

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own motion,)
to implement the provisions of Sections 22 through)
49 and related definitions of Public Act 235 of 2023.)
_____)

Case No. U-21568

COMMENTS OF THE
MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL
AND
ADVANCED ENERGY UNITED

Introduction

On November 28, 2023, Governor Whitmer signed into law Public Act 235 of 2023, which took effect on February 27, 2024. On February 8, 2024, the Michigan Public Service Commission (“Commission”) opened a number of dockets to consider aspects related to the implementation of this law along with Public Acts 239 and 233. The Commission opened Case No. U-21568 to consider issues related to the increase in the renewable portfolio standards (“RPS”) for electric providers. In addition to setting a staggered schedule for utility Renewable Energy Plan (“REP”) case filings, the Commission sought comments on a number of questions. The Michigan Energy Innovation Business Council (“Michigan EIBC”)¹ and Advanced Energy United (“United”;

¹ The Michigan Energy Innovation Business Council is a trade organization tasked with growing Michigan’s advanced energy economy by fostering opportunities for innovation and business growth and offering a unified voice in creating a business-friendly environment for the advanced energy industry in Michigan.

collectively “Michigan EIBC/United”)² provided comments and reply comments in the docket. On April 25, 2024 the Commission issued an order with draft amended renewable energy plan filing requirements (“draft requirements”). Michigan EIBC/United offer the below comments on the Order and draft requirements.

Comments

Question 3

The Commission states in its Order that:

EIBC/United responded to MNSC stating that post-use polymers and industrial waste are not currently considered for RECs on the co-firing calculation, so MNSC’s concern is moot. EIBC/United’s reply comments, filing #U-21568-0016.

Michigan EIBC/United did not comment on Question 3 in either our initial comments or reply comments and did not respond to MNSC regarding post-use polymers and industrial waste. Instead, these reply comments were provided by Michigan Biomass. Michigan EIBC/United simply wish to correct the record on this point and do not take a position on these issues.

Draft Requirements

The draft requirements state that the following should be included in the REP filing by each type of entity:

- 3.) Forecasted megawatt hour outflow from distributed generation customers through 2045.
 - a) Specify if renewable energy credits from distributed generation outflow are utilized towards compliance with the standard.

² Advanced Energy United is a national business association representing leading companies in the advanced energy industry. United supports a broad portfolio of technologies, products, and services that enhance U.S. competitiveness and economic growth through an efficient, high-performing energy system that is clean, secure, and affordable.

This draft requirement appears to be derived from the fact that Section 28(2)(b) of PA 235 excludes distributed generation (“DG”) outflow from the denominator of the RPS calculation. This, however, raises certain concerns regarding customer ownership of the associated renewable energy credits (“RECs”) and those customers’ entitlement to the value of those RECs.

The MPSC has consistently found that “RECs” generated by DG customers remain the property of those customers, a fact that is reflected in multiple utility tariffs. See, *e.g.*, Consumers Energy Rate Book, Sheet No. C-64.80, Section C11.3(N); DTE Electric Rate Book, Sheet No. D-116.03. Consistent with these historical findings, the Commission should clarify here that RECs will continue to remain the property of the DG customer who generated the RECs unless that customer decides to sell the RECs to the utility.

Although PA 235 gives electric providers credit for “the outflow from customers participating in the distributed generation program under section 173,” MCL 460.1028(2)(b)(i), (ii), it does not alter the fundamental ownership arrangement. It neither provides that DG customers simply forfeit their RECs to their electric provider nor provides them with compensation for them.

A law or utility depriving DG customers of the RECs associated with their outflow without just compensation would give rise to a taking, in violation of the Fifth Amendment to the US Constitution and Article X, Section 2 of the Michigan Constitution.

A better and more judicious reading of PA 235, therefore, would *require* electric providers receiving credit for such outflow *as renewable energy* under the RPS to compensate customers generating those RECs to make them whole. Far from making DG REC purchases by Michigan utilities moot, PA 235 has made them necessary, at least as far as RECs associated with DG outflow are concerned. RECs clearly have value under Michigan law, even more so with the passage of PA 235. A DG customer's ownership interest in its RECs cannot be ignored simply because PA 235 does not address the issue. In the absence of fair compensation for RECs associated with DG outflow, an electric provider cannot claim the RECs towards compliance with the RPS without purchasing those RECs from the customer because the electric provider cannot be said to own the REC.³

Conclusion

Michigan EIBC/United appreciate the opportunity to provide comments on the Commission's draft requirements. Michigan EIBC/United believe that it is critical for the Commission to clarify that although PA 235 removes outflow from DG customer from the denominator of the RPS equation, it does not render those RECs worthless or the automatic property of the utility. Instead, it requires the utility to purchase DG RECs from customers to fulfill the new RPS requirements.

³ Michigan EIBC/United do not address the value and counting of RECs associated with renewable energy generated and consumed on-site because, in the absence of an electric provider fairly compensating the DG customer for such RECs, they are understood to be beyond the scope of the proposed filing requirements.