

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)	
to implement the provisions of Sections 173 and)	Case No. U-18383
183(1) of 2008 PA 295.)	
_____)	

At the July 12, 2017 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
 Hon. Norman J. Saari, Commissioner
 Hon. Rachael A. Eubanks, Commissioner

ORDER

On December 21, 2016, Governor Rick Snyder signed 2016 PA 342 (Act 342) into law. Act 342 amends 2008 PA 295 (Act 295) by, among other things, adding Section 173, MCL 460.1173, which requires the Commission to establish a distributed generation program within 90 days of the effective date of Act 342.¹ Section 173(1) states:

The commission shall establish a distributed generation program by order issued not later than 90 days after the effective date of the 2016 act that amended this section. The commission may promulgate rules the commission considers necessary to implement this program. Any rules adopted regarding time limits for approval of parallel operation shall recognize reliability and safety complications including those arising from equipment saturation, use of multiple technologies, and proximity to synchronous motor loads. The program shall apply to all electric utilities whose rates are regulated by the commission and alternative electric suppliers in this state.

¹ Act 342 was effective April 20, 2017.

Section 183(1), which was also added as part of Act 342, MCL 460.1183(1) provides an option whereby a customer may elect to continue to participate in the existing net metering program, established by Act 295, for up to 10 years from the date of enrollment.

Additionally, on December 21, 2016, Governor Rick Snyder signed 2016 PA 341 (Act 341) into law. Subsection 6a(14), which was added as part of Act 341, MCL 460.6a(14) requires the Commission to conduct a study on the appropriate tariff for customers who participate in the net metering program, or the distributed generation program, within one year of the effective date of the Act. Subsection 6a(14) provides:

Within 1 year after the effective date of the amendatory act that added this subsection, the commission shall conduct a study on an appropriate tariff reflecting equitable cost of service for utility revenue requirements for customers who participate in a net metering program or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. In any rate case filed after June 1, 2018, the commission shall approve such a tariff for inclusion in the rates of all customers participating in a net metering or distributed generation program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211. A tariff established under this subsection does not apply to customers participating in a net metering program under the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1001 to 460.1211, before the date that the commission establishes a tariff under this subsection, who continues to participate in the program at their current site or facility.

In an order requesting comments issued on May 11, 2017 (May 11 order), the Commission found that the applicable sections of the above-quoted statutes may cause administrative inefficiencies and customer and supplier confusion if the Commission were to require a distributed generation program with updated tariff sheets to be established for each rate regulated electric company and alternative electric supplier within 90 days of the effective date of Act 342, and then again require updated tariff sheets at the conclusion of rate cases filed after June 1, 2018.

To address these concerns, the Commission Staff (Staff) met with participants of the Distributed Generation Program Workgroup prior to the effective date of Acts 341 and 342 and

proposed a “business as usual” approach in which the net metering program would continue unchanged until the conclusion of the rate cases filed after June 1, 2018, thereby limiting the number of tariff revisions to one round. In addition, the Staff proposed that any customers who enter and participate in the net metering program prior to the conclusion of the rate cases filed after June 1, 2018, may elect to continue receiving service under the net metering tariff for up to 10 years, as provided under Section 183(1) of Act 342.

In the May 11 order, the Commission provided interested parties an opportunity to comment on the following:

- Would a “business as usual” approach as discussed above fulfill the requirements of Section 173 of Act 342?
- Does Section 183(1) of Act 342 allow customers to enroll in the net metering program until the conclusion of the rate cases filed after June 1, 2018, and continue receiving service under this tariff for up to 10 years from the date of enrollment?
- If the Commission were to determine that Section 183 of Act 342 does not apply to new net metering customers (*e.g.*, customers who enter the net metering program after the effective date of the Act), how should the Commission proceed in order to provide clarity to customers and suppliers until the new distributed generation program tariffs are in place after June 1, 2018?

Comments were due on June 1, 2017, and reply comments were due on June 15, 2017.

Comments or responsive comments were filed by DTE Electric Company, Consumers Energy Company (Consumers), Sunrun, Inc., Environmental Law and Policy Center (ELPC), Natural Resources Defense Council, Michigan Electric and Gas Association, Vote Solar Initiative and the Solar Energy Industries Association, Michigan Energy Innovation Business Council (EIBC), Union of Concerned Scientists (UCS), Chart House Energy LLC, Northport Energy, and Great

Lakes Renewable Energy Association Board of Directors. In addition, the Commission received comments from individuals William Wheadon, Phil Von Voigtlander, and Joe DeFors.

Comments in response to the Commission's questions are discussed below.

1. Would a business as usual approach fulfill the requirements of Section 173 of Act 342?

As described above, a "business as usual" approach would simply continue the current net metering program as the distributed generation program until new distributed generation tariffs are approved as part of any rate case filed after June 1, 2018.

All of the commenters agreed that continuing the current net metering program fulfills the requirements of Section 173 of Act 342 until new distributed generation tariffs are in place after June 2018. As UCS observed:

It is clear that the Section 173 of Act 342 and Section 6a(14) of Act 341, when read together, direct the Commission to establish an interim distributed generation program (under Act 342) until it has approved and implemented a newly designed tariff under Act 341. However, Act 342 allows the Commission to "promulgate rules the commission considers necessary to implement this program", giving the Commission broad discretion to consider the potential for administrative inefficiencies and customer and supplier confusion that may occur if the Commission were to require updated tariffs for each regulated utility in the near term and then a different tariff (under Act 341) at the conclusion of rate cases filed after June 1, 2018 - just one year later. Because we agree that these concerns are valid and significant, we also agree that the Commission would be within its authority to establish a distributed generation program that proceeds under a "business as usual" scenario until a tariff consistent with Section 6a(14) of Act 341 is approved through rate cases filed after June 1, 2018.

UCC's comments, p. 2.

Most commenters echoed concerns about causing uncertainty for businesses and customers by implementing an interim program that differs from the current net metering program, which will then be replaced after June 1, 2018, by a new program for new customers. And, EIBC observed that the two statutory sections appear to require a business as usual approach noting that although

the “net metering program” has been changed to the “distributed generation program,” many of the key elements of net metering have remained the same under distributed generation.

Considering the statutory language under Section 173 of Act 342 and Section 6a(14) of Act 341, and in light of the consensus among the commenters, the Commission agrees that until such time as new distributed generation tariffs are approved after June 1, 2018, keeping the net metering (now, distributed generation) program in place, as it is currently structured, is the most reasonable approach. In addition, the Commission finds that maintaining the current program comports with the requirement under Section 173(1) that the Commission establish a distributed generation program within 90 days of April 20, 2017. Accordingly, the Commission approves the continuation of the net metering program as the interim distributed generation program under the terms and conditions set forth in amended Act 295.

2. Does Section 183(1) of Act 342 allow customers to enroll in the net metering program until the conclusion of the rate cases filed after June 1, 2018, and continue receiving service under this tariff for up to 10 years from the date of enrollment?

Again, there was a consensus that Section 183(1) of Act 342 allows customers to enroll in the interim distributed generation program (formerly net metering) until the conclusion of the rate cases filed after June 1, 2018, and all customers, both previous and new, may continue receiving service under this tariff for up to 10 years from the date of enrollment. ELPC comments that, “Under the plain language of the statute, any customer who enrolls in net metering before the Section 6a(14) tariff is approved is entitled to continue under that tariff for ten years after the enrollment date.” ELPC’s comments, p. 5. Likewise, Consumers “believes the ten-year grandfathering provision of Section 183 of Act 342 applies to customers who enroll in the Net Metering/Distributed Generation Program authorized by Public Act 295 of 2008 or Act 342 before

the Commission establishes the cost-of-service based distributed generation tariff pursuant to Section 6a(14) of Act 341.” Consumers’ comments, p. 3.

Again, recognizing the consensus among the commenters, the Commission agrees that under the plain language of Section 183(1) of Act 342, MCL 460.1183(1), any customer enrolled in the distributed generation program approved by this order may continue to net meter for 10 years from the date of enrollment. However, enrollment in the interim distributed generation program shall close on the date that an applicable distributed generation tariff is approved as part of any electric rate case filed after June 1, 2018.

3. If the Commission were to determine that Section 183 of Act 342 does not apply to new net metering customers (*e.g.*, customers who enter the net metering program after the effective date of the Act), how should the Commission proceed in order to provide clarity to customers and suppliers until the new distributed generation program tariffs are in place after June 1, 2018?

Because the Commission has determined that Section 183(1) of Act 342 allows customers to enroll in the net metering program until the conclusion of the rate cases filed after June 1, 2018, and continue receiving service under this tariff for up to 10 years from the date of enrollment, this question is effectively resolved and need not be addressed further.

THEREFORE, IT IS ORDERED that:

A. The net metering programs implemented by each electric provider pursuant to 2008 PA 295, MCL 460.1001 *et seq.*, and the Commission’s rules, shall continue as the distributed generation program under Section 173(1) of 2008 PA 295 until the Commission approves a distributed generation tariff under MCL 460.6a(14).

B. Customers who enter the distributed generation program approved by this order may continue to net meter for 10 years from the date of their enrollment as provided under Section 183 of 2008 PA 295, MCL 460.1183.

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

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under 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 mpscdockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@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

Sally A. Talberg, Chairman

Norman J. Saari, Commissioner

Rachael A. Eubanks, Commissioner

By its action of July 12, 2017.

Kavita Kale, Executive Secretary