take on the financial risk for an entire project;

(2) be further hindered by limiting the pool of potential subscribers willing to take on such risk to only those near the project;

(3) be even further hindered by requiring the financial vetting of potential anchor subscribers, which would require the release of financial records to the Company and a state agency.[62]

All of these problems identified more than justify rejecting the anchor tenant option as a viable community solar option or as satisfaction of the community solar straw proposal requirement from the U-21224 Settlement. The Commission should therefore refrain from

[61] 2 Tr 240–41.
[62] 2 Tr 351–52.

approving the anchor tenant option as a part of any permanent Solar Gardens program or as its own standalone option.

2. Any Permanent Solar Gardens Program Should Include Requirements that Consumers Follow the Commission's Competitive Bidding Guidelines and Conduct Competitive Solicitations Specific to Solar Gardens Seeking Projects 5 MWac or Smaller.

If the Commission finds that Consumers' proposal to make the Solar Gardens program permanent should be approved, it should ensure that the transition from pilot to permanent program is accompanied by structural improvements to the procurement of resources used to serve that program. Under the Company's initial proposal, witness Clinton confirmed that the Company only intends to acquire utility-owned-and-operated facilities to serve Solar Gardens-related load, with third-party involvement limited to "collaboration" and participation—but not selection—in broader competitive bidding processes.[63]

In general, witness Clinton's description of the Company's intentions on this front is unacceptably vague, especially given that the 5.5 MW (presumably self-built) project under consideration by the Company arose not from an open competitive solicitation but from "internal solar siting and prospecting efforts."[64] Dr. Sherman was left only to conclude that, without more stringent requirements, the Solar Gardens program could be used by the Company "to develop and procure self-built projects, including those that are potentially higher-cost."[65] Dr. Sherman also raised a related concern that smaller projects intended to serve the Solar Gardens program not be made to compete directly against larger projects with greater economies of scale intended to serve the new REP.[66]

[63] See 2 Tr 330.
[64] 2 Tr 331.
[65] *Id.*
[66] *Id.* at 331–32.

The Company directly addressed Dr. Sherman's concerns regarding competition between large and small projects, indicating that since the Company would be specifically seeking smaller projects to support Solar Gardens, direct competition would be minimized.[67]

On the broader issue of procurement in general, however, the Company's attempts to alleviate some of MEIU's concerns are inadequate. Witness Clinton claimed that Consumers "is *not opposed to* including Power Purchase Agreements ("PPA") with third parties to fulfill VGP program needs,"[68] but this statement falls well short of expressing an *intention* to include PPAs that could convince MEIU that the Company will depart from its indications in direct testimony and discovery on the issue of Company ownership of VGP and specifically Solar Gardens resources. A vague openness is not the equivalent of a commitment, and the Company continued to stand behind its prior-stated intention to self-identify and self-develop projects outside of competitive solicitation processes.[69] This, combined with the Company's seemingly endless ability to find reasons to prefer Company-owned resources even in the presence of a now-mandatory FCM,[70] should give the Commission little reason to trust Consumers' platitudes regarding the alleged true openness of its VGP procurement processes.

Any permanent Solar Gardens program should therefore include a specific requirement that resources procured to serve load in that program be acquired through a competitive solicitation process conforming to the Commission's competitive bidding guidelines adopted in Case No. U-20852.

[67] See 2 Tr 102.
[68] 2 Tr 91 (emphasis added); see also 2 Tr 140–42 (Johnston rebuttal).
[69] 2 Tr 101.
[70] See 2 Tr 141–42.

E. The Commission Should Require the Company to Procure Equivalent MWs of Renewable Resources from PPAs and BTAs/Self-Builds to Fulfill Demand for the Renewable Energy Program.

Contrary to its practices with respect to resources sought to fulfill IRP capacity needs, Consumers does not seek third-party-owned projects to serve demand derived from its VGP program.[71] This is the case notwithstanding the clear and demonstrated benefits of PPAs reaching back multiple years.[72] In light of these benefits, Dr. Sherman recommended that

> [b]ecause PPAs have been shown previously to be less expensive than utility self-built or BTA projects, it is important that the Company at the very least allow third-party owned projects to compete in RFPs. Preferably, the Company should seek to procure a certain percentage of third-party owned projects in a manner similar to the current IRP procurements.[73]

Structural financial incentives that would have previously weighed in favor of utility ownership from the Company's perspective have been at least seriously blunted by modifications made to the "financial compensation mechanism" contained in MCL 460.6t(15), which 2023 PA 235 has now made mandatory and fixed at the maximum rate previously authorized under 2016 PA 341. Dr. Sherman observed:

> because the value of the new FCM established by Public Act 235 of 2023 is far greater in value than the previous maximum Commission-approved FCM and because the FCM is guaranteed for all PPAs, it is likely that these changes should make utilities like Consumers Energy more agnostic as to ownership of VGP resources. As such, it seems reasonable, in this case, that the Company should seek roughly equivalent capacity from Company-owned resources and third-party owned resources to fulfill VGP demand. I anticipate that this would lower costs for the VGP program while not representing lost financial opportunities for the Company.[74]

[71] See 2 Tr 308 (citing Exhibit MEIU-2).
[72] 2 Tr 309–10.
[73] 2 Tr 310.
[74] 2 Tr 311–12.

She therefore recommended that Consumers Energy be required to procure roughly equivalent MWs of renewable energy resources to fulfill demand for the Renewable Energy Program from third-party owned PPAs and Company-owned BTAs/self-builds.

F. The Commission Should Require the Company to Purchase RECs from Willing Distributed Generation ("DG") Customers at Those Customers' Discretion and at a Price Equal to 100 Percent of the Five-Year Rolling Average of Net Premium for the Renewable Energy Program.

Dr. Sherman's proposal that the Company be required to purchase RECs from DG customers has, by this point, something of a history. The idea originally arose in a DTE general rate case, U-20836, as part of a proposal by the Great Lakes Renewable Energy Association to both increase potential value of DG production for DG customers and reduce the costs of RECs procured through the utility's VGP programs.[75] The Staff supported the proposal in that case, explaining that:

> By utilizing GLREA witness Richter's proposal to purchase RECs from the DG program, it adds value to an asset that some DG customers would characterize as currently being wasted as it is highly unlikely that they are currently retiring or selling RECs. Additionally, because the Voluntary Green Pricing (VGP) programs have continued to grow so rapidly, this source of RECs that are available may help ease some of the current industry supply chain issues. Because of the many benefits of this proposal, Staff supports this recommendation.[76]

In its final order in Case No. U-20836, the Commission agreed "that [DTE Electric's purchase of RECs from DG customers] is beneficial to both DG customers and the VGP program" and required DTE Electric "to supplement its VGP application in Case No. U-21172 with a proposal for amendments to riders 17 and 18 to accommodate the company's purchase of RECs from DG customers to be applied to the Company's VGP program."[77] DTE proceeded to propose

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[75] 2 Tr 313.
[76] *Id.* (quoting Rebuttal Testimony of Cody S. Matthews on behalf of the Michigan Public Service Commission, Case No. U20836-0754, 8 Tr 5389-90).
[77] *In the matter of the application of DTE ELECTRIC COMPANY for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting*

only to clarify its own discretion to purchase RECs from DG customers rather than to comply with the Commission's order to purchase those RECs "at the option of the customer."[78] The parties to Case No. U-21172 await a final decision from the Commission on this issue.

In the meantime, Dr. Sherman proposed in testimony in this case that the Commission impose a similar requirement to purchase DG customer RECs on Consumers, "seeing no reason to treat Consumers Energy differently from DTE Electric."[79] As part of this proposal, Dr. Sherman recommended that Consumers bear the responsibility for certifying those RECs and that it permit DG customers to use a bi-directional meter rather than a generation meter, with all generated RECs (including those associated with energy consumed on site) recognized so long as the customer's system is fitted with an "inverter complying with ASNI C.12 (or its successor)."[80] She also recommended that the price of RECs purchased from DG customers be valued at 100% of the five-year rolling average of net premiums paid by participating customers in the Company's VGP programs (less a reasonable administrative fee), since this price represents the price that "other customers pay for RECs."[81]

1. Public Act 235 Makes DG REC Purchases More Necessary, Not Less.

Both Staff witness Heidemann and Company witness Johnston objected to Dr. Sherman's proposal on grounds related to PA 235. Specifically, witness Heidemann argued that, with respect to RECs associated with DG outflow, "the law is removing the $DG_{outflow}$ from consideration and by subtracting the outflow from the REC requirement to comply with the RPS in the law . . . is therefore assuming that whatever RECs would have been generated are being retired."[82] With

authority, order of the Public Service Commission, entered November 18, 2022 (Case No. U-20836) ("U-20836 Order"), p. 445.
[78] *Id.*
[79] 2 Tr 317.
[80] *Id.*
[81] *Id.* at 318.
[82] 2 Tr 358.

respect to RECs associated with on-site consumption, he argued that "because PA 235 excludes the load that is associated with the DG generation that is consumed on site, the law is assuming the RECs that would have been generated are retired on behalf of the DG customer for the portion of load supplied by the generation onsite."[83] Company witness Johnston makes similar arguments in his rebuttal testimony.[84]

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.

[83] *Id.* at 359.
[84] 3 Tr 142–43.

In a similar manner, DG energy produced and consumed on site is excluded simply because it is by definition not part of the power sold by an electric utility over the course of a year or three years (as the case may be), 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. DG customers certifying RECs associated with their on-site consumption remain free, therefore, to do what they will with those RECs, including selling them to others and forfeiting the right to claim to run their homes or businesses on renewable energy. It is simply not the case, therefore, that allowing them to sell RECs associated with on-site consumption to the utility either for RPS compliance or for VGP purposes (to satisfy pent-up demand, for example) would result in double-counting under the RPS.

In the case of RECs associated with outflow, it is true that PA 235 gives electric providers credit for "the outflow from customers participating in the distributed generation program under section 173."[85] Witness Heidemann's conclusion from this is that "there is nothing left to sell."[86] But Staff does not identify when, how, or in what amount a customer receives compensation for RECs associated with outflow. Witness Heidemann cannot do this because no such sale of RECs occurs. Consumers' rate book has consistently stated, in keeping with Commission precedent, that "Renewable Energy Credits (RECs) are owned by the customer."[87] If read in keeping with witness Heidemann's interpretation, therefore, PA 235 would essentially deprive DG customers of the RECs associated with their outflow by operation of law and without just compensation, in violation of the Fifth Amendment to the US Constitution and Article X, Section 2 of the Michigan Constitution.

[85] See, *e.g.*, MCL 460.1028(2)(b)(i).
[86] 2 Tr 359.
[87] Consumers Energy Second Revised Sheet No. C-64.80, Section C11.3(N).

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.

To summarize, far from making DG REC purchases by Michigan utilities moot as argued by witness Heidemann, PA 235 has made them necessary, at least as far as RECs associated with DG outflow are concerned. And as far as RECs associated with on-site consumption are concerned, they are unaffected by PA 235 and remain available for purchase by the Company either for RPS compliance purposes[88] or for serving demand under VGP programs. There is thus no reason stemming from the passage of PA 235 that would compel the Commission to walk back from requiring the utility to purchase RECs generated by DG customers.

2. RECs Purchased from DG Customers Should Be Valued at 100% of the Five-Year Rolling Average Net Premium of the VGP Program.

Dr. Sherman recommended that for RECs purchased by the Company from DG customers, the Company should pay a value equivalent to 100% of the five-year rolling average of the net premium of Consumers' VGP program (in this case, the REP net premium).[89] As a basis for this recommendation, Dr. Sherman explained that the net premium is effectively the price that VGP customers pay for RECs, since it is what is left over after the value of energy and capacity is subtracted from the customer's subscription charge. This value is logically the value the participating customer puts on RECs, since that is the product the customer is left with when the dust clears. If the customer did not value the RECs at that price, the customer would presumably not participate in the program.

[88] To the extent permitted by Section 28(5)(c).
[89] 2 Tr 318.

Both Staff witness Matthews and Company witness Johnston opposed Dr. Sherman's REC valuation proposal. Witness Matthews attempted to distinguish between the net premium and the cost of RECs, arguing that "Staff's concern is that the net premium calculation does not represent the value of RECs. Instead, the calculation represents the net cost of participating in the VGP program. The two are not equivalent."[90] He does not elaborate on why the two are not equivalent, however, even though the "product" a participating customer is obtaining through its participation *is* RECs, once the subscription charge and energy/capacity credits are netted out.

Company witness Johnston made more of an effort to distinguish the two, arguing that "Customers that participate in the Renewable Energy Program see the program as a hedge against future increases in the costs of energy and capacity in addition to the carbon-free attributes of the program. The DG RECs provide no hedge against energy and capacity and, as a result, should not be valued as if they do."[91] To the extent that future energy and capacity costs do increase in the long run, however, the net result would likely be that the net premium would either decrease or turn negative (assuming VGP subscription charges are less volatile than market energy and capacity prices, as witness Johnston's objection appears to assume), at which point the Commission would likely be required to revisit the value of DG RECs. This is therefore no reason to refuse to adopt Dr. Sherman's pricing proposal.

3. The Commission Should Require the Company to Share a Standard Contract Form for REC Purchases for Stakeholder Input and to File the Resulting Form with the Commission for Approval.

Dr. Sherman explained the necessity for a Commission-vetted REC purchase agreement as follows:

> Because the bargaining power between the Company and most, if not all, DG customers is unequal, it is unlikely that most customers could engage in a

[90] 2 Tr 291.
[91] 2 Tr 144.

> meaningful negotiation with the Company regarding the purchase of RECs. This makes it especially important that any standard REC purchase agreement is developed with stakeholder input and approved by the Commission. To ensure that customers are protected, following this proceeding, if the Commission requires Consumers Energy to purchase RECs from customers, the Commission should also require the Company to share a standard contract form for REC purchases with stakeholders within a reasonable timeframe (e.g., within 90 days after the final Order in this case), provide a reasonable period for input, incorporate appropriate input, and file the contract form with the Commission for approval. Once filed, the Commission should provide a reasonable opportunity for comments and reply comments and thereafter enter an order approving a standard REC purchase contract. For ease of simplicity for customers, if possible, this process should be aligned with any similar process undertaken by DTE Electric.[92]

For the reasons stated in Dr. Sherman's testimony, MEIU urge the Commission to ensure that DG customers selling RECs are adequately protected by reviewing and approving a proposed REC purchase agreement.

G. The Commission Should Require the Company to Use the Entirety of the Excess Funding in the Green Generation Program to Provide for Income-Qualified Subscriptions to the Green Giving and/or Solar Gardens Program, with Those Subscriptions Extended According to Need Beyond the Initial One-Year Period.

In its application, the Company proposed to use the surplus in the Green Generation Program partially for low-income renewable energy subscriptions and partially "to support the development of future renewable resources."[93] With regard to the latter, MEIU clarified with the Company that these funds would not be used "to decrease costs for ratepayers or VGP participants except if the Company does use a portion of the funds to provide income-qualified subscriptions to the Green Giving and/or Solar Gardens Program."[94]

Dr. Sherman and others expressed discomfort with the Company's vague proposal to use a portion of the funds for "the development of future renewable resources."[95]

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[92] 2 Tr 319.
[93] 2 Tr 335 (quoting 2 Tr 83–84).
[94] 2 Tr 335 (citing Exhibit MEIU-10).
[95] See, *e.g.*, 2 Tr 336–337; 2 Tr 263–66; 2 Tr 272–73.

In rebuttal, Consumers witness Clinton appeared to concede that all $40M of surplus funds should be redirected to funds intended to support low-income subscriptions to renewable energy. MEIU express no opinion on the exact nuances of such a redirection but support the Company's decision to abandon its intention to retain approximately half of that amount for the vague purpose of "support[ing] the development of future renewable resources."

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advanced Energy United respectfully request that the Commission:

(a) Approve the Company's proposal to expand its former LC-REP to a Renewable Energy Program for which all full-service customers are eligible;

(b) Reject the Company's Solar Gardens community solar proposal and require the Company to establish a community solar program within 90 days in accordance with the proposals made by Staff witness Baldwin in Case Nos. U-20836 and U-21224;

(c) If the Commission rejects MEIU's community solar recommendations in this case, not endorse lesser alternatives as "community solar" simply for lack of a better option;

(d) If the Commission rejects MEIU's community solar recommendations and the lesser alternatives proposed in this case, clearly state what its expectations for a community solar program are in order to avoid a repeat of the non-responsive straw proposal presented in this case;

(e) Require the Company to procure equivalent MWs of renewable resources from PPAs and BTAs/self-builds to fulfill demand for the Renewable Energy Program;

(f) Require the Company to purchase RECs from willing distributed generation ("DG") customers at those customers' discretion and at a price equal to 100 percent of the five-year rolling average of net premium for the Renewable Energy Program;

(g) Require that the Company to use the entirety of the excess funding in the Green Generation Program to provide for income-qualified subscriptions to the Green Giving and/or Solar Gardens program with those subscriptions extended according to need beyond the initial one-year period.

Respectfully submitted,

Potomac Law Group, PLLC
Attorneys for the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advanced Energy United

April 3, 2024

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4877-2664-8242, v. 4

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*****

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**

PROOF OF SERVICE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

Summer R. Dukes, the undersigned, being first duly sworn, deposes and says that she is a Paralegal at Potomac Law Group PLLC and that on the 3rd day of April, 2024 she served a copy of the Initial Brief of the Michigan Energy Innovation Business Council, the Institute for Energy Innovation and Advanced Energy United, upon those individuals listed on the attached Service List via email.

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