



January 18, 2018

Mr. Jesse Harlow
Michigan Public Service Commission
P.O. Box 30221
Lansing, MI 48909
harlowj@Michigan.gov

Re: Case No. U-20344 — Comments of Soulardarity on the Michigan Public Service Commission
Distributed Generation & Legacy Net Metering Rules Stakeholder Process

Dear Mr. Harlow,

The Abrams Environmental Law Clinic at The University of Chicago Law School, on behalf of Soulardarity, submits these comments in response to the Michigan Public Service Commission's (MPSC) Distributed Generation & Legacy Net Metering (DG LNM) Rules Stakeholder Process.

Soulardarity is a Highland Park, Michigan-based nonprofit (<http://www.soulardarity.com/>) focused on building energy democracy through education, organizing, and community-owned clean energy. Its primary focuses have been 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 participated and commented in the Distributed Generation Workgroup and has been involved in DTE's renewable energy plan case (U-18232) and rate case (U-20162) before the Commission.

Soulardarity is particularly concerned with barriers to entry that make it more difficult for low-income communities and communities of color to benefit from renewable energy programs. Low-income households in Michigan have a significantly higher home-energy burden than wealthier households. This makes DG and community solar particularly valuable tools to help lift individual customers and communities out of energy poverty and reduce the disparity between low-income and higher-income households. The Commission has an interest in Michigan citizens' access to DG programs.

Soulardarity wants to ensure that the DG LNM Stakeholder Process results in measures implemented to improve access to distributed generation and to secure energy justice for low-income communities and communities of color, who are too often left out of these decision-making processes. Soulardarity takes issue with several aspects of Part 3, as well as other parts, of the current Electric Interconnection and Net Metering Standards (Net Metering Rules). In previous processes, Soulardarity has commented on the following issues:

1. **Fees:** Low-income customers face multiple financial barriers to participating fully, if at all, in renewable energy programs, including DG. However, this stakeholder process can and should play a role in reducing those barriers by addressing fees associated with the DG (and net metering) program. For instance, the Commission could waive the application fee for 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.
2. **Premises Requirement:** The DG tariff proposed at the end of the DG Work Group requires eligible generators "be located on the customer's premises, serving only the customer's premises,

and [] be intended primarily to offset a portion or all of the customer's requirement for electricity." This requirement is basically written for—and only for—a customer who resides in an owner-occupied, single-family home, which does not describe many of Michigan's residents. This premises requirement will likely function to exclude many low-income ratepayers from participating in the DG program without any statutory requirement to do so. This requirement also frustrates the development of DG and community solar initiatives in low-income communities. At best, the premises requirement discourages participation of low-income communities in the DG program; at worst, the premises requirement may effectively prevent it.

3. **Community Solar:** Community solar, a form of distributed solar power generation, provides environmental, financial, equity, and participatory benefits to low-income communities and communities of color, while also benefitting the grid and Michigan ratepayers more broadly. During this stakeholder process, it is imperative that any rule changes increase, rather than hinder, affordable access to low-income ratepayers' participation in community solar.
4. **Termination:** The current Net Metering Rules do not discuss what kind of notification a company must provide to a customer regarding a termination and whether a customer gets a chance to cure and/or appeal a termination. A company should not have broad and unchecked authority to terminate a customer. During this stakeholder process, we should discuss and implement ways to protect the rights of customers to be given adequate process when facing termination.

Attached please find Soulardarity's comment on the January 2018 Draft MPSC Staff Report from the DG Work Group and Soulardarity's initial brief in DTE's Rate Case No. U-20162, which expand upon the themes mentioned above. The MPSC has a responsibility to encourage, not prevent, more customers to take advantage of renewable energy programs, including DG. Moving forward, the MPSC and its Staff must keep these concerns in mind at every stage of this stakeholder process and should make an effort to keep costs low to incentivize greater participation.

Sincerely,



Leah Garner, Clinic Student



Jamie Lee, Clinic Student

Mark Templeton, Clinic Director

Robert Weinstock, Clinic Instructor

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January 10, 2018

Ms. Julie Baldwin
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Re: Comments of Soulardarity on the Michigan Public Service Commission Staff's Draft Report on the MPSC Staff Study to Develop a Cost of Service-Based Distributed Generation Program Tariff (December 15, 2017)

Dear Ms. Baldwin,

The Abrams Environmental Law Clinic at The University of Chicago Law School, on behalf of Soulardarity, submits these comments in response to the Michigan Public Service Commission Staff's Draft Report on the MPSC Staff Study to Develop a Cost of Service-Based Distributed Generation Program Tariff ("Draft Report").¹

The following organizations support Soulardarity's comments on the Draft Report:

- Debbie Fisher, Director-HOPE Village, *on behalf of Focus: HOPE*
- Juan Shannon, Founder & Chief Executive Officer, *on behalf of Parker Village, LLC*
- Nick Leonard, Staff Attorney, *on behalf of Great Lakes Environmental Law Center*
- Andrew Sarpolis, Associate Organizing Representative, Beyond Coal Campaign, *on behalf of Sierra Club Regional Field Office – Oakland County, Michigan*
- Darryl Jordan and Siwatu-Salama Ra, Co-Directors, *on behalf of East Michigan Environmental Action Council*
- Guy Williams, Executive Director, *on behalf of Detroiters Working for Environmental Justice*
- Steven Stone, William Held, and Joseph Nagle, Managing Partners, *on behalf of Strawberry Solar*
- Diane Cheklich, Sales Representative, *on behalf of Strawberry Solar*
- Reverend Joan Ross, *on behalf of Storehouse of Hope and North End Woodward Community Coalition*
- Norma Heath, *on behalf of Solar Neighbors Detroit*
- Ali Dirul, Engineering Director, *on behalf of Ryter Cooperative Industries*
- Justin Schott, Executive Director, *on behalf of EcoWorks*
- Bridgett Townsend, Chief Officer, *on behalf of Town Services*
- Constance C. Bodurow, AICP, CUD Director, *on behalf of studio[Ci]*

Soulardarity is a Highland Park, Michigan-based nonprofit (<http://www.soulardarity.com/>) focused on building energy democracy through education, organizing, and community-owned clean energy. Its primary focuses have been on solar street lighting, solar bulk purchasing, energy education,

¹ www.michigan.gov/documents/mpsc/MPSC+Staff+DRAFT+DG+Report+12+15+2017_608897_7.docx

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 believes in energy democracy, the concept that people impacted by energy decisions should have a seat at the table in making them. Unfortunately, historically energy decisions in Michigan have only exacerbated the inequality between socioeconomic groups. Locally undesirable, polluting energy systems have concentrated adverse health and environmental effects and burdened low-income communities and communities of color repeatedly.² Those who benefit maintain the status quo, despite the existence of alternative systems that combine efficiency, energy storage, and distributed clean energy, which would provide more affordable and safe power. Meanwhile, Michigan communities struggling with energy poverty, the health impacts of pollution, and diminishing economic opportunity are in the dark and out of the conversation.³ According to DTE Energy, “roughly 16 percent of Michigan residents live below the poverty line. Approximately 117,500 DTE Energy customers received some kind of energy assistance in 2016.”⁴

Soulardarity provided comments on the Michigan Public Service Commission Staff’s Proposed Distributed Generation Program Concept Tariff (“Proposed Concept Tariff”)⁵ in October 2017, which are attached in Appendix A and incorporated herein. We appreciate the Staff’s addressing some of the concerns raised in our previous comments regarding the distributed generation (“DG” or “distributed generation”) program. However, the Draft Report fails to address many of the concerns we had with the Proposed Concept Tariff’s potential impacts on low-income communities and communities of color. These comments highlight the unaddressed issues from our previous comment and the concerns with the Inflow/Outflow Billing Mechanism. We request that the MPSC Staff change the Inflow/Outflow Billing Mechanism and Proposed Concept Tariff to address these concerns.

These efforts must be understood in light of the requirements of Michigan's Public Act 342, which makes it a priority “to promote the development and use of clean and renewable energy resources” to reduce CO₂ emissions, recognizing that clean energy is the unstoppable and essential future.⁶ The Commission must ensure all people are treated fairly in addressing CO₂ reduction, pursuant to the mandate in Act 341 to recover “a DG customer's 'equitable cost of service' and 'fair and equitable use of the grid.’”⁷ “Fair and equitable” varies based on the ability of the customer to afford energy efficiency measures and distributed generation. We want to emphasize that equity and clean energy growth go hand-in-hand. Equitable use of the grid for all people is integral to the growth of the clean energy sector and overall infrastructure resilience.

² The NAACP reported that “[m]ore African Americans live near coal fired power plants, nuclear power plants, or biomass . . . power plants than any other demographic group in the U.S. . . . Approximately 68% of African Americans live or have lived within 30 miles of a coal-fired power plant. . . . As a result, African Americans are more likely to suffer health problems from the pollution that these facilities produce.” NAACP, *Just Energy Policies & Practices*, <http://www.naacp.org/climate-justice-resources/just-energy/>.

³ *Comments on MPSC Case No. U-18418 regarding Stakeholder Engagement in the Integrated Resource Planning Process*

⁴ DTE Energy, 2016-2017 Corporate Citizen Report 29, https://www.newlook.dteenergy.com/wps/wcm/connect/7194e3af-ff7a-4f14-ab1d-601b74a64086/DTE_CCR_PDF_digital.pdf?MOD=AJPERES.

⁵ MPSC Staff, Proposed Distributed Generation Program Concept Tariff October 2017.

⁶ Michigan PA 342 § 1(2) (2016).

⁷ Michigan 2016 Public Act 341 § 11(1).

The Commission should keep in mind that “fair and equitable” requires promoting DG access for all; as will be shown below, the Staff Proposal consistently and needlessly demonstrates an overly narrow and incorrect view of what constitutes “fair and equitable.” Without making solar and other renewables accessible, the market will not grow fast enough to address climate change, nor will we distribute that clean energy enough to improve the resiliency of the grid. Equity must be the basis now for the structure of the DG tariff, but it also requires taking into account the future environmental consequences for all.

Overall, the Staff’s recommendations have not considered sufficiently either reducing dirty energy usage in Michigan or ensuring that all people are included throughout this process. As we explain in further detail below, we request the Staff conduct a study on how the provisions of the Proposed Concept Tariff and the billing mechanism would impact low-income communities and communities of color. A threshold question for any requirement of the DG program should be whether it limits entry to those who have limited financial and social capital. Our comments highlight some key areas for the Staff and Commission to focus their attention, including transparency of cost, community solar, and customer termination relating to the Inflow/Outflow billing mechanism.

I. Impact on Low-Income and People of Color Communities

In our previous comment, we expressed concern that the Proposed Concept Tariff did not address the potential impact on low-income communities and communities of color, and their ability to access distributed generation and secure energy reliability. Upon review of the Draft Report, we find there has been no discussion or analysis of the issue again.

Neither the Proposed Concept Tariff nor the Draft Report directly address whether the tariff will negatively impact low-income communities and communities of color in general and/or their access to distributed generation. The Proposed Concept Tariff and Draft Report contain a number of embedded and incorrect assumptions; these documents do not consider DG correctly or fully in the context of low-income and people of color communities, including price transparency, homeowners versus renters, and single-family homes versus multi-unit buildings. The Draft Report neither addresses nor analyzes whether the billing mechanism, as structured, will effectively subsidize wealthier DG customers at the expense of other customers, including low-income customers.

One such assumption is that price transparency is sufficient to justify the Inflow/Outflow billing mechanism. The Draft Report states that the Inflow/Outflow billing mechanism “is characterized by a high level of price transparency, resulting in clear and accurate price signals to customers.” The MPSC Staff cites transparency as the main advantage of this new billing mechanism. However, the Staff makes the assumption that: (a) all customers will benefit from transparency, (b) costs will be transparent to all customers, and (c) all customers are able to change their behaviors in light of the transparent information.

Transparency of cost is effective only if customers have enough information beforehand (about the program, the DG system, their own electricity usage, etc.) to change their behavior (e.g., level of power production or usage, the time of power production or usage) in accordance with price signals. This assumption cannot be made for all customers. Without investments in technology and informing tenants and building owners about these programs, the assumption of transparency is inaccurate. For example, renters crediting customers in the next billing period for outflow potentially would not benefit renters, who are more transitory and who would lose the benefits of any overproduction in the last period that they occupy the residence. With renters making up 29 percent of the state’s residents, the MPSC should

structure the DG program to be accessible to them, regardless of whether one thinks that many of them will participate in the program.⁸

Even with enough information, DG customers may be unable to change their behavior in accordance with price signals. The Staff's reliance on transparency as the primary justification for this billing mechanism falls short. The MPSC must remember their statutory duty is to create a "fair and equitable" tariff. Transparency is necessary but not sufficient.

To understand better low-income consumers and to assess their assumptions, the MPSC Staff should conduct and provide a separate analysis of the impact of this billing mechanism and tariff on low-income customers. Low-income customers have different housing needs, including single-family and multi-family dwellings, and renting versus owning, and consequently use energy differently than wealthier customers.

Regardless of whether a study is conducted, the MPSC Staff should address how the DG program will be structured to lower barriers to entry for and to encourage participation by low-income customers. For example, the MPSC should encourage the development of community solar projects and 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 essentially subsidizing wealthier customers.

Similarly, the Proposed Concept Tariff and Draft Report fail 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 both via the accessibility of clean energy as well as the disproportionate impact of environmental harm on low-income communities and communities of color. These communities already bear greater burden and costs than more privileged communities in health and economic vulnerability that are necessary for providing energy through centralizing fossil fuel generation.⁹ Thus, they provide benefits to the entire system but are not compensated for those costs. The Staff's lack of analysis about environmental justice is endemic to the regulation process and perpetuates this injustice.

To combat this concern, the MPSC Staff should measure the success of the DG program on communities already impacted by pollution and other forms of environmental racism. Addressing the concerns of low-income access and affordability is the more 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 and 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) and Outflow (C11.F)

The Staff's proposal in the Draft Report to use the Inflow/Outflow billing mechanism in place of true and modified net metering addresses some of our concerns with regard to equitable cost of service to

⁸ National Low Income Housing Coalition, Out of Reach 2017: Michigan, <http://nlihc.org/oor/michigan> (accessed Jan. 7, 2018).

⁹ To see statistics on individual communities (i.e., zip code), visit <http://scorecard.goodguide.com/>. See Robert Bullard, *Anatomy of Environmental Racism and the Environmental Justice Movement* (1993).

all customers, especially low-income customers. By separating power inflow from power outflow, rather than netting the two values, some DG customers will have better price signals, which is preferable to simply netting inflows and outflows.

While separating inflows from outflows may be the right conceptual approach, the impact of such an approach turns on what the rates actually are for the inflow and the outflow.

The Staff's Draft Report emphasizes the transparency of cost this new billing mechanism gives. However, the arguments for transparency rely on the assumption that it benefits everyone, which is not always true. For example, consider the power outflow credit. Even with enough information, DG customers may be unable to change their behavior meaningfully or significantly in accordance with price signals. Generally speaking, at present, if a DG customer has solar panels, she will put power on the grid when the sun is shining, regardless of the price at that time, unless she also has a storage battery or has some other significant variable load within the household that she can control. Consequently, transparency—which sounds nice in theory—may have limited impact in reality.

In addition, at a time when DG and widespread renewable energy use must be encouraged, rather than hindered, the Inflow/Outflow mechanism as manifested in the Proposed Concept Tariff increases costs to all DG customers, which would disproportionately impact low-income DG customers. The Staff recommends in the Draft Report that the power outflow, or excess generation, be credited at the PURPA avoided cost. The Draft Report notes several times that a DG customer under the new mechanism will be charged more than she would have been charged under true or modified net metering. A net-zero residential customer, who would have paid nothing under true net metering, would now be charged approximately \$300 per year¹⁰ — the equivalent of \$6,000 over the estimated 20-year life of a DG system, a significant sum compared to the cost of such a system. For a thousand potential new DG customers, the MPSC would make the cost of DG rise \$25,000 per month or \$300,000 per year.

The MPSC, if it implements this new mechanism, will have increased the cost of the DG program for all DG customers, which is especially relevant to low-income DG customers, thereby impeding access and discouraging customers from investing in DG. If the MPSC believes that DG is beneficial to the state and should be encouraged, then using this new billing mechanism without making significant efforts in other areas to lower costs for low-income communities who could be potential DG customers simply goes against the statutory mandate to recover to ensure 'fair and equitable use of the grid.'"

Moreover, the Staff's recommendation regarding using the PURPA avoided cost rate does not ensure that the rate credit will take into account key benefits that DG customers provide to the grid, including generation capacity, ancillary services, and avoided greenhouse gases, to name a few. For this reason, we disagree with the Staff's assertion in the Draft Report that the PURPA avoided cost more accurately reflects the equitable cost of service to a DG customer.

We urge the Staff to reconsider its recommendation to use the PURPA avoided cost to credit power outflows. If the outflow credit is calculated using avoided cost, then the Staff should conduct an analysis of the benefits that DG provides to calculate a comprehensive avoided cost and an equitable rate, particularly regarding low-income housing, renters and community DG. The Environmental Defense Fund and Institute for Policy Integrity filed joint comments in the New York Public Service proceeding

¹⁰ MPSC Staff, *Draft Report on the MPSC Staff Study to Develop a Cost of Service-Based Distributed Generation Program Tariff 2* (December 15, 2017).

regarding valuing distributed energy resources in April 2016.¹¹ The comment provided an in-depth analysis of the types of benefits that a DG customer provides to the electric grid. These benefits include:

- Avoided generation capacity,
- Avoided ancillary service costs,
- Avoided distribution capacity costs, and
- Avoided greenhouse gases and criteria air pollutants.¹²

Alternatively, the Staff could use the “value of solar” approach to calculate the outflow credit, or at least to inform the avoided cost.¹³ This alternative credit mechanism is calculated using the following value components:

- Guaranteed fuel value,
- Plant operations and maintenance value,
- Generation capacity value,
- Avoided transmission and distribution capacity cost, and
- Avoided environmental compliance cost, including the cost to comply with environmental regulations and policy objectives.¹⁴

We recommend that the Staff guarantee these benefits, and their value, are incorporated into calculations in individual rate cases. By setting the outflow credit using this total value, the MPSC and its Staff ensure that DG “prosumers” have fair and equitable rates that reflect accurately the benefits and costs of their interactions with the grid.

In addition, predictability of total cost is crucial to encouraging customers — especially low-income customers — to join and stay in the DG program. Because the PURPA rate could change several times and potentially significantly during the lifetime of a DG system, a Proposed Concept Tariff that relies on the PURPA rate makes it harder for a potential customer to know how she will be compensated in the future, especially if prices decline. To ensure that DG customers receive maximum benefits for taking part in the program, the credit rate for power outflow should be guaranteed—or have a floor—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, 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.

The Proposed Concept Tariff should clarify that the MPSC has responsibility—prior to implementation—for reviewing these rates 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.

¹¹ Re: Case 15-E-0751 – In the Matter of the Value of Distributed Energy Resources and Options Related to Establishing an Interim Methodology
<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={FE6ED83D-89EB-4C35-A421-124AE1CE3AB5}>.

¹² *Id.*

¹³ In late 2012, “Austin Energy became the first utility in the US to offer a ‘Value of Solar Tariff’ (VOST) to its residential electricity customers.”

¹⁴ Austin Energy, Value of Solar Methodology (May 27, 2014),
<http://www.austintexas.gov/edims/document.cfm?id=210805>.

2. Application for Service (C11. G)

Regarding an application for service, the Proposed Concept Tariff stated 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.”¹⁵

The Staff’s Draft Report did not sufficiently address our concern that the Proposed Concept Tariff did not provide an amount for the Interconnection Application fee. Despite the Staff’s emphasis on transparency of cost with the new billing mechanism and Proposed Concept Tariff, we still lack numbers that are crucial to knowing the extent to which low-income customers or others will be deterred from participating in the DG program.¹⁶

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 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.

We appreciate that the Staff maintained that the Application fee is refundable if the customer withdraws the application prior to commencing service.

However, 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 customers or others from participating in the DG Program.¹⁷ The Staff’s Draft Report did not sufficiently address our concerns. Therefore, we recommend specifying the Interconnection Application fee and how it was calculated.

3. General Requirements (C11.H)

The Proposed Concept Tariff requires that “Eligible Electric Generator(s) must be located on the customer’s premises, serving only the customer’s premises.”¹⁸ In our comment to the Proposed Concept Tariff, we showed that such language is not required by the statute; however, the Staff failed to change this language in the Draft Report. The Staff also does not address the issues that it creates: needlessly excluding community solar, and more broadly limiting the DG program to owner-occupied buildings that have immediate access to significant financial resources and are able to sustain rooftop solar or other renewable systems. It would not be “fair and equitable” —and could well be illegal—for the MPSC to create a restriction without a statutory basis.

Community solar provides great benefits to participating communities, including low-income communities, and should be encouraged, not barred, by future regulation. A report published by the National Renewable Energy Laboratory of the U.S. Department of Energy defines community solar “as a

¹⁵ *Id.* at 5 (C11.G Application for Service).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 5 (C11.H Generator Requirements).

solar-electric system that . . . provides power and/or financial benefit to, or is owned by, multiple community members.”¹⁹

Community solar is especially important to low-income customers, particularly renters, people who live in subsidized housing, and those who cannot install solar panels on the buildings in which they live, to benefit from distributed generation.

The Proposed 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 that can effectively utilize renewables. Many buildings housing low-income customers and communities of color are in urban areas and inaccessible to rooftop solar. By not encouraging community solar, the Staff’s Draft Report severely limits the expansion of distributed generation and chills the use of clean energy. 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.

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 premise 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.”²⁰ To encourage, rather than prevent, participation by renters and low-income customers, the MPSC Staff should craft the Proposed Concept Tariff to not only allow but actively promote community solar.

We appreciate that the Staff maintained that the customer “need not be the owner or operator of the eligible generation equipment” that allows for innovative financing and ownership models, which supports greater access for DG customers.

Therefore, we recommend eliminating the requirement that the Eligible Electric Generator be located on the customer’s premises and serve the customer’s premises.

4. Generator Interconnection Requirements (C11.I)

In the Draft Report, the Staff failed to address our concerns from our Proposed Concept Tariff comment with regard to interconnection costs. The Proposed 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.”²¹

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

¹⁹ 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>.

²⁰ *Id.* at 2–3.

²¹ *Id.* at 4 (C11.I Generator Interconnection Requirements).

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. For example, Appendix E to the Draft Report notes that California has a one-time interconnection fee varying between \$75-\$150 depending on the incumbent utility and the system type. The MPSC could look to other states as benchmarks for setting appropriate interconnection fees. 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. If the utility chooses, then customers are denied the opportunity to find the optimal installer for them. This issue is especially salient when considering low-income customers, who may want the lowest-priced installer, but might be prevented if a utility has a contract with another installer.

Installation and interconnection could be an opportunity to create jobs in low-income communities and communities of color. Other Midwestern states have shown this can be done, such as the Illinois Future Energy Jobs Act.²² For example, the MPSC should 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 continue to take issue with several aspects regarding customer termination, including re-enrollment, termination, and notice of termination.

i. Reenrollment

The Staff did not address our concern that reenrollment requirements threaten to undermine the DG program, especially if the program proves to be attractive to new DG customers. 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.”²³

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.”²⁴ A property that used to participate may be barred from re-entering due to the utility having already reached its 1% cap. Utilities have the choice to not put in place this barrier to entry by electing not to implement the voluntary 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

²² <http://www.futureenergyjobsact.com/>

²³ *Id.* at 6 (C11.L Customer Termination from the Distributed Generation Program).

²⁴ Michigan 2016 Public Act 342 § 173(3).

length that a person is in his/her home. Note that this concern is even more salient following the Draft Report, where the Staff acknowledges that it could take nearly five extra years for a customer to realize her return on investment for a solar system under the new Inflow/Outflow billing mechanism. 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.

In addition, 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.

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.”²⁵

Setting aside for the moment the question of whether a utility should ever be allowed to terminate a customer for reasons other than an imminent threat to public safety, this language gives the Company overly 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 prior to termination.

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.”²⁶

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 and no less than thirty days prior to actual termination, i.e. a period to

²⁵ *Id.*

²⁶ *Id.*

cure. Even if other provisions in the state's public utility laws provide such a process, those protections should be reiterated here so that it is clear that they would apply to DG customers with DG systems, lest an argument be made that the omission of such provisions here indicate that DG customers do not have these protections.

III. Statutory Concerns

We recognize that Michigan 2016 PA 341 and 342—the bills that require the MPSC to promulgate this regulation—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.

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.”²⁷ The statute mandates a specific allocation for that 1%, which the MPSC Staff’s Proposed Concept Tariff clarifies:

- 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”)²⁸

PA 342 § 1(2) makes it a priority “to promote the development and use of clean and renewable energy resources.”²⁹ The 1% cap effectively limits the number of customers who have the opportunity to participate in a utility’s program, directly working against the goal articulated in § 1(2) of expanding access to renewable energy in Michigan.

In the future, the legislature should lift the cap. In the meantime, the MPSC should remind utilities that they have the option to exceed their 1% cap.³⁰

In addition, the utilities and the MPSC 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 communities of color relative to other consumer groups. Soulardarity has provided comments to the MPSC before on how to engage low-income communities and communities of color in MPSC programs. Below we provide a condensed list of some of these recommendations from comments regarding stakeholder engagement in the Integrated Resource Planning (IRP) process (MPSC Case No. U-18418).

²⁷ Michigan 2016 Public Act 342 § 173(3).

²⁸ Michigan Public Service Commission, Proposed Distributed Generation Program Concept Tariff (Oct 2017).

²⁹ Michigan PA 342 § 1(2) (2016).

³⁰ Michigan PA 342 § 173(3) states that “[a]n 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.”

A strong stakeholder engagement process should:

- Have specific focus on demographics most impacted by energy decisions - particularly low-income communities, communities of color impacted by environmental racism, rural communities harmed by resource extraction and energy poverty, and other impacted communities;
- Provide education to stakeholders to understand how the IRP process works and how to make impactful comment by working through community organizations that work directly with impacted communities to ensure culturally appropriate and effective engagement;
- Be accessible by providing multiple venues and times for engagement and translation services;
- Ensure that the input from these sessions is directly conveyed to the MPSC; and
- Setting binding requirements around how stakeholder engagement will impact the process.³¹

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."³²

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 must take care to not limit access via other means, as described above.

While we believe that the legislature should eliminate this cap in the future, in the meantime, community energy projects must have flexibility to add additional customers. Given that the statute is silent on the issue of community energy projects, the generation capacity requirement is not applicable to community solar projects. The statute only references a single customer's requirement to limit her generation capacity, rather than a group of customers inherent in a community project. Community energy projects require flexibility to add additional customers to meet Michigan's statutory mandate "to promote the development and use of clean and renewable energy resources."

In addition, the statutory language seems to bar new home owners from participating because they will not have data of previous electricity consumption in their home. If the new home owner is to use their consumption from a previous home, assuming one exists, then the MPSC must make that interpretation clear to utilities so that more customers are not systematically barred from utilizing DG. Alternatively, the MPSC should heed our recommendation above regarding applications of tying participation in the DG program to the property rather than the customer. Then the relevant value in this scenario would be the electricity consumption of the property in the previous 12 months.

³¹

https://d3n8a8pro7vhm.cloudfront.net/soulardarity/pages/102/attachments/original/1508524450/17_%28Final_Draft%29.pdf?1508524450

³² Michigan 2016 Public Act 342 § 173(2).

Conclusion

We applaud the state and the MPSC's efforts to keep reduction of CO₂ emissions in energy usage a top priority. Our comment honors that commitment and seeks to provide helpful perspective in achieving this goal through the tariff. 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 Draft Report and Proposed Concept Tariff, as written, place 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.

There are a number of instances where the statute is silent, leaving the MPSC opportunities to fill in the gaps. For example, PA 341 and 342 do not require that the DG program be limited to those whose Eligible Electric Generators serve only the customer's premises, yet the Staff's proposal creates this barrier. In doing so, it effectively cuts out community solar options. The MPSC need not add more complications and barriers as the legislation is limiting enough.

By requiring the MPSC to promote clean energy and to set a tariff that is "fair and equitable," the law requires the MPSC 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 concerns in mind at every stage of this process and should make an effort to keep costs low to incentivize greater participation.

Sincerely,



Leah Garner, Clinic Student



Jamie Lee, Clinic Student

Mark Templeton, Clinic Director

Robert Weinstock, Clinic Fellow

Rebecca Boyd, Legal Consultant

Appendix A

November 3, 2017

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).^[1] 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 Proposed 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 Proposed 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 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. . . .”^[2]

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, neither the Draft Report nor the Proposed Concept Tariff provides the factors that will be considered when setting the rates, nor the entity that will consider these factors and set charges.

The Proposed 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.

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.)^[3]

We understand that the MPSC staff had intended to release an Outflow Credit calculation November 1; however, as of November 3, 2017, we learned 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.³³ 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.”^[4]

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.^[5]

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 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.”^[6]

The Proposed 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

³³ As an update to our November 2017 Comment, we note that the MPSC has issued a final order for Consumers Energy Company on November 21, 2017. Case No. U-18090.

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 the statutes limit service to only a 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."^[7] 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 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 Draft Report 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 premise 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."^[8] To encourage, rather than prevent, participation by renters and low-income customers, the MPSC staff should craft the Concept Tariff to allow and encourage community energy projects.

4. Generator Interconnection Requirements (C11.I)

The Proposed 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."^[9]

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.”^[10]

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.”^[11] 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 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.”^[12]

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.”^[13]

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.

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.”^[14] The statute mandates a specific allocation for that 1%, which the MPSC Staff’s Proposed Concept Tariff clarifies:^[15]

- 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.”^[16]

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

Sincerely,

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^[1]http://www.michigan.gov/documents/mpsc/DG_concept_tariff_603573_7.pdf.

^[2]*Id.* at 4 (C11.E Customer Billing on Inflow).

^[3]*Id.* at 4 (C11.F Customer Billing—Outflow Credit).

^[4]*Id.* at 5 (C11.G Application for Service).

^[5]*Id.*

^[6]*Id.* at 5 (C11.H Generator Requirements).

^[7]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>.

^[8]*Id.* at 2–3.

^[9]*Id.* at 4 (C11.I Generator Interconnection Requirements).

^[10]*Id.* at 6 (C11.L Customer Termination from the Distributed Generation Program).

^[11]Michigan 2016 Public Act 342 § 173(3).

^[12]*Id.*

^[13]*Id.*

^[14]Michigan 2016 Public Act 342 § 173(3).

^[15]Michigan Public Service Commission, Proposed Distributed Generation Program Concept Tariff (Oct 2017).

^[16]Michigan 2016 Public Act 342 § 173(2).

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE
ELECTRIC COMPANY** for authority to
increase its rates, amend its rate schedules
and rules governing the distribution and
supply of electric energy, and for
miscellaneous accounting authority

Case No. U-20162

ALJ Sally L. Wallace

INITIAL BRIEF OF SOULARDARITY

Dated: January 11, 2019

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INTRODUCTION

DTE Electric Company (“DTE”) asks the Michigan Public Service Commission (“the Commission”) for authorization to increase rates and change its rate structure, pursuant to MCL 460.6 *et seq.* and the Commission’s Order in Case No. U-18238, dated October 11, 2017.¹ DTE’s pending request follows the Commission’s Orders dated April 18, 2018 and June 28, 2018, which approved a \$65 million rate increase in Case No. U-18255.² Here, DTE states that it seeks another \$328 million rate increase for a projected test year of May 1, 2019 through April 30, 2020, although DTE admits that the total impact of this rate increase on residential customers will be in the “neighborhood of \$500 million.”³ The proposed rate structure will increase average residential customer rates by approximately 9.1 percent⁴—and up to 45.5 percent for low-consuming customers under the residential service special low-income pilot rate⁵—while the increased revenue will fund projects that will not deliver benefits equitably.⁶ The Commission must require DTE to modify its proposals to serve its residential customers more equitably and justly, particularly its low-income customers.

Soulardarity intervened in this proceeding as the only advocate focused exclusively on the interests of DTE’s low-income residential ratepayers and particularly those in the Detroit area: communities historically most burdened by fossil-fuel energy generation and poorly served

¹ U-20162, DTE Application at 1–2. (“Application”).

² U-18255, Order of April 18, 2018.

³ Application at 2; Stanczak Cross, 3 TR 138.

⁴ Application, Attachment 2.

⁵ Compare 9.86% percent increase for 300 kWh monthly use for Residential Service Rate D1 (Application at 2, Ex. A-16, Schedule F4) to 45.05% percent increase for 300 kWh monthly use for Residential Service Special Low Income Pilot Rate D1.6 (Application at 11, Ex. A-16, Schedule F4).

⁶ Application at 2.

by DTE. Soulardarity files this brief to explain its position on several of DTE’s proposals in this case. The primary issues discussed are: (1) inequities in planning related to reliability spending; (2) inadequate financial assistance programs and customer service practices; and (3) inadequate consideration of the cost-effectiveness of solar, failure to provide equitable rates related to distributed generation (“DG”), and failure to make DG and solar energy accessible for ratepayers from low-income communities and communities of color.

The Commission is charged with ensuring that DTE’s proposals are “just and reasonable.”⁷ As explained further below, DTE’s proposals cannot be deemed “just” unless the Commission requires DTE to formulate a more equitable rate design and to improve its related business plans to address persistent inequities. Specifically, the Commission should require DTE to increase resources to address reliability and customer service in underserved communities; to fund third-party, independent studies of how DTE’s business model impacts low-income ratepayers and ratepayers of color; to assess properly the cost-effectiveness of solar and community solar; and to develop policies that promote access to DTE’s DG programs for low-income ratepayers, among other actions.

STATEMENT OF FACTS

Soulardarity is a Highland Park, Michigan-based nonprofit that promotes energy democracy and environmental justice in low-income communities and communities of color throughout Michigan. In coalition with other Michigan-based and national organizations, Soulardarity advocates for expeditiously transitioning to 100 percent clean energy in Michigan

⁷ MCL 460.557.

while also strengthening local economies, particularly in low-income communities and communities of color.

Members of these communities have historically borne the heaviest public health burdens of DTE's fossil-fuel-based power generation and endure higher home energy burdens, meaning that they spend a greater percentage of their household income on their electricity bills than those in other communities.⁸ In the Detroit area, there are 2,402 asthma attacks and 1,751 lost school days per year due to natural gas-caused ozone pollution, putting the area in the top ten metropolitan areas in the United States for African-American health impacts attributable to this source of emissions.⁹ African-American communities' higher poverty rates—which are exacerbated by higher home energy burdens—and lower rate of health insurance coverage make them less equipped to address these health impacts.¹⁰ These same communities, which lack the disposable income to handle emergencies, medical care, and backup supplies, are more vulnerable to safety and other risks after storm events and blackouts. They also suffer more of the adverse effects of fossil-fuel generation and climate change, such as the health impacts of extreme temperatures and co-pollutants emitted from coal and gas combustion, as well as damages from intense precipitation events.¹¹ For those who have the least resources to commit to

⁸ Ex. SOU-5a (Fact Sheet); Ex. SOU-5b at 3, 6, 18 (Michigan County Breakdown).

⁹ NAACP, *Fumes Across the Fence-Line*, Ex. SOU-3 at 17, Table 2. Michigan (40%), in addition to Louisiana and Tennessee, also have the highest percent of African-American residents living in oil refinery counties. This highlights the cumulative effects communities of color suffer. *See id.* at 24, Table 4. Generally, African Americans are “exposed to 38 percent more polluted air than Caucasian Americans, and they are 75 percent more likely to live in fence-line communities,” which are sited next to a facility and directly affected by its operation (including noise, odor, traffic, and chemical emissions). *See id.* at 8.

¹⁰ *Id.* at SOU-3 at 10.

¹¹ Intergovernmental Panel on Climate Change (IPCC), *Global Warming of 1.5° C*, Ex. SOU-4 at 9–10 (“IPCC Report”). *See also* “For the Poor, Historic 2014 Floods Still a Toxic Nightmare,” Ex. SOU-2 at 1–3.

climate adaptation, lower economic growth and the rising costs of health care, water, and food will exacerbate their vulnerability and poverty.¹²

These are systemic inequities that harm low-income communities and communities of color in Michigan and around the country; that DTE's current proposals exacerbate or ignore these broad problems is manifest in various specific areas.

A. Low-Income Communities and Communities of Color Living in and Near Detroit Face Unique Safety and Reliability Problems

While safety and reliability concerns are significant for all utility customers, low-income communities and communities of color face particularly acute safety risks from unreliable electricity transmission. Reliability failures can result in injuries or fatalities, and these customers experience disproportionately heightened costs due to outages—they may not have the financial means to adjust their activities or plans to address conditions created by the outage and may not be able to afford backup or alternative electricity sources.¹³

Detroit and its close suburbs also face unique safety and reliability challenges that require substantial investment to prevent lasting outages and downed wires and to respond promptly to storm events. Reliability problems are acute within areas served by DTE's outdated 4.8 kV infrastructure,¹⁴ which also exhibit accessibility problems due to the rear-lot location of wires and unmaintained alleyways, the substantially higher tree density (which is correlated with more

¹² IPCC Report, Ex. SOU-4 at 12–13.

¹³ NAACP, *Lights Out in the Cold: Reforming Utility Shut-Off Policies as if Human Rights Matter*, Ex. SOU-19.

¹⁴ The old 4.8 kV system also exists in pockets elsewhere around Michigan. DTE Witness Marco Bruzzano mentioned that “the 4.8 system ... is quite prevalent in the Thumb area and the more rural areas.” Bruzzano Cross, 5 TR 967. Mr. Bruzzano later noted that there is no current plan to address the 4.8 kV infrastructure in the Thumb area. Bruzzano Cross, 5 TR 983.

outages and downed wires), greater urban density, and increasingly destructive weather.¹⁵ DTE is one of the last utilities in the nation that still relies on an antiquated 4.8 kV distribution system.¹⁶

The Commission Staff Report from Case No. U-20169 highlights the life-threatening safety risks associated with the 4.8 kV system and downed wires.¹⁷ Of the 20 incidents reported from June 2013 to June 2018 leading to serious injury or fatality, 14 of those incidents occurred within the 4.8 kV part of the system, 13 of those 14 incidents were fatal, and eight of those incidents occurred in Detroit.¹⁸ Eight of the 20 incidents were related to downed wires; all eight downed-wire incidents occurred within the 4.8 kV system, five of which were in Detroit. Overall, every one of the eight incidents in Detroit resulted in a fatality.¹⁹ This high percentage stands in contrast with the rest of the distribution system, in which only two of six events were fatal.²⁰ While the 4.8 kV system comprises less than one third of the circuit miles of DTE's entire system, it was associated with 70 percent of the incidents including fatalities or serious injuries.²¹

¹⁵ Bruzzano Rebuttal at 85; Bruzzano Cross, 5 TR 950–52, 966. Many of these issues are detailed in the Commission Staff Report in the U-20169 proceeding. *See* SOU-13, the Commission's Staff Report from Case No. U-20169, dated August 10, 2018. ("Commission Staff Report").

¹⁶ Bruzzano Cross at 981.

¹⁷ *See* Commission Staff Report, Ex. SOU-13.

¹⁸ *Id.* at 7–8.

¹⁹ *Id.*

²⁰ *Id.* at 8.

²¹ Bruzzano Direct, Ex. A-23, Schedule 5 at 152.

B. DTE's Proposed Rate Increases Are Inequitable, and Low-Income Community Needs Are Not Assessed Systematically

DTE's proposed rate structure is inequitable. First, residential customers would incur a 9.1 percent increase—higher than the 6.7 percent increase for protective, municipal, and traffic light rates, 4.5 percent increase for primary ratepayers, and 4.3 percent increase for secondary ratepayers.²² Second, at a given level of monthly consumption, the rate of increase in rates for low-income consumers is significantly more than it is for other residential consumers.²³ Third, within a given rate schedule, the rates increase the most for those who use the least amount of energy.²⁴ DTE witness Tamara Johnson, who directs low-income programs for the utility, admitted on cross-examination that the percentage increases are “regressive.”²⁵ The cumulative impact of these three problems would hit low-income and people of color ratepayers especially hard.

DTE does not assess low-income community needs systematically. DTE itself tracks only those ratepayers who are at 200 percent of the federal poverty level (“FPL”),²⁶ though 150 percent of the FPL is used as the eligibility level for many of the programs designed to support low-income consumers. DTE does not take steps to identify the actual number of ratepayers eligible for or enrolled in these programs, or where ratepayers who currently participate in these

²² Application, Attachment 2; Johnson Cross, 7 TR 3176.

²³ Compare 9.86% percent increase for 300 kWh monthly use for Residential Service Rate D1 (DTE Ex.A-16, Schedule F4 at 2) to 45.05% percent increase for 300 kWh monthly use for Residential Service Special Low Income Pilot Rate Table D1.6 (DTE Ex. A-16, Schedule F4 at 11).

²⁴ Compare 45.05% percent increase for 300 kWh monthly use to 11.89% percent increase for 1000 kWh monthly use for Residential Service Special Low Income Pilot Rate D1.6 (DTE Ex. A-16, Schedule F4 at 11).

²⁵ Johnson Cross, 7 TR 3176.

²⁶ Johnson Cross, 7 TR 3152–53.

programs reside—facts which DTE has its possession.²⁷ Moreover, low-income ratepayers must take affirmative steps to enroll in a number of different programs.

Low-income ratepayers and ratepayers of color often have multiple, interrelated issues that are complex to resolve—and which DTE recognizes often require calls handled in-house. DTE proposes to invest more in online and mobile digital applications, which offer more self-service options. Many low-income customers lack reliable access to the internet or the necessary technology to connect, so DTE’s focus on online customer service could correlate with worse service for customers requiring human customer service.

C. Localized Solar Generation Provides Significant Benefits to Low-Income Communities and Communities of Color

Community solar, a form of distributed solar power generation, provides environmental, financial, equity, and participatory benefits to low-income communities and communities of color, while also benefiting the grid and DTE’s customer base more broadly. Distributed solar keeps air and water cleaner, compared to traditional energy generation, and promotes grid reliability,²⁸ helping DTE to achieve its renewable energy goals and saving both DTE and its customers costs.

These environmental and social benefits will help offset historic inequities in the energy system that have harmed and continue to harm low-income communities and communities of color. Traditional fossil-fuel energy generation sources have been disproportionately sited near low-income communities and communities of color.²⁹ As described above, these communities

²⁷ *Id.* at 3154–56.

²⁸ See generally Rocky Mountain Institute, *A Review of Solar PV Benefit and Cost Studies*, Ex. SOU-12.

²⁹ NAACP, *Fumes Across the Fence-Line*, Ex. SOU-3 at 8.

have faced health effects from energy production while also having less access to affordable energy. Community solar provides these communities access to their own sources of clean energy and the ability to participate in decision-making about energy generation. Affordable access requires policies and fee structures that eliminate barriers to low-income ratepayers' participation in community solar.

LEGAL STANDARDS

All Commission orders must be “authorized by law” and “supported by competent, material, and substantial evidence on the whole record.”³⁰ By statutory mandate, rates authorized by the Commission must be “just and reasonable.”³¹ In making its case, DTE must prove by a preponderance of the evidence that its proposed rate increases are reasonable and prudent.³²

As part of its rate proposal, DTE proposes its own DG tariff pursuant to the Commission Order in Case No. U-18383.³³ When the Commission authorizes a DG tariff in this proceeding, it will fulfill its statutory mandate under Section 6a(14) of Act 341 to approve an appropriate DG tariff “reflecting equitable cost of service.”³⁴ Act 342 informs the tariff development and approval process mandated by Act 341 and, recognizing that renewable energy is Michigan's future,³⁵ it seeks “to promote the development and use of clean and renewable energy resources

³⁰ Mich. Const. 1963, art. 6, § 28; *In re Application of DTE Energy Company to Increase Rates*, No. 338378, 2018 WL 5305101 (Mich. Ct. App. Oct. 25, 2018).

³¹ MCL 460.557(4); 460.11(1).

³² U-18014, Order Authorizing Utility to Increase its Rates of January 31, 2017 at 8.

³³ The Commission stated in its April 18, 2018 Order that it will “approve a new tariff in each utility's post-June 1, 2018 rate case, which will allow the Commission to consider the unique circumstance of each utility and other applicable factors to determine the final DG tariff to include in each utility's rates.” Further, while the Commission included an Inflow/Outflow Tariff as Exhibit A to its Order, it permitted rate-regulated utilities to file their own “alternative DG tariffs,” which DTE has done in this proceeding.

³⁴ Michigan PA 341 § 6a(14).

³⁵ Michigan PA 342 § 1(3) (2016) (heightening statewide goals for renewable energy consumption by 2025).

and the reduction of energy waste.”³⁶ The Act goes on to list factors that must be prioritized, including but not limited to: (1) diversification of energy resources to reliably meet customers’ needs; (2) promotion of energy security through the use of resources indigenous to Michigan; (3) private investment in renewable energy and energy waste reduction; and (4) coordination with federal regulations to achieve improved air quality and other benefits *to consumers and citizens*.³⁷ The Commission must prioritize the factors articulated by Act 342 in carrying out its mandate to approve a DG tariff for DTE under Act 341.

ARGUMENTS

DTE’s rate proposal is unjust: it perpetuates inequities suffered by its low-income and people of color ratepayers. First, DTE seeks to raise rates for all ratepayers to finance infrastructure investments that will largely benefit ratepayers in economically thriving or improving neighborhoods, excluding low-income and economically struggling communities from the upgrades they need. Second, DTE seeks additional funding for its customer service department, but it does not project allocating those funds in ways that benefit low-income customers: namely, thoughtful organization and tailored implementation of its low-income assistance programs and customer service procedures in a manner that accommodates low-income and other vulnerable customers’ needs. Third, DTE fails to consider fully—let alone quantify accurately—the value of solar generation in its cost-effectiveness calculations, and its proposed Rider 18 for implementing the DG tariff would conflict with Michigan law. To stay

³⁶ Michigan PA 342 § 1(2) (2016).

³⁷ *Id.* (emphasis added).

true to its stated mission to “protect the public”³⁸ and to comply with its statutorily mandated duty to ensure just rates,³⁹ the Commission must reject DTE’s proposals and take a strong stance to protect Michigan’s most vulnerable communities.

A. DTE Does Not Adequately Allocate Its Safety and Reliability Investments to Those Areas Most Impacted by System Failures and Which DTE Has Historically Underserved

The primary reliability programs that DTE intends to fund through its proposed rate increase do not adequately account for the safety and reliability needs of low-income and people of color ratepayers. Though DTE acknowledges that the consequences of reliability problems can be more severe for residents in low-income communities,⁴⁰ DTE does not consider those consequences in its planning and is not sufficiently investing in areas where many low-income and people of color ratepayers live. Instead, DTE plans to focus the benefits from its reliability-oriented spending in areas that are economically rebounding, excluding areas that are economically struggling.

This unjust policy benefits higher-income ratepayers on the backs of low-income ratepayers. First, by focusing reliability benefits in areas that are economically improving, many low-income and people of color ratepayers will shoulder the burden of increased rates but will not receive the important benefits from an updated distribution system. Second, DTE’s spending plans perpetuate the cycle of poverty endured by low-income communities and communities of

³⁸ “The mission of the Michigan Public Service Commission is to protect the public by ensuring safe, reliable, and accessible energy and telecommunications services at reasonable rates for Michigan’s residents.” Available at <https://www.michigan.gov/mpsc/0,4639,7-159--40495--,00.html>.

³⁹ MCL 460.557(4).

⁴⁰ See *Bruzzano Cross*, 5 TR 997 (acknowledging the different effects of streetlight outages on people who wait for buses as opposed to those who do not and of building outages for a person who needs elevators in a high-rise as opposed to a healthy person living in a one-story building).

color. Struggling low-income areas with the same aging infrastructure as growing areas will not receive reliability improvements because they do not currently demonstrate economic growth. However, without improvements to energy infrastructure, low-income communities and communities of color cannot effectively exit this cycle and transition to become the “rebound areas” that DTE deems worthy of upgrades. DTE’s unjust proposal dedicates more resources to precisely those areas that already have resources. Instead, DTE should target its reliability spending in ways that address the inequities it has created and perpetuated thus far.

1. DTE Spending Plans Exclude Communities Most Vulnerable to the Negative Impacts of Reliability Failures

While DTE is implementing various programs to alleviate the problems associated with Detroit’s aging infrastructure,⁴¹ its programs fall short of ensuring reliability and safety for DTE’s most vulnerable low-income and people of color ratepayers. Greater Detroit and other low-income communities in Michigan are served by the antiquated 4.8 kV distribution system, much of which is at the end of its useful life.⁴² The technologically outdated 4.8 kV system experiences a higher failure rate, increases the risk of long-duration outages, can lead to high reactive maintenance costs, and contributes to more dangerous service risks for ratepayers and DTE employees alike.⁴³ In response to these problems, DTE seeks to implement a set of strategies within the areas currently served by its 4.8 kV system, including the 13.2 kV conversion plan, the 4.8 kV Hardening program, and the City of Detroit Infrastructure Program

⁴¹ For a comprehensive discussion of DTE’s safety and reliability programs, see generally Bruzzano Direct.

⁴² See Bruzzano Cross, 5 TR 977. See also Bruzzano Direct at 37–39.

⁴³ Bruzzano Cross, 5 TR 977. As mentioned above, most utilities nationwide have already switched away from the 4.8 kV distribution system due to its obsolescence. See Bruzzano Cross, 5 TR 981.

(the “CODI” program). Unfortunately, these programs will not help many of the areas home to low-income and people of color ratepayers, meaning those ratepayers will remain susceptible to the quantifiably higher risks caused by the obsolete 4.8 kV system. As such, the Commission should require changes to DTE’s inequitable distribution plan for the benefits that will be delivered by the 13.2 kV conversion plan, the 4.8 kV Hardening program, and the CODI program to ensure that those programs also address the neglected needs of DTE’s low-income ratepayers.

The 13.2 kV conversion plan, which will replace portions of the 4.8 kV system with a modern 13.2 kV system, is currently projected to yield the highest improvements in reliability,⁴⁴ but that program will be implemented only in economically rebounding areas or where DTE finds it will create cost savings for the utility. According to DTE witness Marco Bruzzano, DTE will “only convert[] systems when required to serve new load [such as building construction] or when poor reliability drives very high maintenance costs, making conversions economically advantageous for customers.”⁴⁵ Where it is not related to new load demand, DTE’s policy for targeting conversion is purely cost-based; as Mr. Bruzzano explained, DTE uses the phrase “economically advantageous for customers” to refer to situations where DTE’s maintenance costs are greater than DTE’s projected costs of conversion.⁴⁶ DTE does not consider reliability benefits for ratepayers served by converted infrastructure when it determines what is “advantageous for customers.” Where DTE has determined that the cost of conversion is more expensive than continuing to keep dangerously outdated equipment in place, non-converted

⁴⁴ Bruzzano Direct at 39, Table 12.

⁴⁵ Bruzzano Direct at 41–42.

⁴⁶ Bruzzano Cross, 5 TR 985.

infrastructure is set to receive inferior reliability benefits from the Hardening program or receive no focused 4.8 kV system investments at all.⁴⁷

Indeed, although it is technically possible to implement some of the ancillary benefits from conversion in a part of the system that is not actually converted, DTE does not plan to offer these benefits in areas where many low-income and people of color ratepayers reside. By virtue of being considered for conversion, an area is evaluated for other reliability improvements.⁴⁸ For example, conversion may require “relocation of overhead infrastructure from rear lot to front lot, extension of overhead primary wires and removal of overhead secondary wires, and conversion of overhead to underground services.”⁴⁹ While these types of reliability improvements could be executed without converting the system, DTE appears to consider these improvements only for those economically growing areas it treats as part of its larger conversion program.⁵⁰

While the 4.8 kV Hardening program will delay the need for full conversion to the 13.2 kV system in those areas where it is implemented, it will deliver only incremental and inferior reliability improvements for those served by hardened 4.8 kV infrastructure. For example, the average restoration time for an outage on the 4.8 kV system is 70 percent longer than on the 13.2 kV system.⁵¹ Additionally, DTE projected a 65 percent decrease in downed-wire incidents as a result of 4.8kV hardening, as opposed to the 90 percent decrease from 13.2kV conversion.⁵² DTE also projected a 60 percent reduction in trouble events from hardening, as opposed to an 85

⁴⁷ *Id.* at 983.

⁴⁸ *Id.* at 994–95.

⁴⁹ *Id.* at 994.

⁵⁰ *Id.* at 996.

⁵¹ Bruzzano Direct, Ex. A-23, Schedule 5 at 153.

⁵² Bruzzano Direct at 39, Table 12.

percent reduction from 13.2kV conversion.⁵³ Ongoing system-wide technological upgrades, deploying infrastructure for modern functions like remote control and monitoring, are designed to work with the 13.2 kV system and will not be fully compatible with the 4.8 kV system.⁵⁴

Worse still, though some areas of the 4.8 kV system that are not converted to 13.2 kV will be “hardened,” a significant portion of DTE’s ratepayers served by the 4.8 kV system will receive no reliability spending under these programs at all.⁵⁵ The Hardening Program is projected to address only about 50 percent of the 4.8 kV infrastructure in Detroit, and DTE estimates that only approximately 50 percent of the remaining 4.8 kV infrastructure will be converted.⁵⁶ This means that even under DTE’s generalized estimates, at least approximately 25 percent of the 4.8 kV system will receive neither conversion nor hardening. As of this proceeding, DTE has no plans to address the entirety of the 4.8 kV system.⁵⁷ Moreover, DTE’s planning estimates for the Hardening program lay out only a handful of projects over the next three years.⁵⁸ Otherwise, DTE’s projections of how much of the system will receive hardening or conversion are vague and aspirational.⁵⁹ The limited scope of the program will preclude many low-income ratepayers from realizing even these marginal benefits and will leave them vulnerable to the outdated distribution system, with no concrete plans for improvement.

⁵³ *Id.*

⁵⁴ Bruzzano Cross, 5 TR 967.

⁵⁵ Along with the non-growth areas in Detroit, a swath of 4.8 kV infrastructure in more rural areas, such as the Thumb, will neither be converted nor hardened, leaving ratepayers there susceptible to safety risks from reliability failures. *See* Bruzzano Cross, 5 TR 983.

⁵⁶ Bruzzano Direct at 40.

⁵⁷ Bruzzano Cross, 5 TR 983.

⁵⁸ Bruzzano Direct at 41, Table 13.

⁵⁹ Bruzzano Cross, 5 TR 982.

DTE's CODI program offers another example of DTE's failure to deliver the benefits of reliability-focused spending to all low-income ratepayers. The stated objective of the CODI program is to address greater Detroit's aging infrastructure, which is "experiencing higher failure rates, increasing the risk of long-duration outages that can lead to high reactive maintenance costs."⁶⁰ The CODI program will improve customer safety, risk, and reliability in those areas covered by the program.⁶¹ However, the CODI program is also driven by economic rebound, load growth, and economic development.⁶² As noted above, this method of prioritization unfairly excludes low-income and people of color ratepayers from receiving the benefits of conversion and other infrastructure enhancements. As with conversion and much of the infrastructure hardening, the benefits from the CODI improvements will reach only a limited number of ratepayers and, by design, will not be delivered to ratepayers in economically struggling low-income areas.

Accordingly, DTE should be converting to 13.2 kV more aggressively and based on more equitable selection criteria to ensure the safety of all of its ratepayers. Even if its conversion capacity is limited, DTE should harden its 4.8 kV infrastructure across its entire service area or commit to providing the ancillary benefits that accompany consideration for conversion. This way, even if a service area does not receive the full benefits of conversion, it can still receive reliability improvements, such as relocation of back-lot lines or beneficial tree-trimming adjustments. The Commission should not approve DTE's requested rate increase without ensuring that DTE's reliability-focused spending will comprehensively and fairly cover its 4.8kV

⁶⁰ Bruzzano Direct at 55.

⁶¹ Bruzzano Direct, Ex. A-23, Schedule M3 at 15.

⁶² Bruzzano Cross, 5 TR 976.

service areas. In DTE's prioritization of reliability spending, the Commission should require DTE to consider the aggravated risk impacts to low-income ratepayers, instead of only considering whether an area is supported by economic growth.

2. DTE's Spending Plans Perpetuate Cycles of Poverty in Low-Income Communities and Communities of Color that It Has Historically Underserved

DTE acknowledges that reliability problems affect low-income communities and communities of color more than other areas,⁶³ but it does not account for this in its spending plans. According to Mr. Bruzzano, "[DTE] does tend to invest more of its reliability-focused spending in areas where it is more difficult to maintain reliability."⁶⁴ DTE does not design its reliability spending by evaluating the actual effects of reliability failures based on risk indicators such as geography, socioeconomics, or demographics.⁶⁵ Mr. Bruzzano agreed that, as compared to ratepayers in more affluent areas, ratepayers in low-income communities and communities of color suffer greater safety and other harms when there are power outages, such as mobility-impaired apartment residents whose health and safety depends on reliable elevator service or ratepayers in urban areas who use public transportation and rely on streetlights to maintain public safety.⁶⁶ Yet, DTE does not in any respect consider these disparate impacts in its reliability planning. Instead, reliability spending is planned according to the economics and engineering of specific hardware assets.⁶⁷

⁶³ Bruzzano Cross, 5 TR 996–97.

⁶⁴ Bruzzano Rebuttal at 85.

⁶⁵ NAACP, *Lights Out in the Cold*, Ex. SOU-19 at 9.

⁶⁶ Bruzzano Cross, 5 TR 997.

⁶⁷ *Id.* at 958–59.

This asset-based approach does not do enough to protect low-income and people of color ratepayers. While it may be appropriate to spend money to replace aging equipment that requires relatively high costs to continue operating, those costs are not the only factor DTE should be considering when it determines whether or not to address dangerously outdated infrastructure. Not only does this spending policy ignore the realities faced by low-income and some people of color ratepayers, it perpetuates the cycle of poverty in low-income communities and some communities of color. Because many of the programs focus on serving “new load,” an area is underserved by the utility until it shows economic growth, but the under-service itself dampens the prospects for growth and results in these areas not even being considered for future reliability spending.

Furthermore, DTE has a history of underserving Detroit and should rectify this history when prioritizing its reliability spending.⁶⁸ To illustrate, the Commission Staff Report in U-20169 concluded that DTE has not allotted a proportionate level of tree-trimming resources to Detroit.⁶⁹ The Staff Report further concluded that DTE failed to comply with downed-wire requirements by failing to respond promptly to certain requests for relief in Detroit, as compared to other metropolitan and non-metropolitan areas.⁷⁰ More generally, the low-income communities and communities of color being underserved now have been underserved for decades and have borne the brunt of negative impacts from the fossil-fuel energy system.⁷¹ DTE can and should rectify this injustice by prioritizing the needs of those most affected.

⁶⁸ See Commission Staff Report, Ex. SOU-13.

⁶⁹ *Id.* at 11.

⁷⁰ *Id.* at 16 (citing failure to abide by R. 460.723 “Wire down relief requests”).

⁷¹ Koeppel Direct at 11; “For the Poor, Historic Toxic Floods Still a Toxic Nightmare,” Ex. SOU-2.

Consequently, DTE’s reliability-focused spending should account for the more severe impact of reliability failures on low-income communities and communities of color, its role in perpetuating stagnant growth in these communities, and its history of underserving these communities, especially in light of the disproportionate financial impact of the rate increase on low-income ratepayers, as discussed further in the next section. The Commission should direct DTE to design and implement specific policies to prioritize safety responses in low-income communities and communities of color and to expand reliability programs to cover all low-income and people of color ratepayers.

B. For Low-Income Ratepayers, Financial Assistance Programs and DTE’s Customer Service Remain Inadequate, Deepening the Inequity of the Rate Increase

The shortcomings of DTE’s low-income assistance programs and its proposed customer service redesign underscore that the rate increase is inequitable. The patchwork way in which DTE approaches low-income considerations—including understanding where the customers are located and what their financial assistance or customer service needs are—produces knowledge gaps, inefficiencies, and missed opportunities. DTE plans to pour resources into Customer 360, which focuses on customer self-service and digital applications, but that effort will not sufficiently improve the service experienced by low-income and people of color ratepayers.

1. DTE Lacks a Comprehensive Approach to Addressing Low-Income Concerns

DTE administers a number of programs that provide assistance to low-income consumers, but it does not assess participation in those programs comprehensively. Choosing not to do so hinders opportunities for more targeted assistance efforts and better long-term planning. It is telling that DTE has allocated responsibility for the company’s low-income programs to the

Revenue Management and Protection⁷² (RM&P) division, strongly suggesting that DTE views low-income customers primarily from the perspective of DTE's ability to collect on the money low-income customers owe to the company.⁷³ The fact that "RM&P allocates costs based on the number of accounts in arrears"⁷⁴ further demonstrates that the orientation is collecting on accounts, not providing assistance to those ratepayers in need.

DTE ratepayers who are at 150 percent of the federal poverty level ("FPL") or below qualify for several programs that help with their electric and gas bills, including the Home Heating Credit ("HHC"), Residential Income Assistance Credit, State Emergency Relief Program ("SER"), Heat and Warmth Fund ("THAW"), and through the Salvation Army.⁷⁵ Eligibility or participation in many of the above-mentioned programs are also the basis for credits that DTE directly offers its low-income ratepayers. For example, the "Residential Income Assistance" credit of \$9.00 is available to electric-only customers who receive SER or HCC assistance.⁷⁶ DTE provides a flat \$40 per month Low Income Assistance ("LIA") credit to ratepayers at 150 percent of the FPL or below.⁷⁷ While DTE offers a number of programs, Soulardarity has concerns about the burden that DTE shifts to its low-income ratepayers to navigate these various forms of assistance, each with their own cut-offs and requirements.

DTE should do more to help more customers. For example, DTE has proposed increasing the number of RIA participants from approximately 35,000 to 70,000.⁷⁸ However, at least

⁷² Johnson Cross, 7 TR 3146.

⁷³ Johnson Direct at 2.

⁷⁴ *Id.* at 6.

⁷⁵ Johnson Cross, 7 TR 3153–56.

⁷⁶ *Id.* at 3158, 3160.

⁷⁷ Johnson Cross, 7 TR 3165–66.

⁷⁸ Johnson Direct at 27.

164,000 ratepayers (“business partners”) have income levels at the 200 percent of the federal poverty level or below,⁷⁹ which strongly suggests that there are thousands more who could and should benefit from the kind of assistance offered by the RIA.

The Low Income Self-Sufficiency Plan (“LSP”) presents another missed opportunity for integration and improved management of low-income assistance programs. Customers who are roughly between 110 percent and 150 percent of the FPL can participate in the program and pay a maximum monthly electric and gas bill of about \$120 to \$140.⁸⁰ And customers at 150 percent of the FPL or below who participate in LSP pay a maximum monthly bill of about \$90.⁸¹ However, participation is strictly restricted to those ratepayers whose households do not exceed the average consumption for all customers.⁸² Soulardarity is specifically concerned about those low-income ratepayers who may have higher-than-average consumption. For example, families or those who reside in older, less energy-efficient housing must suddenly pay a much higher bill. Soulardarity is also concerned that a federal policy change has “dramatically reduced” LSP funding⁸³—a sudden change that harms at least 44,000 low-income ratepayers who could qualify this year.⁸⁴

While DTE knows which customers are enrolled in each program and, for the “vast majority” of them, knows their zip codes,⁸⁵ it does not conduct any analysis to determine how

⁷⁹ *Id.* at 26. Johnson Cross, 7 TR 3151. *See also* DTE Response to MEC, NRDC, and SC Discovery Request-2.11 (T.D. Johnson). Ex. SOU-29 at 1.

⁸⁰ Johnson Cross, 7 TR 3163.

⁸¹ *Id.*

⁸² The LSP is funded through the Michigan Energy Assistance Program, which requires that the ratepayer’s consumption is within a reasonable range. *See* Johnson Cross, 7 TR 3160-62.

⁸³ Johnson Direct at 24.

⁸⁴ Johnson Cross, 7 TR 3164.

⁸⁵ *Id.* at 3154–56.

many customers receive assistance from one or more of these programs or which areas contain the greatest number (or proportion) of such customers so that it can work comprehensively to meet the energy needs of these customers.⁸⁶ For example, despite knowing which ratepayers receive RIA and LIA, DTE maintains that it does not track its low-income ratepayers, except for those at 200 percent of the FPL⁸⁷—a metric above the threshold for many internal and external programs. For example, DTE does not track LSP participants as low-income, and it makes no attempts to identify those ratepayers who are at 110 percent of the FPL or below—and thus very likely in need of financial assistance—but whose bill exceeds that of the average customer. Even assuming that a customer consumes an average amount and could participate in both LIA and LSP, a ratepayer from 110 percent to 150 percent of the FPL would still have a bill of about \$80 to \$100 per month and one at or below 110 percent of the FPL would still have a bill of about \$50 per month. These are sizable expenditures for families near or below the poverty line—but this relevant consideration is apparent only to someone evaluating the problem from the perspective of the low-income ratepayer.

These knowledge gaps make it impossible to determine how many low-income ratepayers are receiving assistance and whether that assistance is adequate. This in turn leads to a service gap, not only in terms of maintaining connectivity, but also in terms of achieving broader goals relating to safety, customer service, and renewable energy that are specific to low-income communities. These gaps persist even though DTE is well aware that “uncollectible expenses” (unpaid bills) “are driven by economic challenges throughout the service territory, weather

⁸⁶ *Id.* at 3172.

⁸⁷ *Id.* at 3152.

conditions, and changes in federal funding.”⁸⁸ For example, requesting to double the returned (“bounced”) check charge (to \$28.66 from \$15.00) in order to pay third-party vendors to recover insufficient fund payments⁸⁹ essentially taxes already struggling ratepayers and completely ignores these root causes. A recognition of the larger problem should lead to a comprehensive solution.

Soulardarity’s purpose in highlighting these gaps is not only to request a holistic approach to low-income issues, but also to stress the inequity of the regressive rate increase on residential ratepayers. The disproportional rate increase DTE now requests—associated with policies and plans that do not deliver long-term environmental, social, and financial benefits—will have harsh effects on low-income communities already inadequately served by a patchwork of disconnected programs.⁹⁰ DTE and its customers would benefit from gathering more information from low-income consumers and communities of color and better assessing their needs. Consistent with its previously articulated position regarding community engagement in the Integrated Resource Planning process,⁹¹ Soulardarity thinks that the New York Public Service Commission’s specific proceeding soliciting input from low-income ratepayers and

⁸⁸ Johnson Direct at 18.

⁸⁹ *Id.* at 20, 22.

⁹⁰ We acknowledge that DTE also offers energy efficiency programs. In her cross-examination, Ms. Johnson noted that ratepayers who are at 110% of the FPL or below but who do not qualify for LSP due to above-average consumption are sometimes enrolled in energy-efficiency programs to help them become eligible. *See* Johnson Cross, 7 TR 3161. We note that marginal and incremental energy efficiency gains cannot substitute for the substantial benefits that investing in distributed solar and community solar would provide long-term.

⁹¹ Ex. SOU-9 (Comments on MPSC Case No. U-18418 regarding Stakeholder Engagement in the Integrated Resource Planning Process, Oct. 20, 2017).

working to address their needs provides a holistic model that the Commission can and should adopt in Michigan.⁹²

2. DTE’s Focus on Self-Service Will Not Sufficiently Improve Customer Service Satisfaction for Low-Income Ratepayers

Low-income ratepayers face urgent and varied customer service needs, such as financial assistance to avoid a shutoff. They also have the fewest resources to navigate customer service protocols and to manage issues like incorrect overcharges or erroneous shutoffs.⁹³ DTE plans to invest a significant amount on Customer 360,⁹⁴ a new customer interface, including for billing and customer service. Because the proposed changes will not necessarily improve customer service for low-income ratepayers—and may actually further degrade the customer service experiences of these ratepayers—low-income customers will pay for Customer 360 implementation without receiving proportional benefits from it. Indeed, a customer interface that does not increase access and engagement will not be a good use of any customer’s payments.

Soulardarity generally supports modernization of utility-customer interactions, but it is concerned that Customer 360 is not designed with the specific needs of DTE’s low-income customers in mind. DTE is focusing on “*self-service* channels such as the Internet and mobile applications . . . includ[ing] electronic billing, payment, outage reporting & status updates.”⁹⁵ These applications are costly to build—and will be paid for by customers—but are ultimately

⁹² See Koeppel Direct at 14–15 (citing “Order Adopting Low Income Program Modifications and Directing Utility Filings,” an order from the New York Public Service Commission in Case No. 14-M-0565).

⁹³ See generally NAACP, *Lights Out in the Cold*, Ex. SOU-19.

⁹⁴ For example, training on automated notifications will cost \$600,000, and implementation will cost \$1 million a year, not including developing the notification systems. Johnson Direct at 30. And overall Customer 360 post-implementation will cost \$11 million. *Id.* at 11, 13.

⁹⁵ Johnson Direct at 5 (emphasis added).

designed to lower DTE’s customer costs drastically by making customers *self-sufficient*. In her rebuttal testimony, Ms. Johnson, who is a member of DTE’s Customer Service Leadership⁹⁶ in addition to heading its low-income programs, asserts that DTE is removing barriers to access by “adding to a customer’s ability to interact with the Customer Service department, and as a result, increas[ing] customer satisfaction.”⁹⁷ However, this claim is completely unsupported by any specific assessment of or design for the needs of low-income ratepayers. The measure of Customer 360’s success must be whether it improves the access and engagement of those most impacted by customer service gaps.

Soulardarity is concerned about this transition toward more digital interfacing, especially because DTE is aware of spikes in call volumes when a significant issue affects many customers. Implementation of Customer 360 led to increased calls as a result of widespread billing issues and shutoffs,⁹⁸ and DTE expects the new rate structure to result in approximately 500,000 additional calls.⁹⁹ Low-income ratepayers often have complex needs. They may have a billing issue, a weatherization issue, a financial assistance issue, and safety issues—all at the same time. Johnson explains that more complex calls are handled internally and are costlier.¹⁰⁰ DTE itself acknowledges that complex issues are difficult to outsource to external vendors—and likely also difficult to adequately address through digital applications. Currently, it is “[e]mployees at office locations [who] help customers understand their bills, resolve customer concerns, direct low

⁹⁶ Johnson Cross, 7 TR 3147.

⁹⁷ Johnson Rebuttal at 7.

⁹⁸ DTE was recently fined \$840,000 and required to conduct audits through 2020. *See* U-20084, Order Approving Settlement Agreement of December 20, 2018.

⁹⁹ Johnson Direct at 14, 28.

¹⁰⁰ *Id.* at 8.

income customers to energy assistance resources.”¹⁰¹ It is not clear that these digital applications will improve low-income assistance or whether they will simply replicate the model of disaggregated programs that individuals need to enroll in individually. A planned expenditure of \$0.6 million on direct-engagement low-income programming pales in comparison to the planned expenditure of \$6.2 million on “system enhancements and process improvements,”¹⁰² especially considering the Detroit region’s economic challenges, weather events, and the federal funding shortfall.

To the extent investments in digital infrastructure create any additional options or benefits, such improvements will be enjoyed only by ratepayers with access to those new resources. Those who cannot afford a computer with internet service or a mobile device with a data plan will have difficulty obtaining help, especially when there is an urgent need for them to do so. These ratepayers may rely on “payment kiosks” at office locations,¹⁰³ which should be maintained as an option. An app will also be inaccessible to ratepayers who are not digitally savvy, including the elderly. If the app’s prompts are exclusively or mostly in English, it will create barriers for non-English-speaking ratepayers.¹⁰⁴ Even for customers who do not face cost and access, technological fluency, or foreign language barriers, the app—unlike a conversation with a customer service representative—will inherently limit customers’ ability to seek assistance for issues that do not precisely fit within its parameters.

¹⁰¹ Johnson Direct at 10 (emphasis added).

¹⁰² *Id.* at 10–11.

¹⁰³ Johnson Direct at 10.

¹⁰⁴ In his direct testimony, Jackson Koeppel describes a DTE meeting on the Integrated Resource Plan that offered translation services but provided English-only outreach materials advertising the meeting and noting that translation services would be available. This is an example of an access gap that should be closed and not carried over into Customer 360. *See* Koeppel Direct at 16.

DTE's rate proposal increases expenditures without sufficiently improving its low-income assistance programs or delivering more effective customer service. With respect to low-income assistance programs, Soulardarity requests that the Commission mandate a comprehensive investigation of the effectiveness and scope of DTE's low-income assistance programs and require an allocation of the increased rates toward improving those assistance programs. The programs are not currently tailored to the needs of individual low-income ratepayers, and DTE's disorganized efforts in this domain weaken its self-evaluative ability and the effectiveness of these programs. Furthermore, increased automation of DTE's customer service apparatus may have the perverse effect of complicating low-income customers' ability to receive prompt and quality customer service and compromising their safety. Accordingly, Soulardarity requests that DTE maintain transparent and accessible customer service practices, including retaining adequate staff for its direct customer service phone line; sending copies of written records to customers when complaints or customer service requests are made; and submitting an annual report to the Commission that includes tracking of customer service response and resolution rates broken down by zip code.

C. DTE Undervalues Solar and Distributed Solar and Inhibits Access to Distributed Solar Generation for Low-Income Ratepayers

1. DTE's "Cost-Effectiveness of Solar" Analysis Underlying its Rate Calculation is Inadequate

DTE places an artificially low value on distributed solar generation by failing to incorporate into its rate analysis many benefits of distributed solar, and DTE incorrectly contends that these considerations are outside the scope of the rate proceeding. Cost-effectiveness of solar is relevant to the rate proceeding, in addition to the Integrated Resource Plan proceeding, for two

primary reasons: 1) it directly informs why this proposed rate increase is not equitable or reasonable, and 2) it is inextricably related to other cost determinations underpinning the unreasonable proposed rates. The policies advanced through DTE's rate proposal improperly foreclose the option of community solar projects for low-income ratepayers, and DTE's policies and rates do not make DG cost-effective and accessible to individual low-income customers.

DTE's analysis does not take full account of the financial and environmental values that distributed solar provides to DTE and to DTE's entire customer base. Distributed solar provides a range of quantifiable financial benefits. Generating power near customers can be more efficient by avoiding central generation costs and the loss of energy in transit.¹⁰⁵ When energy is lost in transmission, more power must be produced at central generation units to meet end-use demand, increasing the financial, environmental, and social costs of such central generation. Direct cost savings to utilities can—and should—be passed onto customers. Moreover, diversifying the location of generation through dispersed generators reduces grid congestion and lowers the risk of large-scale outages,¹⁰⁶ thereby providing value not only to individual utilities and their customers but also to the entire grid.¹⁰⁷ In terms of quantifiable environmental benefits, solar results in reduced criteria air pollutant emissions, as well as less water consumption and pollution.¹⁰⁸ DTE states simply that “the customer owns all environmental attributes assignable

¹⁰⁵ Rocky Mountain Institute, *A Review of Solar PV Benefit & Cost Studies*, Ex. SOU-12 at 14 (“RMI Report”).

¹⁰⁶ *Id.* at 37.

¹⁰⁷ See DTE Response to Soulardarity's First Discovery Request, Ex. SOU-74 at 1, Ex. SOU-78 at 1 (stating that DTE does not incorporate “grid support value of utility scale solar” or “any security value of solar”); Ex. SOU-24 at 1 (stating that DTE has not analyzed the effects that distributed generation will have on grid resiliency and reliability).

¹⁰⁸ RMI Report, Ex. SOU-12 at 39–41.

to their generation through the generated renewable energy credits,” ignoring the fact that renewable energy also has significant environmental benefits across the system.¹⁰⁹

DTE did not consider the equity benefits of distributed solar or community solar on low-income communities and communities of color either. Distributed solar and community solar avoid the environmental and public health costs of fossil fuel-based energy generation—which disproportionately fall on these communities;¹¹⁰ provide reliability in historically underserved areas; and create job growth where the energy is generated.¹¹¹ However, DTE explicitly excluded low-income ratepayers when it conducted customer opinion research on renewable energy—with polling starting at those earning \$55,000 annually¹¹²—and has not specifically sought input from low-income individuals. Nor has DTE analyzed how its policies would influence low-income ratepayers’ demand for renewable energy, including community solar. DTE quickly foreclosed solar and community solar based on cursory presumptions. For example, in its cost calculations, DTE uses the utility-scale cost of solar and outright dismisses community solar, stating in a conclusory manner that it “understands that universal-scale projects which can be optimized for layout, tilt, tracking, and interconnection are more cost effective than small-scale projects.”¹¹³

¹⁰⁹ DTE Response to Soulardarity’s First Discovery Request, Ex. SOU-79 at 1. *See also* Ex. SOU-81 at 1 (stating that “DTE Electric does not analyze the emissions or other environmental costs of its subsidiaries, or other entities it owns”).

¹¹⁰ *See generally* NAACP, *Fumes Across the Fence-Line*, Ex. SOU-3.

¹¹¹ RMI Report, Ex. SOU-12 at 17, 42.

¹¹² DTE Energy, *Renewable Energy Programs Exploration: Final Report* (June 19, 2014), Ex. SOU-59 at 8.

¹¹³ DTE Response to Soulardarity’s First Discovery Request, Ex. SOU-64 at 1.

DTE points to its commitment to “meeting or exceeding the Renewable Portfolio Standard” (REP),¹¹⁴ but that does not address these concerns. First, compliance with the REP will not satisfy DTE’s public pledge to achieve 80% renewable generation by 2050,¹¹⁵ let alone the complete transition away from fossil fuels and broader energy democracy goals for which Soulardarity advocates. Furthermore, the REP treats burning trash as comparable to community solar,¹¹⁶ when the two are very different in their environmental, public health, and energy democracy outcomes. Collapsing DTE’s responsibility into simply satisfying the REP replicates the problems we describe here: community solar has specific, valuable benefits that should be factored into DTE’s long-term plans.

DTE fails to take a holistic look at the environmental and health costs of its total operations. These represent the externalities of DTE’s present and future commitment to fossil fuel-based energy production because they are real costs imposed by DTE’s operations but will be endured by the public and are excluded from DTE’s decision-making. DTE’s overall operations as proposed in this rate-making proceeding, including for example, development and reliance on the Nexus Pipeline,¹¹⁷ will lock in the impacts from decisions DTE and the Commission make today, including the impacts dismissed by DTE as external to this proceeding. Because DTE ignores these costs of its existing generation portfolio, it fails to recognize the

¹¹⁴ DTE Response to Soulardarity’s First Discovery Request, Ex. SOU-80 at 1 (noting also that DTE is “not specifically performing a net jobs and local economic development study between different alternatives”).

¹¹⁵ DTE Corporate Citizenship Report, Ex. SOU-1b at 1.

¹¹⁶ DTE Electric Company, *Renewable Energy Plan Overview, 2016 PA 342 Renewable Energy 2018 Amended Plan*, Case No. U-18232, T.L. Schroeder Exhibit A-1 at 1. See also 2016 PA 342 at § 11(g)(vii) (2016) (listing municipal solid waste, landfill gas produced by municipal solid waste, and fuel that has been manufactured from waste as renewable energy sources).

¹¹⁷ Midwest Energy News, “Michigan Utility’s Gas Plant, Pipeline Plans Pose Conflict of Interest, Critics Say,” Ex. SOU-11.

corresponding benefits delivered by forms of renewable energy that replace this generation without those attendant social costs. We disagree with the suggestion of Commission Staff Member Kevin Krause that externalities, such as the social cost of carbon and other public health costs, cannot be considered absent legislation *mandating* their consideration.¹¹⁸ DTE can and should incorporate the costs of externalities that it imposes on the public into its cost-assessments. DTE holds monopoly power and has a special obligation to act in the interest of the *public*, who suffer from DTE's externalities, not just in the interests of its *shareholders*.

DTE's failure to consider all of the costs of its operations is particularly troubling to Soulardarity and particularly harmful to the low-income communities and communities of color it represents, given the recent IPCC report on Global Warming of 1.5 °C.¹¹⁹ The report concluded that our current carbon emissions trajectory, including further long-term investment in conventional energy generation, will create 1.5 °C of warming as soon as 2030.¹²⁰ That means that, within 12 years, "rapid and far-reaching transitions in energy" are necessary to avoid the severe climate risks of warming beyond 1.5 °C.¹²¹ Climate change mitigation and adaptation are especially important to Soulardarity because the communities it represents will be impacted the soonest and most severely by climate disruptions and because these communities have the most limited resources to adapt to a changed climate. Fully accounting for the environmental and health-related costs of its existing operations will demonstrate that it is prudent for DTE to increase its investment in distributed solar generally and community solar more specifically.

¹¹⁸ Krause Rebuttal at 1.

¹¹⁹ IPCC Report, Ex. SOU-4.

¹²⁰ *Id.* at 5.

¹²¹ *Id.* at 5, 12, 22.

2. DTE’s Rate Structure Does Not Promote DG or Community Solar Accessibility and the Participation of Low-Income Customers

DTE’s proposed DG rider does not include reasonable and prudent measures to promote DG or community solar accessibility for low-income customers, and it does not prioritize the factors established in Act 342 that the Commission must promote. As discussed above, low-income households in Michigan have a significantly higher home-energy burdens than wealthier households.¹²² This makes DG and community solar particularly valuable tools to help lift individual customers and communities out of energy poverty and reduce the disparity between low-income and higher-income households. The Commission has an interest—indeed, a statutorily-mandated interest—in Michigan citizens’ access to DG programs, and approving a DG rider that makes participation in DG programs costlier and more difficult for consumers contravenes that interest.

a. DTE’s Proposed “Premises Requirement” Is Inconsistent with the Statute and Unnecessarily Inhibits Low-Income DG Participation

DTE’s proposed DG rider contains the requirement that eligible generators “must be located on the customer’s premises, serving only the customer’s premises, and must be intended primarily to offset a portion or all of the customer’s requirement for electricity.”¹²³ For ease of reference, we refer to this requirement as the “premises requirement.” DTE’s proposed DG tariff is basically written for—and only for—a customer who resides in an owner-occupied, single-family home. The premises requirement will likely function to exclude many low-income ratepayers from participating in the DG program without any statutory requirement to do so.

¹²² Ex. SOU-5a (Fact Sheet); Ex. SOU-5b at 3, 6, 18 (Michigan County Breakdown).

¹²³ Application, Rider 18, D-114.00.

While the premises requirement that DTE proposes is copied directly from the sample Inflow/Outflow Tariff provided by the Commission in Case No. U-18383,¹²⁴ the Commission should reject it because there is no statutory basis for such a requirement in Acts 341 or 342, the Michigan laws superseding the 2008 Clean and Renewable Energy and Energy Waste Reduction Act. While Act 342 “limit[s] each customer to generation capacity designed to meet up to 100% of the customer’s electricity consumption for the previous 12 months,”¹²⁵ the Act neither restricts the location of the eligible electric generator nor mentions “premises” at all.

The Commission should also reject the premises requirement as currently framed because it is ambiguous. For example, it is not clear (a) if a renter can participate in the DG program if he or she has responsibility for the electricity bill for the premises, or (b) if an owner or tenant-occupant of one unit in a multi-unit building can participate in the DG program if he or she installs generation equipment on the roof of the building which he or she does not own exclusively. Soulardarity has concerns that DTE will implement the premises requirement in a way that makes it more difficult for those who rent or who live in multi-unit facilities to participate in DG programs. Act 342 itself does not have the kinds of ambiguities or limitations that the premises requirement creates.

Finally, the Commission should reject the premises requirement because its effect is to frustrate the development of DG and community solar initiatives in low-income communities and beyond. Community solar could be a particularly effective tool to combat energy poverty in

¹²⁴ *Id.* Note that the order is currently pending review and is not in effect. Even before Consumers Energy filed its request for review, the Commission declined to approve a single DG tariff in its order in U-18383, electing instead to approve DG tariffs in each individual rate case, like the case at hand, filed after June 1, 2018.

¹²⁵ Michigan 2016 Public Act 342 § 173(2).

Detroit. Community solar provides an avenue for low-income customers to participate in localized solar generation without having to shoulder individually the entire burden of infrastructure costs, maintenance, fees, and system management for a distributed solar generation system.¹²⁶ For those who are unable to place a solar system on their premises, the only way they may be able to reap the benefits of DG may be through participating in a community solar program. However, the premises requirement may preclude customers from receiving power from a shared generation system, even if that shared generation system is located on the same plot as the customer, e.g. a single solar system on top of a multi-unit building serving multiple units.

Furthermore, all low-income people—whether homeowners or renters—face heightened risks of displacement. With community solar, a renter could feasibly move within the same general neighborhood and remain a member of the same community solar program without needing to start from scratch with every move. Even switching from one community solar program to another in a new neighborhood would be significantly less complex and costly than the DG program that DTE proposes. With the premises requirement in place, that customer is limited to accessing DG through a system located only on his or her premises, and he or she would need to re-initiate participation in the DG program, to install or to move and reinstall generation equipment, and to pay additional interconnection fees with each move.

¹²⁶ Moreover, these larger systems may be more economically efficient than installing individual systems on individual properties. Would it not make more economic sense to have a single solar array on an apartment building and allow individual apartment dwellers to purchase a portion of the solar array's power, rather than having them install individual systems, if they are even allowed to do that under the premises requirement?

By including the premises requirement in its proposed DG rider, DTE further frustrates access to DG and localized solar generation for its low-income customers. At best, the premises requirement discourages participation of low-income communities in the DG program; at worst, the premises requirement may effectively prevent it.

Due to the absence of statutory foundation, ambiguity, and impacts on low-income populations, the Commission should require DTE to remove the premises requirement from its DG rider. Alternatively, and at the very least, the Commission should require that DTE implement the premises requirement in a manner that avoids inhibiting the development of DG in low-income communities.

b. DTE's Proposed DG Rider Impedes Low-Income Customers' Participation by Imposing Unreasonable Financial Burdens and Providing No Offsetting Income-Based Assistance

DTE's proposed DG Rider imposes a number of additional requirements and costs. It states that customers' eligibility is "conditioned on the full satisfaction of any payment term or condition imposed on the customer by pre-existing contracts or tariffs with the Company, including those imposed by participation in the Distributed Generation Program, or those required by [interconnection]."¹²⁷ The rider requires that customers submit an application fee of \$50 with their application to the program, and only waives the application fee for customers transitioning from the Net Metering Program.¹²⁸ DTE's proposed application fee is the maximum

¹²⁷ Application, Ex. A-16, Schedule F10, Original Sheet D-113.00; Dennis Direct at 19–23.

¹²⁸ Application, Ex. A-16, Schedule F10, Original Sheet D-113.00.

authorized by the statute, which does not require any application fee at all.¹²⁹ Interconnection costs are also the responsibility of the customer, and while the Commission is addressing interconnection issues outside of this proceeding, their effect is still relevant, particularly for low-income customers.¹³⁰ Additionally, on a monthly basis, DTE's proposed rider would charge DG customers for access to the distribution system (the System Access Contribution, or "SAC"),¹³¹ creating a financial barrier for all DG participants that will hit low-income customers the hardest. DTE's proposed monthly SAC means that even if a customer generates enough power to offset his or her inflow, he or she will still have to pay a monthly fee that non-participants do not.

We agree with the arguments made by the witnesses of Michigan Environmental Council ("MEC"), Natural Resources Defense Council ("NRDC"), Sierra Club and Environmental Law and Policy Center ("ELPC") about the problems of the SAC. As MEC/NRDC/Sierra Club Witness Douglas Jester explained, the SAC is founded on an erroneous idea that DTE is "entitled to the revenue it will otherwise forgo when a customer adopts distributed generation."¹³² Similarly, Witness Karl Rabago aptly described the SAC as "a charge on DG customers for the energy not used by a hypothetical customer with a hypothetical DG facility and a hypothetical pattern of electricity usage, which is then allocated based on system capacity rather than energy

¹²⁹ MCL 460.1175 states that "An electric utility or alternative electric supplier may charge a fee not to exceed \$50.00 to process an application to participate in the distributed generation program."

¹³⁰ Application, Ex. A-16, Schedule F10, Original Sheet D-115.00.

¹³¹ Application, Ex. A-16, Schedule F10, Original Sheet D-114.00; Dennis Direct at 19–23.

¹³² Jester Revised Direct at 62.

usage.”¹³³ Mr. Rabago’s explanation illustrates well the reason the SAC is wholly unlawful: because it is not cost-based and amounts to a proverbial “second bite of the apple,” the SAC violates MCL 460.6a(14)’s requirement that a DG tariff reflect an “equitable cost of service.”¹³⁴

In addition, from the perspective of low-income communities and communities of color, Soulardarity is particularly concerned because the SAC may contribute to the unaffordability of the program for low-income ratepayers who might otherwise have been able to participate. As Witness Karl Rabago stated, DTE’s sample data for DG customers indicated “a more than 100% increase in charges levied on DG customers and reduce[d] monthly savings by about \$44 dollars per month [on average.]”¹³⁵ This is particularly troubling given the other financial requirements for DG customers, such as costs of acquiring and installing equipment and the interconnection fee, and the slim margin by which low-income customers specifically might be able to access the program.

While DTE Vice President of Corporate Strategy and witness Camilo Serna noted that DTE “has many different low-income programs for [its] customers today and will continue to in the future,”¹³⁶ none of DTE’s low-income programs directly fosters accessibility of DG for low-income customers. Rather, programs discussed above like the RIA, SER, THAW, and LSP provide partial assistance on the customer’s entire account.¹³⁷ This distinction is important because the SAC increases costs on top of external startup costs for DG participants, raising a barrier to participation for low-income customers that is not ameliorated by participation in

¹³³ Rabago Direct at 32.

¹³⁴ Jester Revised Direct at 62; MCL 460.6a(14).

¹³⁵ Rabago Direct at 28 (citing Ex. MEC-22, discovery response ELPCDE 2-84).

¹³⁶ Serna Rebuttal at 67.

¹³⁷ See Johnson Direct at 26; Johnson Cross, 7 TR 3156, 3159–60.

other, unrelated assistance programs. DTE cannot answer a call to create equitable opportunities for low-income customers in its renewable programs by pointing to the general existence of other, unrelated low-income assistance programs.

DTE's failure to take any steps to make DG accessible to low-income ratepayers and the addition of the SAC also inhibit low-income access to common residential-solar business models, such as solar leasing. While a low-income customer may not be able to spend thousands of dollars to buy solar panels, solar leasing could be an option to acquire the necessary equipment for a reasonable, fixed, monthly payment. If that customer also faces the monthly SAC, even the most affordable setup may slip out of reach. This not only excludes the customer from participating in the DG program, but also excludes him or her from the pool of potential customers for Michigan businesses providing solar installation and leasing as well.

If low-income customers could participate in the DG program, their savings due to reduced inflow could reduce or eliminate their dependence on state- or federal-funded assistance programs. However, this is only a cost-effective move for a low-income customer if the costs of DG participation (e.g., the SAC, other fees, and equipment costs) do not add up to more than the customer's existing bill after receiving assistance. Furthermore, absent the SAC, it is possible that low-income customers would not require any monthly assistance to maintain their DG program participation after tackling startup costs, leading to more funds being available to serve other customers in need and/or more long-term savings for funders and administrators of assistance programs. Accordingly, policy targeted to remove barriers for low-income DG applicants and participants provides benefits to low-income DG participants, low-income non-DG customers, and all other residential customers.

DTE has taken analogous steps toward increasing credits in tandem with increased costs for customers. In this proceeding, DTE proposes to raise the RIA credit from \$7.50 to \$9.00 per month “to fully offset the D1 service charge for RIA customers,” as the D1 service charge will be increasing to \$9.00 per month.¹³⁸ If the SAC is allowed to remain at all, it should be reformulated to prioritize equitable access for low-income DG participants, like the credit corresponding to the D1 service charge. This could be a SAC formulated as a progressive fee schedule based on the participants’ annual income bracket.

DTE maintains that equity and fairness are central concepts foundational to its proposed DG tariff, including the fees.¹³⁹ However, equity and equality are not synonymous. Because fixed fees inherently impact low-income customers disproportionately more than higher-income customers, DTE’s proposed mandatory fixed fees create bigger barriers to entry for low-income customers. The dollar figure of the fee applied to each ratepayer may be equal, but the effect is not equitable. While implementing these fees in the name of equity, DTE perpetuates inequitable access to solar power among its customer base, and it perpetuates the same broader public health, energy burden, and safety inequities that echo throughout its history.¹⁴⁰

The premises requirement in the DG rider has no basis in the law and serves only to restrict customers’ renewable options and to chill the use of clean energy. Further, making individual DG accessible to low-income ratepayers is in line with the priorities of Act 342. Equity would be better served if DTE removed the SAC from its DG rider or, at a minimum,

¹³⁸ Dennis Direct at 13–14.

¹³⁹ Serna Rebuttal at 24–25; Application.

¹⁴⁰ NAACP, *Fumes Across the Fence-Line*, Ex. SOU-3 at 6, 14–16.

reformulated the SAC to reflect equitable distribution of the financial burden, given the already higher home-energy burdens that its low-income ratepayers carry.

CONCLUSION AND PRAYERS FOR RELIEF

To address the concerns articulated above, Soulardarity respectfully requests that the Commission reject DTE's request to increase its residential rates. Soulardarity requests that the Commission grant relief consistent with the positions articulated above and requests specifically that the Commission:

1. Reject DTE's request to increase residential rates.
2. Select, and direct DTE to compensate, an independent third party to assess the potential demand for residential and commercial community solar in DTE's service area, including in low-income and communities of color; to assess business models, marketing, and the full range of private and social costs and benefits, including all identifiable environmental and public health impacts; and to develop specific recommendations to incorporate community solar into DTE's service area.
3. Select, and direct DTE to compensate, an independent third party to study, with full access to DTE data and documents, the impacts of electricity rate increases on low-income ratepayers and to evaluate its low-income assistance programs. This study should include, but not be limited to, communications with low-income ratepayers about the programs, internal recordkeeping, and an assessment of how DTE uses ratepayer and external funding to finance the programs.
4. Direct DTE to design and implement specific policies to prioritize safety responses in areas served by the 4.8 kV system or that have otherwise demonstrated increased

safety risks associated with outages or downed wires. In designing these policies, DTE should consider the socioeconomic and demographic characteristics and needs of communities within its service area to assess fully the safety risks created by outages or downed wires.

5. Reject DTE's request to increase the returned check charge (to the maximum amount allowable by the Michigan Department of Insurance and Financial Services) assessed to ratepayers when a check bounces.
6. Direct DTE to maintain transparent and accessible customer service practices, including maintaining adequate staff for its direct customer service phone line; sending physical copies of records to customers that memorialize complaints or customer service requests; and preparing an annual report to the Commission that includes tracking of customer service performance broken down by zip code.
7. Direct DTE to remove the participation cap for the low-income assistance credit, and waive or credit the application, interconnection, and SAC fees for DG customers enrolled in its low-income programs.
8. Reject the requirement set out in DTE's distributed generation tariff that an eligible DG customer's generator must be located on the customer's premises, serving only the customer's premises, and intended primarily to offset a portion or all of the customer's requirement for electricity.
9. Assess whether its current resources and authorities are sufficient to support holistic and expert review of all aspects relevant to utility proceedings, including but not limited to evaluation of all integrated lifecycle costs and benefits borne by utilities,

the State and the public, including all identifiable environmental and public health impacts.

10. Direct DTE to solicit and respond to direct input from low-income ratepayers through hosting broad-based monthly stakeholder meetings. Such stakeholder meetings should be public and should be arranged, planned and publicized in accordance with the recommendations for robust stakeholder engagement articulated in Exhibit SOU-9¹⁴¹ to make the meetings accessible to low income communities and communities of color. Both MPSC Commissioners and Commission staff should attend these meetings.
11. In addition, Soulardarity requests that the Commission establish a docket, similar to the New York Public Service Commission,¹⁴² or in the alternative a workgroup, specifically dedicated to protecting the interests of low-income ratepayers with respect to utility rates; low-income programs; hiring practices; renewable energy options; and human health and safety impacts including water, air and soil quality. Such a docket or workgroup should be conducted in accordance with the recommendations for robust stakeholder engagement articulated in Exhibit SOU-9.

¹⁴¹ See Ex. SOU-9 (Soulardarity Comments on MPSC Case No. U-18418 regarding Stakeholder Engagement in the Integrated Resource Planning Process, Oct. 20, 2017).

¹⁴² See Koeppel Direct at 14–15 (citing “Order Adopting Low Income Program Modifications and Directing Utility Filings,” an order from the New York Public Service Commission in Case No. 14-M-0565).

Soulardarity reserves the right to request additional and/or different relief in reply to the positions expressed in the briefs of other parties

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/s/Mark N. Templeton

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