



November 3, 2017

Ms. Julie Baldwin  
Michigan Public Service Commission  
7109 W. Saginaw Hwy  
Lansing, MI 48917  
[baldwinj2@michigan.gov](mailto:baldwinj2@michigan.gov)

Re: Comments of Soulardarity on Michigan Public Service Commission's staff's Proposed Distributed Generation Program Concept Tariff (October 2017)

Dear Ms. Baldwin,

The Abrams Environmental Law Clinic at the University of Chicago submits these comments on behalf of Soulardarity.

Soulardarity is a Highland-Park, MI-based organization (<http://www.soulardarity.com/>) focused on building energy democracy through education, organizing, and community-owned clean energy. It works on solar street lighting, solar bulk purchasing, energy education, and expanding access to clean energy to improve the economic condition of low-income communities, and especially low-income communities of color, in southeast Michigan.

Soulardarity provides these comments in response to the Michigan Public Service Commission's staff's Proposed Distributed Generation Program Concept Tariff (October 2017).<sup>1</sup> The proposal fails to address potential impacts on low-income and people of color communities and opportunities to improve their access to distributed generation (DG) in Michigan. Our comment highlights general concerns that should inform the Commission's design of the tariff, and identifies several specific pieces of language that limit access to solar by potential customers, especially by those in low-income and people of color communities. We recommend that the Commission use these concerns to inform changes to the Concept Tariff, and we offer specific changes to some provisions.

## **I. Impact on Low-Income and People Of Color Communities**

The Workgroup Process and the Concept Tariff itself have not addressed the potential impact on low-income communities and their ability to access distributed generation and to secure energy justice. To the best of our knowledge based on our review of the materials, no significant discussions have occurred about the potential impact of the various distributed-generation-program structures on low-income consumers and consumers of color. The Concept Tariff itself and the staff's presentation about it do not address the potential impact on low-income communities. For example, if the tariff has the effect of subsidizing the purchase and installation of DG, and if the average owner of a DG system is wealthier than the average customer, then a tariff structured as a subsidy would transfer wealth from average customers (including lower-income ones) to wealthier DG owners.

To address this concern, the MPSC staff should conduct and provide an analysis of the impact of this tariff on low-income customers. In addition, the MPSC staff should address how the DG program

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<sup>1</sup> [http://www.michigan.gov/documents/mpsc/DG\\_concept\\_tariff\\_603573\\_7.pdf](http://www.michigan.gov/documents/mpsc/DG_concept_tariff_603573_7.pdf).

will be structured to lower barriers to entry for and to encourage participation by low-income customers in DG. For example, the MPSC should allow the development of community solar projects, and it could require utilities to offer on-bill financing for various costs associated with the program. The MPSC needs to ensure that the DG program is accessible to all and that the tariff, to the extent feasible, enables low-income customers to switch to renewable energy without subsidizing wealthier customers at the expense of low-income consumers.

Similarly, the proposed tariff fails to consider the impact on communities of color. If the DG program has the effect of limiting access to renewable energy by communities of color, then the MPSC will perpetuate injustice toward communities of color. To combat this concern, the MPSC staff should measure success by impact on communities already impacted by pollution and other forms of environmental racism. Addressing the concerns of low-income access and affordability is the most salient approach in the context of designing the DG tariff, but in light of the disproportionate impacts of energy injustice faced by low-income communities of color, the MPSC should apply this additional lens to measuring success of the DG program.

## **II. Specific Provisions in the MPSC Staff Proposal**

### **1. Customer Billing**

#### **i. Inflow (C11.E)**

Regarding customer billing on inflow, the proposed language reads: "[T]he customer will be billed according to the Distributed Generation Rate Provision . . . plus surcharges, and Power Supply Cost Recovery (PSCR) Factor. . . ."<sup>2</sup>

The proposed Concept Tariff lacks specific numbers for the Rate Provision, surcharges, and PSCR Factor. Without this information, a potential customer cannot calculate the cost of joining and staying in the DG program.

To resolve such concerns, the MPSC should guarantee that all costs and surcharges will be made available to potential customers well in advance of their applying to the DG program, and that these numbers are specific, or, at a minimum, are close approximations. To ensure that DG customers receive maximum benefits for taking part in the program, the Rate Provision and other charges should be guaranteed—or capped—for a period of time equal to the life of the average PV panel or other renewable technology. This will ensure predictability and fairness for a potential DG customer.

In addition, the proposal does not provide the factors that will be considered when setting the rates, nor the entity that will consider these factors and set charges.

The Concept Tariff should clarify that the MPSC has responsibility—prior to implementation—for reviewing these rates and charges and ensuring that they are just and reasonable. It should lay out the factors the MPSC will consider when reviewing these rates and charges, such as the impact on low-income communities, encouraging the expansion of renewable energy, and maintaining transparency with customers. In addition, there should be a limit on how high a utility can set its Distributed Generation Rate Provision, surcharges, and other inflow costs to the customer.

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<sup>2</sup> *Id.* at 4 (C11.E Customer Billing on Inflow).

**ii. Outflow (C11.F)**

The proposed language states:

The Outflow Credit will be reviewed by the Commission in the Company's biennial avoided cost review cases pursuant to Case No. U-\_\_\_\_\_.  
Outflow Credit: \$\_\_\_\_\_/kWh (Based on the utility's avoided cost case.)<sup>3</sup>

We understand that the MPSC staff had intended to release an Outflow Credit calculation November 1; however, we learned today that MPSC staff does “not have a final order in any of the pending utility avoided cost cases and actual numbers are not yet available. When they are available, [MPSC staff] will provide the calculations and proposed numbers.”

While recognizing that the Outflow Credit is calculated according to individual Companies' avoided cost cases, the proposal provides no benchmark. Without an example case and number, analysts and those working on behalf of potential customers are unable to calculate the net benefit to a potential DG Program customer. A low Outflow Credit might discourage potential low-income DG customers (and all potential DG customers) from investing in DG systems.

The Concept Tariff must lay out the factors the MPSC will consider when setting the rates, (such as encouragement of the expansion of renewable energy, impact on low-income and people of color consumers, and maintenance and improvement of transparency. The proposal should affirm that the MPSC sets the rates, as opposed to the individual utility, and it should ensure that these rates and charges will be reviewed to be just and reasonable prior to implementation.

The Outflow Credit rate should be made available to potential customers well in advance of their applying to the DG program, and a minimum Outflow Credit should be guaranteed for a period of time equal to the life of the average PV panel or other renewable systems. This will ensure predictability for a potential DG customer.

**2. Application for Service (C11. G)**

Regarding application for service, the proposed language states that "in order to participate in the Distributed Generation Program, a customer shall submit a completed Interconnection Application, including application fee of \$\_\_ and a completed Distributed Generation Program Application, including application fee of \$50 to the Company."<sup>4</sup>

Without knowing the amount of the Interconnection Application fee and how it is calculated, we do not know the extent to which the Interconnection Application fee will deter low-income consumers or others from participating in the DG Program.<sup>5</sup>

The MPSC should ensure that the Interconnection Application fee is specified well in advance of when applications are due and should cap the fee or provide an estimated fee in the meantime so that analysts and those working on behalf of potential customers can comment on the impact of the fee on potential DG customers, especially low-income customers. The MPSC could waive the application fee for

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<sup>3</sup> *Id.* at 4 (C11.F Customer Billing—Outflow Credit).

<sup>4</sup> *Id.* at 5 (C11.G Application for Service).

<sup>5</sup> *Id.*

potential customers below a certain income level. Alternatively, the application fee could be refundable after a period of time, be subsidized to encourage participation, or be financeable. The MPSC should state that it will review these fees prior to implementation to ensure they are just and reasonable.

### 3. General Requirements (C11.H)

The proposed language states, “The Eligible Electric Generator(s) must be located on the customer's premises, serving only the customer's premises.”<sup>6</sup>

The Concept Tariff does not define "premises," leaving ambiguity as to whether this provision applies to those who own the property or those who occupy the property (e.g. renters). In addition, it does not specify whether multi-unit buildings are covered, such as apartment complexes and condominiums. The provision is ambiguous once one considers anything other than a single unit, single owner home. It is important to emphasize that neither Michigan law 2016 PA 341 nor PA 342 specifies where the eligible electric generator must be located, nor do they limit service to only the customer's premises.

Thus this language seems to eliminate needlessly and unwisely the possibility of community solar programs by limiting the eligible electric generator location and service area. A report published by the National Renewable Energy Laboratory of the U.S. Department of Energy defines community solar "as a solar-electric system that . . . provides power and/or financial benefit to, or is owned by, multiple community members."<sup>7</sup> Community solar provides great benefits to participating communities, including low-income communities, and should be encouraged, not barred, by future regulation. In addition, the proposal does not address or define community solar or other multi-user renewable-energy systems.

Therefore, we recommend eliminating the requirement that the Eligible Electric Generator be located on the customer's premises and serve the customer's premises. Alternatively, an exception for community solar could be implemented in which certain groups of customers are not required to serve only their premises, but instead can serve several properties if these customers and DG systems meet certain reasonable requirements.

By eliminating the possibility of community solar, the MPSC staff proposal effectively eliminates access to distributed generation for renters, who make up a large portion of the low-income population. Additionally, all low-income people (homeowners or renters) face a heightened risk of displacement for a variety of reasons. While a land owner can elect whether to install a DG system on his or her property, renters have less (or no) say in whether a premises can participate in the distributed generation program. Given that, as of 2008, "only 22% to 27% of residential rooftop area is suitable for hosting an on-site [PV] system . . . community options are needed to expand solar power to renters, those with shaded roofs, and those who choose not to install for financial or other reasons."<sup>8</sup> To encourage, rather than prevent, participation by renters and low-income customers, the MPSC staff should craft the Concept Tariff to allow community solar.

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<sup>6</sup> *Id.* at 5 (C11.H Generator Requirements).

<sup>7</sup> Northwest Sustainable Energy for Economic Development, A Guide to Community Solar: Utility, Private, and Non-Profit Project Development at 2, developed for the National Renewable Energy Lab, U.S. Department of Energy (Nov. 2010) <https://www.nrel.gov/docs/fy11osti/49930.pdf>.

<sup>8</sup> *Id.* at 2–3.

#### **4. Generator Interconnection Requirements (C11.I)**

The Concept Tariff requires that “the customer . . . pay actual interconnection costs associated with participating in the Distributed Generation Program, subject to limits established by the Michigan Public Service Commission.”<sup>9</sup>

However, the proposal does not stipulate interconnection costs associated with participating in the DG Program. It also does not prohibit utilities from imposing prohibitive interconnection costs to deter customers from partaking in distributed generation. No matter the interconnection cost, it will discourage participation in the DG program to some degree.

To ensure utilities do not hinder access to distributed generation, the MPSC needs to establish clear limitations. The MPSC should oversee utilities to ensure that they do not impose prohibitive interconnection costs and limit how much a utility can charge for interconnection.

In addition, the proposal does not detail who will choose the installer for interconnection and what criteria will be considered when choosing.

Installation and interconnection could be an opportunity to encourage job creation for low-income communities. For example, the MPSC could require or incentivize utilities to train independent contractors on installation and maintenance of renewable technologies (such as PV panels) or the interconnections themselves. In turn, the MPSC or the respective Companies could recommend these contractors as preferred installers to DG program participants.

#### **5. Customer Termination from the Distributed Generation Program (C11.L)**

We take issue with several aspects regarding customer termination, including re-enrollment, termination, and notice of termination.

##### **i. Reenrollment**

The proposal states that “[i]n the event that a customer who terminates participation in the Distributed Generation Program wishes to re-enroll, that customer must reapply as a new program participant, subject to program size limitations, application queue and application fees.”<sup>10</sup>

For lower-income customers, re-application fees may be cost-prohibitive; therefore, the MPSC should ensure that re-application fees be reasonable or even waived.

Moreover, if property ownership changes, the language seems to indicate that the property would be removed from the DG program and a new property owner would have to re-apply and pay application fees, even though the previous property owner had successfully completed this process. Requiring re-application is particularly problematic due to 2016 PA 342 § 173(3), which allows an electric utility to limit its DG program to “1% of its average in-state peak load for the preceding 5 calendar years.”<sup>11</sup> A property that used to participate may be barred from re-entering due to the utility having already reached its 1% cap. Thus, the reapplication requirement might deter property owners from investing in distributed generation because the average life of a DG system (and the financing for it) is longer than the average

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<sup>9</sup> *Id.* at 4 (C11.I Generator Interconnection Requirements).

<sup>10</sup> *Id.* at 6 (C11.L Customer Termination from the Distributed Generation Program).

<sup>11</sup> Michigan 2016 Public Act 342 § 173(3).

length that a person is in his/her home. Such a requirement could gut the demand for the DG program before it even begins.

To counter this, when there is a change of property ownership, the proposed Concept Tariff must ensure that the property is not removed from the DG Program due a requirement to re-enroll. We recommend that an application to join the DG program be specific to the property, not the customer. This allows for change of ownership without removing new owners from the DG program.

## **ii. Termination**

The proposal states, “The Company may terminate a customer from the Distributed Generation Program if the customer fails to maintain the eligibility requirements, fails to comply with the terms of the operating agreement, or if the customer's facilities are determined not to be in compliance with technical, engineering, or operational requirements suitable for the Company's distribution system.”<sup>12</sup>

This language gives the Company broad authority to terminate a customer for a variety of reasons; however, it is not detailed enough to provide sufficient notice to potential customers about why they might be terminated in the future. For example, the proposal does not indicate whether a customer will be held liable for a problem with a third party's installation of solar panels and/or interconnection equipment, nor does it discuss whether a customer gets a chance to cure and/or appeal a termination.

To address this concern, the DG program must expand and clarify conditions required to terminate a customer, specifically defining “eligibility requirements,” “fails to comply with the terms of the operating agreement,” and “customer's facilities are determined not to be in compliance with technical, engineering, or operational requirements suitable for the Company's distribution system.” Even if those changes are made, the customer must still have a reasonable opportunity to cure and to appeal the Company's decision.

## **iii. Notice of Termination**

According to the proposed Concept Tariff, “The Company will provide sixty days' notice to the customer prior to termination from the Distributed Generation Program, except in situations the Company deems dangerous or hazardous. Such notice will include the reason(s) for termination.”<sup>13</sup>

The current language does not indicate the level of required detail in a notice of termination, nor does it define “dangerous” or “hazardous.” The proposal omits an appeal process for customers given notice of termination.

To address this issue, the notice of termination should expand and clarify the reasons for termination. A customer should have an opportunity to address reasons for termination within sixty days following a notice of termination, i.e. a period to cure.

## **III. Statutory Concerns**

We recognize that Michigan 2016 PA 341 and 342—the bills from which this regulation is promulgated—limit the scope and impact of this regulation. However, we have concerns with certain statutory provisions that the MPSC staff should take into account when constructing and overseeing the DG program and that the Michigan legislature should revise in the future.

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## **1. 1% Cap**

2016 PA 342 § 173(3) allows an electric utility to limit its distributed generation program to "1% of its average in-state peak load for the preceding 5 calendar years."<sup>14</sup> The statute mandates a specific allocation for that 1%, which the MPSC Staff's Proposed Concept Tariff clarifies:<sup>15</sup>

- 0.5% to Category 1 customers (including all "Eligible Electric Generators with an aggregate nameplate capacity of 20 kWac or less")
- 0.25% to Category 2 customers (including "Eligible Electric Generators with an aggregate nameplate capacity greater than 20 kWac but not more than 150 kWac")
- 0.25% to category 3 customers (including "methane digesters with an aggregate nameplate capacity greater than 150 kWac but not more than 550 kWac")

By effectively capping the number of customers who may participate in a utility's program, many potential customers may not have the opportunity to join the program, which works against the goal of expanding access to renewable energy in the state. In the future, the legislature should lift the cap; in the meantime, the MPSC staff should inform low-income and people of color communities early on about how to participate in the DG program to ensure they do not lose the opportunity to access the program due to potential gaps in the amount of information available to low-income communities and people of color communities relative to other consumer groups.

## **2. Generation Capacity**

2016 PA 342 § 173(2) limits an electric customer's "generation capacity . . . to 100% of the customer's electricity consumption for the previous 12 months."<sup>16</sup>

The primary concern with this provision is that it makes community solar projects more difficult. If a customer can produce only as much electricity as she or he consumed in the last year, she or he would not be able to power multiple properties, which would be essential for meaningful community solar projects. Given that the statute already places this roadblock in front of the development of community solar, the MPSC staff must take care to not limit access via other means, as described above.

## **IV. Conclusion**

The Distributed Generation Program has the potential to increase renewable energy usage amongst communities that previously did not participate, especially low-income and people of color communities. However, the MPSC Staff's proposed Concept Tariff, as written, places several roadblocks in the way of these communities gaining access to the DG program. It fails to account for the challenges that low income and people of color customers face when trying to take advantage of this opportunity. The MPSC should aim to encourage, not prevent, more customers joining the DG program through this tariff, including allowing the use of community solar and ensuring that customers are not left behind when a property changes ownership. Consumers and their advocates need information now and prior to investment so that they can understand, express concerns about the costs, and make meaningful decisions regarding participation in the DG program. Moving forward, the MPSC and its staff must keep these

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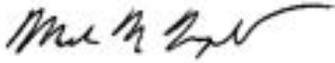
<sup>14</sup> Michigan 2016 Public Act 342 § 173(3).

<sup>15</sup> Michigan Public Service Commission, Proposed Distributed Generation Program Concept Tariff (Oct 2017).

<sup>16</sup> Michigan 2016 Public Act 342 § 173(2).

concerns in mind at every stage of this process and should make an effort to keep costs low to incentivize greater participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Templeton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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