

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission’s own)	
motion, to implement the provisions of)	
Sections 173 and 177 and related)	Case No. U-21569
definitions of Public Act 235 of 2023.)	
_____)	

In the matter, on the Commission’s own motion, to)	
grant waivers from certain Interconnection and)	
Distributed Generation Standards for)	Case No. U-21767
ALPENA POWER COMPANY, UPPER PENINSULA)	
POWER COMPANY, UPPER MICHIGAN ENERGY)	
RESOURCES CORPORATION, NORTHERN)	
STATES POWER COMPANY, INDIANA MICHIGAN)	
POWER COMPANY, CONSUMERS ENERGY)	
COMPANY, and DTE ELECTRIC COMPANY,)	
to conform to Public Act 235 of 2023.)	
_____)	

At the July 23, 2024 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

On November 28, 2023, Governor Gretchen Whitmer signed into law Public Act 235 of 2023 (Act 235), which amended Public Act 295 of 2008 and Public Act 342 of 2016 (Act 342). The amendments were effective on February 27, 2024. Section 173(3) of Act 235 increased the size of Michigan’s distributed generation (DG) program from 1% of an electric utility’s or alternative electric supplier’s average in-state peak load for the preceding five calendar years to 10% of the

average in-state peak load for the preceding five calendar years, and included other changes to the DG program. MCL 460.1173(3). Section 177 of Act 235 addressed metering and billing associated with the DG program.

On February 8, 2024, the Commission issued an order in Case No. U-21569 (February 8 order) seeking comment from interested persons on three aspects of the statutory changes resulting from Act 235 which are described below. February 8 order, pp. 2-5. The February 8 order set dates for the filing of initial and reply comments on these three issues and any other relevant matter. February 8 order, p. 5.

On March 26, 2024, initial comments were filed by DTE Electric Company (DTE Electric); Consumers Energy Company (Consumers); Michigan Energy Innovation Business Council and Advanced Energy United (together, MEIU); the Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (together, the Clean Energy Organizations or CEOs); Great Lakes Renewable Energy Association (GLREA); Indiana Michigan Power Company (I&M); and the Michigan Electric and Gas Association (MEGA). On April 16, 2024, reply comments were filed by DTE Electric, Consumers, MEIU, GLREA, and MEGA. One public comment was filed in the Case Comments section of the docket by Adam Schaller on behalf of Lakeshore Die Cast. All of the filed comments are publicly available in the docket for review at filing ## U-21569-0004 through U-21569-0016, and U-21569-0001-CC. This order provides a brief summary of the comments (by topic) followed by further guidance on the implementation of Act 235.

Generation Meters

First, Section 177(1) of Act 342 stated:

Electric meters shall be used to determine the amount of the customer's energy use in each billing period, net of any excess energy the customer's generator delivers to

the utility distribution system during that same billing period. For a customer with a generation system capable of generating more than 20 kilowatts, the utility shall install and utilize a generation meter and a meter or meters capable of measuring the flow of energy in both directions. A customer with a system capable of generating more than 150 kilowatts shall pay the costs of installing any new meters.

By contrast, Section 177(1) of Act 235 now states: “An electric meter provided by a utility must be used to determine the amount of the customer’s inflow and outflow electricity in each pricing period. Eligible customers shall pay only the incremental cost above that for meters provided by the electric utility to similarly situated, non-generating customers.” MCL 460.1177(1). Thus, this change to the previous statutory language resulted in removal of the requirement that the utility install a generation meter for any DG customer generating more than 20 kilowatts (kW), and the removal of language specifying that any customer capable of generating more than 150 kW shall pay the associated costs. In light of the amendments, the Commission invited comment on the following questions:

1. Can the utility provide a generation meter at its own cost but require the customer to provide the necessary current transformer (CT) rated meter cabinet and wiring to accommodate the installation of the generation meter?
2. If so, does this add costs for the customer and increase the space required for the installation?
3. Is there a purpose or need for a generation meter?

February 8 order, p. 2.

In their initial comments, GLREA, MEIU, and the CEOs assert that a generation meter is not necessary, and that the statutory changes demonstrate that the Legislature intended to remove the previous generation meter requirement from MCL 460.1177. They contend that no costs should be assigned to the DG customer related to a generation meter or any associated infrastructure, nor should the customer be required to provide space. GLREA’s initial comments, pp. 1-3; MEIU’s initial comments, pp. 2-6; CEOs’ initial comments, pp. 3-4. They comment that such a

requirement would be an obstacle to participation in the DG program and an infringement upon the customer's property rights. These commenters also assert that a generation meter would duplicate the capability that already exists through the use of advanced metering infrastructure (AMI) meters. GLREA, MEIU, and the CEOs point to the new statutory language and note that the new language explicitly limits the costs to the "incremental cost above that for meters provided . . . to similarly situated, non-generating customers." MCL 460.1177(1). They note that AMI meters are capable of measuring bi-directional flow.

Additionally, GLREA comments that, if a utility installs such a meter, then it should pay rent to the customer for the space; and that, if a future renewable energy credit market is developed, then "inverters with revenue grade meters could measure the power produced." GLREA's initial comments, p. 3.

The CEOs comment that the Commission should update the Interconnection and Distributed Generation Standards, Mich Admin Code, R 460.901a *et seq.*, (the MIXDG rules) to reflect the fact that generation meters are not required, and utilities should revise their interconnection procedures accordingly. The CEOs comment that the "clear intent of the revised language is to minimize incremental metering costs for DG customers." CEOs' initial comments, p. 3. The CEOs state that "most systems now come equipped with PV [photovoltaic] monitoring software which already tracks generation data. Utilities could work with installers to access more detailed generation information through these means upon a demonstration that such visibility into generation behind the customers meter is necessary." *Id.*, p. 4.

MEIU comments that:

the statute *as amended* provides that generating customers must pay no more than the difference in cost between meters generally in use for non-generating customers and meters capable of measuring both inflow and outflow. Insofar as similarly situated, non-generating customers are ordinarily served through meters already

capable of measuring both inflow and outflow (as is the case for customers with Advanced Metering Infrastructure (“AMI”) meters), the clear implication of the statute *as amended* is that no incremental costs would be incurred by the utility to be passed to generating customers.

MEIU’s initial comments, pp. 3-4 (emphasis in original). MEIU cites to rules of statutory construction which require that attention be paid to the problem the legislature has sought to remedy in the changed statutory language. MEIU also notes that significant costs can be associated with the parts and the labor for ancillary equipment. MEIU comments that if the measurement of total output is necessary, then inverters can be used for that purpose. MEIU also comments that the MIXDG rules at Mich Admin Code, R 460.1014(2) and (3) (Rule 114(2) and (3)), still appear to require a generation meter and MEIU recommends that the Commission act expeditiously to update these rules to reflect Act 235. Because rulemaking is a lengthy process, MEIU recommends that the Commission, on its own motion, grant a blanket waiver from the generation meter requirement in Rule 114, stating that the Legislature’s “removal of the generation meter requirement from MCL 460.1177 certainly constitutes good cause as required by” Mich Admin Code, R 460.910 (Rule 10), which governs waivers from the MIXDG rules. MEIU’s initial comments, pp. 2-3.

In their initial comments, DTE Electric, I&M, MEGA, and Consumers state that the statutory changes do not prevent the utility from requiring the use of a generation meter, and that costs associated with such use should not be borne by the utility or the utility’s non-generating customers. DTE Electric’s initial comments, pp. 2-3; I&M’s initial comments, p. 2; MEGA’s initial comments, pp. 2-3; Consumers’ initial comments, p. 2.

Additionally, DTE Electric comments that the telemetry provided by generation meters is “a critical component to effective management of the distribution system” because without generation meters the utility “will be unable to determine if a change in inflow or outflow at the

main meter is due to increased or decreased generation or increased or decreased load.” DTE Electric’s initial comments, p. 2. DTE Electric comments that a distributed energy resource (DER) may be obliged to have a generation meter based on requirements set by the Federal Energy Regulatory Commission (FERC) or the Midwest Independent System Operator, Inc. (MISO).

Likewise, I&M comments that American Electric Power Company, Inc. (AEP) or PJM Interconnection, L.L.M. (PJM) “may require a generation meter for certain DER interconnections, dependent upon specific DER configurations and sizes.” I&M’s initial comments, p. 2. I&M adds that “AEP requires real-time telemetry (SCADA) [supervisory control and data acquisition] for generation greater than 2.5 MW [megawatts] connected to the distribution system and all connections at transmission voltages.” *Id.* I&M comments that “[w]ithout a generation meter, DER supply could not be metered because part or all of the load is being provided by the generator.” *Id.*

Consumers comments that, without generation metering, “the Company’s planning and operational decisions will be based solely on net feeder load and an assumption that customer-owned generation will be available at any given time.” Consumers’ initial comments, p. 2.

MEGA comments that a generation meter is no longer required but whether “the utility provides a generation meter at its own cost, or the customer requests it, the customer would still be responsible for the upgrades to accommodate the installation of the generation meter.” MEGA’s initial comments, p. 2. MEGA adds that under Act 235 “generation meters are not necessary and their use case is company-specific.” *Id.*, p. 3. MEGA comments that if the Commission requires the use of generation meters, then utilities should be authorized to recover those costs “through monthly fees included in the applicable parallel generation and distributed generation program tariffs.” *Id.*

In its reply, MEIU comments that “generation meters will not provide Consumers any additional information required for planning and operational decisions beyond that provided by AMI and modern inverters.” MEIU’s reply comments, p. 3. MEIU adds that I&M appears to be referring to PJM’s requirements for DERs participating in the wholesale market, and these are not relevant. In its reply, GLREA comments that none of the utilities “cited any specific examples of any situation in which they have made use of data from DG system generation meters” nor did they explain why they need to know the load separate from the generation. GLREA’s reply comments, p. 1. GLREA comments that most inverters are already providing generation information, and that electric utilities do not, in any case, have supervisory control over a customer’s DG inverter.

In its reply, addressing GLREA, Consumers comments that its current tariffs require the customer to provide, free of charge, a space suitable for the installation of necessary metering equipment. Consumers’ reply comments, pp. 2-3. Addressing MEIU and the CEOs, Consumers comments that:

inverter data has not proven to be a realistic approach in practice. Consumers Energy has had little success in obtaining access to inverter data from its customers. And even in cases where data has been provided, a variety of inverter models, software systems, metering accuracy levels, and other factors make it infeasible to integrate this practice broadly. . . . Consumers Energy is not aware of any inverter standards that would ensure inverter metering is “revenue grade” in order to meet the necessary accuracy standards.

Id., pp. 3-4.

In its reply, DTE Electric comments that the concept of a blanket waiver is inappropriate because there is no prohibition on the use of generation meters, stating that:

certain other statutory provisions remain in effect that make clear that there is no such prohibition, including that “[t]he commission shall not prohibit an electric utility from metering and billing its customers for services provided by the electric utility.” (MCL 460.10q(5)) In addition, “[t]he merchant plant will be responsible

for all costs associated with the interconnection unless the commission has otherwise allocated the costs and provided for cost recovery.” (MCL 460.10e(3)) Also, “each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) or nonregulated electric utility may assess against the qualifying facility on a nondiscriminatory basis with respect to other customers with similar load characteristics.” (18 CFR Section 292.306).

DTE Electric’s reply comments, p. 2 (emphasis in original). DTE Electric maintains that without generation meters “capacity planning for the electrical system becomes uncertain as the actual amount of generation and the amount of load cannot be determined[,]” leading to reliance on assumptions that will become increasingly inaccurate. *Id.*, p. 3. DTE Electric comments that it has no plans to require generation meters but it would be unlawful to prohibit them.

The new statutory language states: “An electric meter provided by a utility must be used to determine the amount of the customer’s inflow and outflow electricity in each pricing period. Eligible customers shall pay only the incremental cost above that for meters provided by the electric utility to similarly situated, non-generating customers.” MCL 460.1177(1). Consistent with the Legislature’s intent, the Commission finds that, under Section 177(1) of Act 235: (1) a generation meter is no longer required (though it is not prohibited); (2) the utility must provide an electric meter that measures inflow and outflow in the pricing period (and the type of meter is not designated); (3) customers who are eligible to participate in the DG program must pay the incremental cost for that meter, if any, above the cost paid by a similarly situated, non-generating customer; and (4) if the type of electric meter provided by the utility for non-generating customers (such as an AMI meter) can perform the inflow and outflow measurement for the pricing period, then there is no incremental cost to the DG customer, no matter what the size of the system.

Per Mich Admin Code, R 460.901a(1), certified projects are projects that meet requisite safety and reliability standards, such as projects “in conformance with IEEE [Institute of Electrical and

Electronics Engineers] 1547.1-2020.” The Commission acknowledges that there is no need for a generation meter to collect billing determinant information for billing, and thus finds that the additional cost and space burdens associated with generation metering for projects sized 150 kW and smaller does not justify the required use of generation metering.

Additionally, as pointed out in several comments, other circumstances may arise. A DER desiring to participate under FERC jurisdictional programs such as under FERC Order 2222¹ may be required to have a generation meter based on the FERC or MISO requirements for participation. The Commission also acknowledges that future programs in which DERs may participate may require a generation meter, and customers themselves may opt for a generation meter.

Some commentors stated that the generation data is necessary for planning and critical to the management of the distribution system, particularly where the difference between the actual amount of generation and the amount of load cannot be determined. As quoted above, Consumers noted that it is not aware of inverter standards that ensure that the metering is revenue grade. While the Commission recognizes that the generation data could make certain capacity planning functions easier, the Commission notes that, with the newest iteration of IEEE 1547.1-2020, compliant inverters are capable of measuring and recording generation data and could be used to gather this data without the need to install generation metering. Concerning the accuracy of inverter data, there may be a difference between the level of detail needed for billing purposes and that which is needed for planning. In light of the additional burdens encountered by interconnection customers to provide for the installation of the generation meter, the Commission encourages utilities to consider whether a separate generation meter is truly needed for planning

¹ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (September 17, 2020) (FERC Order 2222).

purposes and further encourages the utilities to investigate utilizing compliant inverters to perform these functions.

Applying these principles and the statutory language, the Commission finds that there is no requirement for the use of a generation meter for certified projects under 150 kW in size, and that utilities should be allowed to make a determination as to the need for a generation meter on a case-by-case basis for certified projects larger than 150 kW and for non-certified projects larger than 20 kW. Thus, if an AMI meter is capable of measuring inflow and outflow in the pricing period for a certified project that is smaller than 150 kW and non-certified projects 20 kW and smaller, then the DG customer will pay no incremental cost because there is no need for a generation meter.

Turning to the MIXDG rules, Rule 114 provides as follows:

R 460.1014 Meters for distributed generation program.

Rule 114. (1) For a customer with a generation system capable of generating 20 kWac or less, an electric utility shall determine the customer's power flow in each direction using the customer's existing meter if it is capable of measuring and recording power flow in each direction. If the customer's meter is not capable of measuring and recording the customer's power flow in each direction and if meter upgrades or modifications are required, all of the following apply:

(a) An electric utility serving 1,000,000 or more customers in this state shall provide a meter or meters capable of measuring and recording the customer's power flow in each direction at no additional charge to the distributed generation program customer. The cost of the meter or meter modification is considered a cost of operating the distributed generation program.

(b) An electric utility serving fewer than 1,000,000 customers in this state shall provide a meter or meters capable of measuring and recording the power flow in each direction to customers at cost. Only the incremental cost above the cost for the meter provided by the electric utility to similarly situated non-generating customers shall be paid by the eligible customer.

(c) An electric utility shall provide a generator meter at cost, if requested by the customer.

(2) For a customer with a generation system capable of generating more than 20 kWac and not more than 150 kWac, an electric utility shall utilize a meter or meters capable of measuring and recording power flow in each direction and the generator output. If the customer's meter is not capable of measuring and recording the

customer's power flow in each direction along with the generator output, and if meter upgrades or modifications are required, all of the following apply:

(a) An electric utility serving 1,000,000 or more customers in this state shall provide a meter or meters capable of measuring the flow of energy in both directions at no additional charge to a distributed generation program customer. If the electric utility provides the upgraded meter at no additional charge to the customer, the cost of the meter is considered a cost of operating the distributed generation program.

(b) An electric utility serving fewer than 1,000,000 customers in this state shall provide a meter or meters capable of measuring the flow of energy in both directions to customers at cost. Only the incremental cost above the cost for the meter provided by the electric utility to similarly situated non-generating customers shall be paid by the eligible customer.

(c) An electric utility shall provide a generator meter. The cost of the meter shall be considered a cost of operating the distributed generation program.

(3) For a customer with a methane digester generation system capable of generating more than 150 kWac, an electric utility shall utilize a meter or meters capable of measuring the flow of energy in both directions and the generator output. If meter upgrades are necessary to provide such functionality, the customer shall pay the cost of providing any new meters.

(4) An electric utility deploying advanced metering infrastructure shall not charge the cost of advanced meters to a distributed generation program customer or the distributed generation program.

Rule 114.² The MIXDG rules were promulgated prior to the passage of Act 235 and do not address renewable energy systems larger than 150 kW (other than methane digesters under Rule 114(3)). Rule 114(1) addresses DG systems smaller than 20 kW and the Commission finds that the provisions of that subsection do not conflict with Act 235. Rule 114(2) addresses DG systems sized between 20 kW and 150 kW. Rule 114(2) provides that “an electric utility shall utilize a meter or meters capable of measuring and recording power flow in each direction and the generator output.” The generator output is measured by a generation meter; thus, the rule requires the use of such a meter. Rule 114(2)(c) also provides that “[a]n electric utility shall provide a generator meter.” The Commission finds that these regulatory mandates are in conflict with

² Per Mich Admin Code, R 460.901b(b), kWac means “the electric power, in kilowatts, associated with the alternating current output of a DER at unity power factor.”

MCL 460.1177(1). Thus, the Commission finds good cause under Rule 10 to grant a waiver to the rate regulated electric utilities named in the caption in Case No. U-21767 from the provisions of Rule 114(2) and 114(2)(c) that require the utilization of a generation meter. The Commission does not find that a waiver from Rule 114(3) is necessary. Methane digesters are not inverter based and therefore do not meet the definition of a certified project in R 460.901a(1), so the utility may consider the need for a generation meter on a case-by-case basis. The remaining aspects of Rule 114 do not conflict with Act 235 and continue in effect. Rule 114(4) provides that a DG customer shall not be charged for AMI meters. A generation meter is not required pursuant to Act 235. In the event that the utility determines that a generation meter is needed based upon the criteria described above, the cost of the generation meter shall not be charged to the customer and shall be considered a cost of operating the DG program.

Distributed Generation Bill Credits

Second, Section 177(4) of Act 342 stated:

If the quantity of electricity generated and delivered to the utility distribution system by an eligible electric generator during a billing period exceeds the quantity of electricity supplied from the electric utility or alternative electric supplier during the billing period, the eligible customer shall be credited by their supplier of electric generation service for the excess kilowatt hours generated during the billing period. The credit shall appear on the bill for the following billing period and shall be limited to the total power supply charges on that bill. Any excess kilowatt hours not used to offset electric generation charges in the next billing period will be carried forward to subsequent billing periods. Notwithstanding any law or regulation, distributed generation customers shall not receive credits for electric utility transmission or distribution charges. The credit per kilowatt hour for kilowatt hours delivered into the utility's distribution system shall be either of the following:

(a) The monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory, or for distributed generation customers on a time-based rate schedule, the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric utility's distribution service territory during the time-of-use pricing period.

(b) The electric utility's or alternative electric supplier's power supply component, excluding transmission charges, of the full retail rate during the billing period or time-of-use pricing period.

By contrast, Section 177(2) of Act 235 now states:

A distributed generation customer shall be credited by the customer's supplier of electric generation service for the outflow during the billing period. The credit must appear on the bill for the following billing period and be limited to the total charges on that bill. Any excess bill credits not used to offset inflow charges in the next billing period will be carried forward to subsequent billing periods.

MCL 460.1177(2). Thus, this change to the statutory language resulted in removal of the previous requirement that the bill credit be limited to power supply charges. In light of the amendments, the Commission invited comment on the following question:

1. Does the new provision allow for customers to offset the entire bill, including separate time-of-use periods, surcharges, and other items that were not historically offset?

February 8 order, p. 3.

In their initial comments, GLREA, MEIU, the CEOs, I&M, and MEGA answer in the affirmative. GLREA's initial comments, p. 3; MEIU's initial comments, pp. 6-7; CEOs' initial comments, p. 5; I&M's initial comments, p. 3; MEGA's initial comments, p. 4. They also comment that the credit cannot exceed the total bill and thus may be carried forward. I&M adds that "[t]his increases the likelihood a monthly credit can negate the entire bill and all other customers will end up subsidizing this customer's use while this customer benefits from the transmission, distribution, and generation systems without paying their fair share of cost." I&M's initial comments, p. 3.

DTE Electric comments that the "new provisions allow, but do not require, changes to how credits are applied to distributed generation program bills." DTE Electric's initial comments, p. 3. Consumers comments that "MCL 460.1177(2) does not change how the DG credit is calculated or the total amount of the DG credit." Consumers' initial comments, p. 3. Consumers states that "the

intent of Section 177(2) seems to be that the credit amount that will be applied to a single bill is only limited to the total charges for regulated utility service on the electric customer's bill." *Id.* However, Consumers comments that under MCL 460.10k, 460.10l, and 460.10n securitization charges occupy a special status. Consumers notes that the right to impose those charges does not belong to the utility but rather to the Special Purpose Entity, because those charges must be remote from the utility for bankruptcy purposes and are nonbypassable. *Id.*, p. 4. Consumers points out that the utility carries out the task of billing for the securitization charge only as a servicer for the Special Purpose Entity.

In its reply, GLREA comments that numerous DG customers are confused by the current bill, which may require payment while carrying forward a large credit. GLREA's reply comments, p. 7.

The Commission agrees with the commenters that the new statutory language allows customers to offset the entire bill. All commentors agreed that the new provision eliminates the restriction that credits may only be used for power supply charges, and the statute now limits the use of credits to the total bill. The Commission disagrees with DTE Electric's comment that the new provisions allow, but do not require, changes to how credits are applied to DG program bills. The Commission finds that the new language constitutes a requirement that a DG customer be credited for outflow, that the credit appear on the bill, and that the credit be limited to the total charges on that bill. This clearly requires a change from prior billing practices. However, the Commission agrees with Consumers that outflow credits may not be used to offset securitization charges appearing on the customer's bill. This is because the provisions of MCL 460.1177(2) apply to the customer's "supplier of electric generation service." The Special Purpose Entity created under the provisions of MCL 460.10h-460.10o is not the supplier of electric generation

service but, rather, the assignee of the securitization property. The right to impose, collect, and receive securitization charges is part of the securitization property. MCL 460.10j(1)(a). The law provides that:

The interest of an assignee or pledgee in securitization property and in the revenues and collections arising from that property are not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the bankruptcy of the electric utility or any other entity.

MCL 460.10k(1). Further:

An agreement by an electric utility or assignee to transfer securitization property that expressly states that the transfer is a sale or other absolute transfer signifies that the transaction is a true sale and is not a secured transaction and that title, legal and equitable, has passed to the entity to which the securitization property is transferred.

MCL 460.10l(1). These provisions make clear that, with an approved financing order, the right to impose and collect the securitization charge transfers to the assignee of the securitization property, which is referred to in a financing order as the Special Purpose Entity; thereafter, the utility only acts as a servicer for the Special Purpose Entity. *See*, MCL 460.10i. Thus, the Commission finds that the DG customer's bill credit may not be applied to the securitization charge on the DG customer's bill.

Generator Size Limit

Third, Section 5(b) of Act 342 stated:

“Eligible electric generator” means a methane digester or renewable energy system with a generation capacity limited to the customer's electric need and that does not exceed the following:

- (i) For a renewable energy system, 150 kilowatts of aggregate generation at a single site.
- (ii) For a methane digester, 550 kilowatts of aggregate generation at a single site.

By contrast, Section 5(e) of Act 235 now states: ““Eligible electric generator” means a methane digester or renewable energy system with a generation capacity limited to 110% of the customer's

electricity consumption for the previous 12 months.” MCL 460.1005(e). Additionally, Section 173(3) of Act 342 stated:

An electric utility or alternative electric supplier is not required to allow for a distributed generation program that is greater than 1% of its average in-state peak load for the preceding 5 calendar years. The electric utility or alternative electric supplier shall notify the commission if its distributed generation program reaches the 1% limit under this subsection. The 1% limit under this subsection shall be allocated as follows:

- (a) No more than 0.5% for customers with an eligible electric generator capable of generating 20 kilowatts or less.
- (b) No more than 0.25% for customers with an eligible electric generator capable of generating more than 20 kilowatts but not more than 150 kilowatts.
- (c) No more than 0.25% for customers with a methane digester capable of generating more than 150 kilowatts.

By contrast, Section 173(3) of Act 235 now states:

An electric utility or alternative electric supplier is not required to allow for a distributed generation program that is greater than 10% of its average in-state peak load for the preceding 5 calendar years. The electric utility or alternative electric supplier shall notify the commission if its distributed generation program reaches the 10% limit under this subsection. The 10% limit under this subsection shall be allocated as follows:

- (a) Not less than 50% for customers with an eligible electric generator capable of generating 20 kilowatts or less.
- (b) Not more than 50% for customers with an eligible electric generator capable of generating more than 20 kilowatts but not more than 550 kilowatts.

MCL 460.1173(3). Thus, in addition to increasing the threshold for the DG limit, these changes to the statutory language resulted in the removal of one of the previous allocation categories (20 kW to 150 kW) and the removal of the previous cap of 150 kW for a renewable energy system (that is not a methane digester). In light of the amendments, the Commission invited comment on the following question:

1. Taken together, do the revised versions of MCL 460.1005(b) and MCL 460.1173(3) limit the size of generator eligible to participate in the DG program to no larger than 550 kilowatts?

February 8 order, p. 4.

Consumers, DTE Electric, I&M, and MEGA comment that 550 kW is the upper size limit for a renewable energy system under MCL 460.1173(3) and MCL 460.1005(e). Consumers' initial comments, p. 5; DTE Electric's initial comments, p. 3; I&M's initial comments, p. 5; MEGA's initial comments, p. 4. MEGA adds that a utility "could propose changes in its tariff that go beyond the scope of the current law and allow for additional resources." MEGA's initial comments, p. 4. DTE Electric adds that the statute "permits aggregate eligible generator capacity at a single site no larger than 550 kW." DTE Electric's initial comments, p. 3. In its reply, MEGA comments that "MCL 460.1005(e) appears to place a limit on individual customers while MCL 460.1173(3) places a total system limit." MEGA's reply comments, p. 4.

GLREA, MEIU, and the CEOs comment that the definition of an "eligible electric generator" that appears in MCL 460.1005(e) provides the only limit on the size of the generator; in other words, the size of an eligible electric generator is limited to 110% of the DG customer's electricity consumption for the previous 12 months. GLREA's initial comments, p. 4; MEIU's initial comments, pp. 7-9; CEOs' initial comments, pp. 5-7. They note that the statutory changes eliminated the previous 150 kW size limit for renewable energy systems, and comment that a system larger than 550 kW but less than or equal to 110% of the customer's annual electric consumption may now participate in the DG program.

Additionally, addressing the allocations mandated by MCL 460.1173(3), MEIU notes that the statute establishes a maximum allocation of 50% for generators between 20 kW and 550 kW, and comments that:

anywhere between 0% and 50% of the program capacity is also available to systems larger than 550 kW up to a maximum of 110% of a customer's annual electricity load. Because these systems fall within the definition of "eligible electric generator" as revised under PA 235, they should be eligible to participate in the DG program.

MEIU's initial comments, p. 8. MEIU comments that the Legislature previously used a watt-based limit and has now chosen a consumption-based limit. GLREA comments that the provisions of MCL 460.1173(3) "do not limit the number of customers that can build up to 110% of their prior 12 months of usage no matter the size of the system." GLREA's initial comments, p. 4. The CEOs add that "the specific definition of an eligible electric generator in Section 5(e) based on customer usage takes precedence over the more general language in Section 173(3)." CEOs' initial comments, p. 6. Regarding MCL 460.1173(3) and the two size ranges addressed therein, the CEOs comment that:

the interplay between these two statutory provisions implies a third category. Clearly, 50% of the cap is protected for small systems, less than 20 [kW], and systems between 20 and 550 [kW] cannot exceed 50%, but that allows for systems larger than 550 [kW] to utilize the remaining cap space not otherwise allocated to the other two categories.

CEOs' initial comments, pp. 6-7. Mr. Schaller, on behalf of Lakeshore Die Cast, also comments that the statutory changes are not meant to limit the size of the interconnecting generator.

In its reply, Consumers comments that the implied third category contradicts the statutory language that clearly refers to only two size categories. Consumers states that if there was intended to be no size limit, there would have been no need for designation of the remaining 50% to be allocated to the 20-550 kW category. Consumers adds that:

opening this cap to projects greater than 550 kW in size would negatively impact smaller Level 2 (>20 kW and ≤ 150 kW) and 3 (>150 kW and ≤ 550 kW) projects, an outcome that would be contrary to Act 235. A rush of Level 5 projects at large sites could consume the no-more-than-5% reservation held for Level 2 and 3 projects. For example, 75 projects at 5 MW each could consume the entire 5% cap, whereas it would take nearly 700 projects at 550 kW, or 2,500 projects at 150 kW, to provide the same impact. This is clearly not the intent of the law.

Consumers' reply comments, p. 6. In its reply, DTE Electric comments that the Commission must give effect to the intent of the Legislature and, as such, approval of a generator with capacity

greater than 550 kW would render the provisions of MCL 460.1173(3) nugatory and would “fail to read the statute as a whole[.]” DTE Electric’s reply comments, p. 4. DTE Electric comments that the allocations made in Section 173(3) are mandatory (using the word “shall”) and exclude the discretion to create a third size category. DTE Electric notes that the statute allows the 20 kW or smaller size generators to constitute more than 50% of the DG program.

The Commission finds that the size of a renewable energy system eligible for the DG program is limited to 110% of the customer’s electricity consumption for the previous 12 months and the aggregate eligible generator capacity at a single site is limited to no more than 550 kW. In the comments, utilities agreed that the size limit of generators eligible to participate in the DG program should be no larger than 550 kW, while non-utility commentors agreed that the provisions in the law do not limit the eligibility size but, instead, the 110% of annual use is the determining factor. The Commission does not find that the Legislature evinced an intent to allow customers with a system larger than 550 kW but less than or equal to 110% of the customer’s annual electricity consumption to be able to participate in the DG program. If the Legislature had such an intent it could have easily written that into the statute, rather than requiring the Commission to infer the existence of a third allocation category. The changes in Act 235 result in two distinct categories for the DG program and set participation thresholds for those two categories. The Commission is not persuaded that there was an intent to include a third category—systems larger than 550 kW—in the DG program that was unwritten but implied.

Regarding the principles of statutory construction, the Michigan Supreme Court has held that:

The words used in the statute are the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the context within which they are used in the statute. In interpreting a statute, this Court avoids a construction that would render any part of the statute surplusage or nugatory. . . . Moreover, the statutory language must be read and understood in its grammatical context.

Dep't of Environmental Quality v Worth Twp, 491 Mich 227, 237-238; 814 NW2d 646 (2012) (internal citations omitted). The Commission finds that the words used in the statute indicate that there are two allowable size categories in a DG program: 20 kW or less, and more than 20 kW up to 550 kW. The former category may be allocated more than 50% (but not less) of the program, and the latter category may not be allocated more than 50% of the program.

The Commission also recognizes that the MIXDG rules reflect the former statutory language. The definition of “eligible electric generator” in Mich Admin Code, R 460.901a(y) tracks the language of Act 342. However, the language of Section 173(3) of Act 235 supersedes the rule language and the Commission finds that utilities should comply with the current language of MCL 460.1173(3) in determining what is an eligible electric generator. As noted, rulemaking is a lengthy process and this guidance will assist the utilities in implementing Act 235 until such time as the Commission can revise the MIXDG rules to align with the new statutory requirements. Accordingly, the rate regulated electric utilities named in the caption of Case No. U-21767 are granted a waiver from compliance with the definition of “eligible electric generator” contained in R 460.901a(y), R 460.1001(7)(a), and R 460.1001(7)(c).

Other Topics Addressed in Comments

The CEOs comment that the Commission should revisit the issue of the outflow compensation for DG customers. They recommend that the Commission order a DER valuation study “that identifies the different value streams DG can provide.” CEOs’ initial comments, p. 8. They note that Illinois has undertaken a similar process. In its reply, GLREA agrees with the proposal for a DER valuation study. GLREA’s reply comments, p. 9.

GLREA comments that all customers should “receive bill credits consistent with the specific rates approved for each rate class, no matter the size of the solar system (under 20 kW or over

20 kW).” GLREA’s initial comments, p. 5. GLREA states that utilities take credit for the DG in their service territories and thus “such resources need to be fairly valued on a real time basis,” and should include anything the utility designates as a cost of energy including securitization costs and decommissioning costs. *Id.* GLREA adds that customers should be able to remove generation meters and that “solar disconnect is not functionally required. UL 1741 Inverters, required in the state, automatically shut down when line voltage goes to zero.” *Id.*, p. 6. GLREA comments that the solar disconnect is unnecessary and infringes on the customer’s property rights.

I&M comments that it “supports an outflow credit that represents the wholesale cost of generation to appropriately reflect a credit that reflects what the utility would have otherwise paid if it was buying the generation from the market” such as a “simplified credit equal to an average annual LMP [locational marginal price] for DG participants . . .” I&M’s initial comments, p. 5.

In its reply, Consumers disagrees with the CEOs that a DER valuation study is advisable, but agrees with I&M that an outflow credit reduction is appropriate. Consumers disagrees with GLREA that a customer may remove an existing generation meter and comments that this should be reviewed on a case-by-case basis. Consumers also comments that the separate solar disconnect allows the DER to be isolated in a safe manner, ensuring employees’ safety. Consumers’ reply comments, p. 8.

In its reply, DTE Electric comments that this docket should not be expanded to other topics such as outflow compensation and the elimination of disconnects. DTE Electric’s reply comments, pp. 5-6.

The Commission finds that changes to the outflow rate and inflow/outflow rate structure should be determined in a contested proceeding and not in this comment docket. The Commission does not find that an outflow valuation study is necessary at this time. Any customer that wishes

to remove its generation meter should work with their utility. Similarly, any customer that wishes to examine the use of a solar disconnect should work with their utility.

Revised Tariffs

The Commission finds that each rate regulated electric utility named in the caption of Case No. U-21767 should file an *ex parte* application for approval of a revised DG tariff that is compliant with the provisions of Act 235 and this order in a new docket no later than 5:00 p.m. (Eastern time) on September 20, 2024.

THEREFORE, IT IS ORDERED that:

A. Pursuant to Mich Admin Code, R 460.910, Alpena Power Company, Upper Peninsula Power Company, Upper Michigan Energy Resources Corporation, Northern States Power Company, Indiana Michigan Power Company, Consumers Energy Company, and DTE Electric Company are granted a waiver from the provisions of Mich Admin Code, R 460.1014(2) and R 460.1014(2)(c) that require the use of a generation meter, and from the generator size limitations contained in Mich Admin Code, R 460.901a(y), R 460.1001(7)(a), and R 460.1001(7)(c).

B. Alpena Power Company, Upper Peninsula Power Company, Upper Michigan Energy Resources Corporation, Northern States Power Company, Indiana Michigan Power Company, Consumers Energy Company, and DTE Electric Company shall each file an *ex parte* application for approval of a revised distributed generation tariff consistent with the provisions of Public Act 235 of 2023 and this order in a new docket no later than 5:00 p.m. (Eastern time) on September 20, 2024.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at hugheys@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of July 23, 2024.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

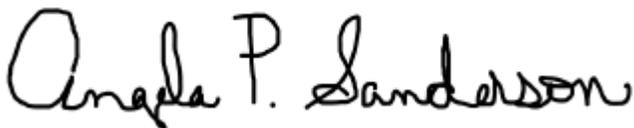
Case No. U-21569 *et al.*

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on July 23, 2024 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 23rd day of July 2024.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

Service List for Case: U-21767

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Presque Isle Electric & Gas Cooperative, INC

Realgy Corp.

Realgy Energy Services

Santana Energy

Santana Energy

Spartan Renewable Energy, Inc. (Wolverine Power Marketing Corp)

Stephenson Utilities Department

Superior Energy Company

Texas Retail Energy, LLC

Thumb Electric Cooperative

Upper Michigan Energy Resources Corporation

Upper Michigan Energy Resources Corporation

Upper Peninsula Power Company

Upper Peninsula Power Company

Village of Baraga

Village of Clinton

Volunteer Energy Services

Wabash Valley Power

Wolverine Power

Wood, Amanda

Xcel Energy

Xcel Energy