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April 15, 2021

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
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RE: In the matter, on the Commission's own motion, regarding the regulatory reviews, revisions, determination and/or approvals necessary for regulated electric providers to comply with Section 61 of 2016 PA 342
MPSC Case No: U-20713

In the matter of **DTE ELECTRIC COMPANY'S** application for the regulatory reviews, revisions, determinations, and/or approvals necessary for to fully comply with Public Act 295 of 2008
MPSC Case No: U-20851

Dear Ms. Felice:

Attached for electronic filing in the above referenced matter is DTE Electric Company's Initial Brief regarding financial compensation mechanism. Also attached is the Proof of Service.

Very truly yours,

Lauren D. Donofrio

LDD/erb
Enclosure

cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter, on the Commission's own motion, regarding regulatory reviews, revisions, determination and/or approvals necessary for regulated electric providers to comply with Section 61 of 2016 PA 342.	)	Case No. U-20713
In the matter of **DTE ELECTRIC COMPANY'S** application for regulatory reviews, revisions, determinations, and/or approvals necessary to fully comply with Public Act 295 of 2008	)	Case No. U-20851

DTE ELECTRIC COMPANY'S INITIAL BRIEF REGARDING FINANCIAL COMPENSATION MECHANISM

Dated: April 15, 2021

TABLE OF CONTENTS

I. INTRODUCTION....................1
II. HISTORY OF PROCEEDINGS....................1
III. THE COMPANY'S POSITION....................5
IV. APPLICABLE LAW....................5
  A. Standard of Review....................5
  B. Governing Statutes....................7
V. ARGUMENT....................8
  A. The Commission Should Approve an FCM Structure and an FCM for the Calhoun Power Purchase Agreement.....................8
VI. RELIEF REQUESTED....................11

I. INTRODUCTION

In this biennial review of DTE Electric Company's ("DTE Electric" or the "Company") Voluntary Green Pricing ("VGP") program, consolidated with its case seeking amendment of the current Renewable Energy Plan ("REP") to incorporate the VGP build plan, DTE Electric seeks to expand its VGP offerings to better meet the needs of its customers, expand the Company's renewable footprint in Michigan, allow the Company to compete for renewable projects on an equal footing with third-party developers, and account for the effect of Power Purchase Agreements ("PPAs") on the Company's financial statements, including its balance sheet. DTE Electric filed its Application on August 31, 2020 pursuant to the Commission's May 8, 2020 Order in this case. DTE Electric requests that the Commission grant approval of the VGP plan and biennial review of the Company's MIGreenPower program ("MIGreenPower" or "Program") pursuant to MCL 460.1061, including tariff revisions, ownership structure, financial compensation mechanism, and other approvals. Also on August 31, 2020, the Company filed an Application in docket U-20851 seeking approval of the necessary accounting authority to effectuate the Company's Renewable Energy Plan ("REP Application"), including authorization to utilize the same accounting treatment and contract approval process for proposed VGP projects as used for prior builds. DTE also filed an ex parte application in Docket U-20851 seeking approval of three projects, the Whitetail Solar Build Transfer Agreement, the Freshwater Solar Build Transfer Agreement, and the Calhoun County Solar Power Purchase Agreement.

II. HISTORY OF PROCEEDINGS

In its July 12, 2017 order, in Case No. U-18349 *et al*, the Commission provided guidance to the utilities regarding the minimum requirements of voluntary renewable programs under

Section 61 of 2016 Public Act 342 (Act 342 or the Act) and required each utility to file plans to comply with the Act. In its January 18, 2019 order in Case No. U-20343, at page four, the Commission approved the Company's Large Customer Voluntary Green Pricing Program (LC-VGP) as a pilot. On February 21, 2019, in its order in Case No. U-18352, the Commission approved DTE Electric's revised MIGreenPower program as a Section 61-compliant program. In the Commission's January 23, 2020 order in U-18349, *et al*, the Commission ordered all electric utilities to file a biennial review of their voluntary green pricing programs under Section 61 of the Act, with DTE Electric's filing scheduled for April of 2020. Due to the timing of the Company's integrated resource plan and amended REP cases, the Company requested an extension, and the Commission granted the request in its May 8, 2020 order in this docket and Case No. U-18349 *et al.*, requiring DTE Electric to file its biennial review by August 31, 2020.

On August 31, 2020, DTE Electric filed its Application for Approval of its MIGreenPower Voluntary Renewable Energy Program[1] ("VGP Application") to provide a status update on its existing VGP programs and to support the relief requested in this case. The LC-VGP program is compliant and ready to move forward on a non-pilot basis subject to a biennial review of the plan itself.

The VGP Application requests determination that the MIGreenPower program, made up of Rider 17 and Rider 19, as amended, satisfies MCL 460.1061 and is consistent with all other applicable provisions of 2008 PA 295; approval of the VGP program build plan to acquire renewable resources to meet program demand; approval of the use of tax equity financing as a permissible ownership structure; and approval of the Company's proposed financial compensation

[1] *In re DTE Electric Co*, MPSC Case No. U-20713, Application, Dkt. No. 7.

mechanism. In support of its VGP Application, DTE Electric filed the testimony and exhibits of Brian T. Calka, David B. Harwood, and Edward J. Solomon, and testimony of Patrick D. Kauffman.

Also, on August 31, 2020, the Company filed an Application for *Ex Parte* Approval of August 2020 Amended Renewable Energy Plan ("REP Application") in case U-20851. The REP Application requests a determination that the Company's August 2020 Amended Renewable Energy Plan is reasonable and prudent, and is consistent with all applicable provisions of 2008 PA 295, as amended; entry of an Order approving the revenue recovery mechanism surcharge of $0.00/meter for all customer classes and allowing the Company to maintain a regulatory liability throughout the Plan period through the application of transfer prices as requested in the filing; and authorization of the necessary accounting authority to effectuate the Company's REP, including permission from the Commission to utilize the same accounting treatment and contract approval process for these proposed VGP projects as recently approved for builds in case U-18232. *In re DTE Electric*, MPSC Case No. U-18232, July 9, 2020 Order, pp. 45-47.

Following the filing of the Company's VGP and REP Applications, on August 31, 2020, multiple Petitions to Intervene were filed, including Petitions from Soulardarity, Michigan Environmental Council ("MEC"), National Resources Defense Council ("NRDC") Michigan Energy Innovation Business Council ("MEIBC"), Institute for Energy Innovation ("IEI") and Advanced Energy Economy ("AEE"), Energy Michigan, Inc. ("Energy Michigan"), the City of Ann Arbor, Michigan Municipal Association for Utility Issues ("MI-MAUI"), the Environmental Law and Policy Center ("ELPC"), the Ecology Center, and Vote Solar.

Staff filed an unopposed Motion to Consolidate on September 25, 2020. A prehearing conference related to the consolidated matters was held on October 27, 2020, at which time the

Administrative Law Judge ("ALJ") established a consent schedule and granted the previously filed petitions to intervene. Pine Gate Renewables, LLC ("Pine Gate"), the Association of Businesses Advocating Tariff Equity ("ABATE"), and Great Lakes Renewable Energy Association ("GLREA") subsequently filed Petitions to Intervene, which the ALJ granted.

Staff and intervenors filed testimony on December 22, 2020 and December 23, 2020. The parties filed rebuttal testimony and exhibits on January 21, 2021. DTE Electric filed the rebuttal testimony and exhibits of David B. Harwood, Thomas W. Lacey, Marcus J. Rivard, and Edward J. Solomon and rebuttal testimony of Brian T. Calka. Cross-examination of Brian Calka and David Harwood was held on February 8, 2021. By agreement of the parties, all direct testimony and rebuttal testimony was bound into the record, and all accompanying exhibits were admitted into evidence.

The parties filed initial briefs in this matter on March 12, 2021. Thereafter the parties, with the exception of one party,[2] reached a partial settlement agreement that, if the Commission approves it, resolves all matters pending in docket U-20851 and resolves all matters in docket U-20713 except for DTE Electric's request for a financial compensation mechanism ("FCM"). On April 12, 2021, the parties to this case filed a stipulation agreeing to file new initial briefs on the sole remaining issue of the FCM. All parties will file their briefs on or before April 15, 2021, with the exception of one party, GLREA, which will file its FCM brief on or before the 19th. The parties also agreed to waive the proposal for decision. As such, the only issue presented in this brief is the Company's request for an FCM.

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[2] Soulardarity has agreed not to contest the settlement, and it is anticipated that GLREA will contest the settlement.

III. THE COMPANY'S POSITION

As outlined in Company witness Calka's testimony, DTE Electric requests approval of a Financial Compensation Mechanism ("FCM") for renewable energy Power Purchase Agreements ("PPAs") utilized in the MIGreenPower program (3T 85). Inclusion of an FCM for renewable energy PPAs utilized in the MIGreenPower program is appropriate. The Commission has authority to approve the FCM proposed by the Company under 2016 PA 341 § 6t(15). In addition, the proposed FCM structure is consistent with the structure that the Commission approved for UPPCo in Case No. U-20350 and the settlement of Consumers Energy's recent IRP case, Case No. U-20165. The Company plans to apply the FCM to the Calhoun County Solar PPA, submitted ex parte for Commission approval in Case No. U-20851.

IV. APPLICABLE LAW

A. STANDARD OF REVIEW

Const 1963, art 6, § 28 requires that the Commission's findings "be supported by competent, material and substantial evidence on the whole record." Substantial evidence is evidence "that a reasoning mind would accept as sufficient to support a conclusion." *Monroe v State Employees' Retirement Sys*, 293 Mich App 594, 607; 809 NW2d 453 (2011). Expert testimony is "substantial" only if it is offered by a qualified expert who has an informed and rational basis for his or her view, even if other experts disagree. *Great Lakes Steel v Public Service Comm*, 130 Mich App 470, 481; 334 NW2d 321 (1983).

The preponderance of evidence standard applies in this proceeding. *Aquilina v General Motors Corp*, 403 Mich 206, 210-211; 267 NW2d 923 (1978) ("The proof required in an administrative proceeding…is the same as that required in a civil judicial proceeding: a

preponderance of the evidence."). The preponderance of evidence standard is the lightest of all evidentiary standards when compared to the heightened "clear and convincing" standard[3] or the "beyond a reasonable doubt" standard that is only applicable to criminal proceedings.[4]

Evidence also cannot be disregarded simply because it stands in the way of the decision-maker's preferences. Const 1963, Art 6, § 28. The "preponderance of the evidence" standard is generally defined as follows:

> *The greater weight of the evidence*, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; *superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other*. [*Black's Law Dictionary* 1301 (9th ed 2009) (emphasis added).]

The Administrative Procedures Act ("APA") precludes the Commission from making decisions based on non-record materials. MCL 24.276 provides: "Evidence in a contested case... shall be offered and made part of the record. Other information or evidence shall not be considered in determination of the case except as permitted under [MCL 24.277 concerning official notice of judicially cognizable facts and facts within the agency's specialized expertise]." Noncompliance with the APA is reversible error. *In re Public Service Commission Guidelines for Transactions Between Affiliates*, 252 Mich App 254, 267; 652 NW2d 1 (2002).

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[3] *In re Moss*, 301 Mich App 76, 89-90; 836 NW2d 182 (2013).

[4] *Thangavelu v Dep't of Licensing & Regulation*, 149 Mich App 546, 554-555; 386 NW2d 584 (1986).

B. GOVERNING STATUTES

The statute governing this VGP plan proceeding is 2016 Act 342, which amended 2008 PA 295, MCL 460.1001 *et seq*., by adding Section 61, MCL 460.1061, which requires electric providers to offer a voluntary green pricing program. This Section states:

> An electric provider shall offer to its customers the opportunity to participate in a voluntary green pricing program under which the customer may specify, from the options made available by the electric provider, the amount of electricity attributable to the customer that will be renewable energy. If the electric provider's rates are regulated by the commission, the program, including the rates paid for renewable energy, must be approved by the commission. The customer is responsible for any additional costs incurred and shall accrue any additional savings realized by the electric provider as a result of the customer's participation in the program. If an electric provider has not yet fully recovered the incremental costs of compliance, both of the following apply:
>
> (a) A customer that receives at least 50% of the customer's average monthly electricity consumption through the program is exempt from paying surcharges for incremental costs of compliance.
>
> (b) Before entering into an agreement to participate in a commission-approved voluntary green pricing program with a customer that will not receive at least 50% of the customer's average monthly electricity consumption through the program, the electric provider shall notify the customer that the customer will be responsible for the full applicable charges for the incremental costs of compliance and for participation in the voluntary renewable energy program as provided under this section.

Another act, 2016 PA 341, which was tie-barred with Act 342 discussed above, amended 1939 Act 3 to add numerous provisions, including MCL 460.6t(15), which provides that "For power purchase agreements that a utility enters into after [April 20, 2017] with an entity that is not affiliated with that utility, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital." This provision also governs in this matter.

V. ARGUMENT

A. THE COMMISSION SHOULD APPROVE AN FCM STRUCTURE AND AN FCM FOR THE CALHOUN POWER PURCHASE AGREEMENT.

The Company requests approval of an FCM structure that it would apply consistent with the Commission authority established in 2016 PA 341 §6t(15), which states:

> For power purchase agreements that a utility enters into after the effective date of the amendatory act that added this section with an entity that is not affiliated with that utility, the commission shall consider and may authorize a financial incentive for that utility that does not exceed the utility's weighted average cost of capital.

The Company requests Commission approval of an FCM structure that it would include with MIGreenPower program renewable energy PPAs it submits to the MPSC for approval. In its initial filing the Company requested to use its permanent weighted average cost of capital. Staff Witness Nichols, in his testimony, found an FCM to be reasonable provided the incentive factor is no greater than the after-tax overall weighted average cost of capital (4T 406-407). Witness Matthews also recommended an FCM only apply to the subscribed portion of VGP projects because DTE Electric will use unsubscribed VGP projects for compliance purposes in its REP (4T 399). In his rebuttal testimony, DTE Witness Calka agreed that that Company would not seek to recover the FCM on unsubscribed portions of PPAs (3T 108). Mr. Calka also revised the Company's position to be in accord with Staff's and use the overall after-tax weighted average cost of capital ("WACC") (3T 109). This means that the overall after-tax weighted average cost of capital, ordered in Case No. U-20561 at 5.46%, would be the incentive factor for PPAs submitted for approval in Case No. U-20851 for use in the Company's voluntary programs. Mr. Calka explained that future renewable energy PPAs that are submitted and approved for the Company's voluntary programs will utilize the prevailing overall after-tax weighted average cost of capital approved by the Commission. (3T 109). The requested structure would authorize the

Company to earn an FCM on a given PPA equal to the sum of the PPA payments in that year multiplied by an incentive factor.

An FCM is appropriate, as more fully explained in the direct testimony of Witness Solomon, because PPAs are credit negative and can increase the Company's cost of equity. He explained that PPAs are obligations "disclosed to investors and rating agencies as a commitment owed by the utility." Depending on the methodology they apply, rating agencies and/or credit analysts, often net present value PPA commitments, in whole or in part, and add them to the Company's debt balances when they calculate the various credit metrics they use. (4T 318). Witness Solomon testified that the FCM will partially offset this impact.

Another negative effect of PPAs on the Company is the increase to the cost of equity. Witness Solomon explained that "a PPA is a lost opportunity cost for the utility, as the return on investment is transferred from the utility to a third party" (4T 318). This is problematic because there is a finite amount of capital projects that can be built before challenging customer affordability. Mr. Solomon explained that "the lost opportunity has the effect of reducing the rate base growth that a utility could have otherwise generated. In other words, for a utility to realize its originally projected growth rate, it would have to find incremental capital projects and potentially risk affordability constraints; and if this was not realizable, it would need to lower its growth rate." (4T 318). This is problematic because utility investors, assuming risks are equal, will naturally favor utilities with higher growth rates, thereby increasing the cost of equity for the slower growth utility. He explained that the FCM will also partially offset this impact (4T 318).

Another inequity to the utility arises from PPA projects. The project that is supplying the PPA is financed on the back of the utility's customers and investors, and the utility's good credit allows the project to get better debt and equity financing than it would otherwise qualify for. The

FCM provides some fairness as it “compensates the utility’s debt and equity holders, who are negatively impacted during the PPA period for the significant benefits that the project sponsors received.” Thus, an incentive enables economic fairness for utility customers and investors alike. (4T 319).

The requested FCM mirrors the FCM approved by the Commission that both Staff and intervenors broadly supported in proceedings for two different Michigan utilities (Consumers Energy in Case No. U-20165 and UPPCo in U-20350). In the case of the Company entering into a PPA, the application of an FCM would ensure the Company’s continued strong financial standing, allow for the fair and equitable use of the Company’s balance sheet strength, and support long-term alignment of customer and Company interests. The FCM will also meet the criteria established in § 6t(15) of 2016 PA 341. For these reasons, a financial incentive for PPAs is a reasonable and prudent approach to contracting renewable projects (3T 90).

The Company currently seeks approval of an FCM on one PPA (Calhoun) that will be attributable to the MIGreenPower program. The Company is not seeking an FCM on existing PPAs that it previously filed and the Commission approved.

For subscribed portions of the PPAs, the Company will add the financial incentive to the subscription fee that participating customers pay. The Company will not include the FCM revenue in the Power Supply Cost Recovery (“PSCR”) or in the Incremental Cost of Compliance (“ICOC”) calculation. The Company will not collect an FCM on any unsubscribed portions of the PPAs.

The Commission should approve an FCM on VGP PPAs, which will include the Calhoun County Solar PPA.

VI. RELIEF REQUESTED

Based on the discussion above and the great weight of the evidence supplied by the Company, DTE Electric respectfully requests that the Commission issue its final order in this case which:

A. Approves the Company's financial compensation mechanism at the prevailing DTE Electric after-tax weighted average cost of capital;

B. Grants DTE Electric such further additional relief as the Commission may deem appropriate.

Respectfully submitted,

DTE ELECTRIC COMPANY

By:_________________________________

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April 15, 2021

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ESTELLA R. BRANSON states that on April 15, 2021, she served a copy of DTE Electric Company's Initial Brief Initial Brief regarding financial compensation mechanism via electronic mail upon the persons listed on the attached service list.

____
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