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May 20, 2019

Via Electronic Delivery

Mr. Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Union Building
100 North Union Street, Suite 950
Montgomery, AL 36104

**RE: Docket Nos. 32767 and U-4226
James H. Bankston, *et al.* v. Alabama Power Company**

Dear Secretary Thomas:

Enclosed please find a Notice of New Authority filed on behalf of James Bankston, Ralph Pfeiffer and Gasp, Inc. in the above referenced matter.

Complainants/Intervenors are submitting this filing to the Commission through its e-filing system, consistent with the rules and practices of the Commission. The original and one copy of this filing are being delivered to the Commission via overnight mail.

Please call if you have any questions or concerns.

Sincerely,



Keith Johnston
Southern Environmental Law Center

**BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION
MONTGOMERY, ALABAMA**

JAMES H. BANKSTON, RALPH B. PFEIFFER, JR.,	)	
	)	Docket No. 32767
Petitioners/Complainants	)	
	)	
GASP, INC.	)	
Petitioner/Complainant,	)	
	)	
v.	)	
	)	
ALABAMA POWER CO.,	)	Docket No. U-4226
Respondent/Petitioner.	)	

**In re: Rate Rider RGB (Supplementary,
Back-up, or Maintenance Power)**

NOTICE OF NEW AUTHORITY

James Bankston, Ralph Pfeiffer and Gasp, Inc. ("Complainants") respectfully request that the Alabama Public Service Commission ("PSC" or "Commission") and the Administrative Law Judge ("ALJ") in this matter consider a recent public service commission decision regarding the same issues under consideration as in the above captioned dockets. Complainants submit this new authority in support of their evidence and filings in this matter.

Background

On December 18, 2018, the Chief ALJ for the Commission entered a Procedural Ruling in Docket Nos: 32767 and U-4226 stating that the Commission "takes said matters under advisement for a final determination based on the testimony and evidence submitted by the parties." Procedural Ruling at 1 (Dec. 18, 2018). On December 21, 2018, Complainants, pursuant to the Alabama Code and Rules of Practice for the PSC, filed a Motion for Hearing in both dockets. On January 11, 2019, Alabama Power opposed Complainants' motion for a public hearing on these matters. The Commission has yet to enter a decision on the pending Motion for

Hearing or the ultimate disposition of Docket Nos. 32767 and U-4226.¹ On May 2, 2019, the Michigan Public Service Commission (“MPSC”) issued a decision which, in part, directly addresses the same issues currently before the Commission. *See Ex. A, 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, (Mich. P.S.C. May 2, 2019) (“*DTE Electric*”) (pertinent discussion here is pp. 194-98 of the original Order, and those pages have been excerpted in Exhibit A).

Notice of New Authority²

The Commission and the presiding ALJ are allowed broad discretion in determining what may be considered proper evidentiary material to determine a matter (“The Commission, or the presiding Commissioner or Administrative Law Judge shall entertain all motions and pleadings made or filed in any proceeding which are not specifically covered by these rules as may in their or its discretion be deemed proper...” Rules of Practice 11(F)). In light of the broad discretion provided to determine relevant evidence, we believe that this recent decision issued by the MPSC will assist with the Commission and ALJ’s determination of this matter.

In *DTE Electric*, the utility sought to impose a System Access Contribution Charge (“SAC”) on residential and small commercial customers who generated their own electricity and remained connected to the grid. The proposed SAC was the equivalent of Alabama Power’s Capacity Reservation Charge in design and intent. As with Alabama Power’s Capacity

¹ On August 23, 2018, the Chief ALJ entered a Procedural Ruling under Docket Nos. 32767 and U-4226 which, in part, held in abeyance Alabama Power’s prior Motion to Dismiss in Docket No. 32676 and allowed for evidentiary development under Docket U-4226. On December 18, 2018, the Chief ALJ issued a Procedural Ruling taking Docket Nos. 32767 and U-4226 under advisement.

² The Alabama Rules of Appellate Procedure allow for a Notice of New Authority if “pertinent and significant authority” comes to light after briefing or oral argument. Ala. R. App. P. 28B (2019).

Reservation Charge, the proposed SAC sought to impose a monthly charge based on the nameplate capacity of the customer's generating system. In addition, DTE Electric calculated the proposed SAC based on an "annual distribution revenue deficiency," similar to the methodology that Alabama Power performed when determining the Capacity Reservation Charge. See Ex. B, *Qualifications and Direct Testimony of Philip W. Dennis*, at 19-21; Ex. C, *Notice of Proposal for Decision*, at 281-86 (portions of relevant testimony and proposal have been excerpted). DTE Electric's proposed SAC charge differed from Alabama Power's Capacity Reservation Charge in that the SAC was significantly less than the Capacity Reservation Charge. The SAC proposed to charge \$2.31 per kW of nameplate capacity per month for residential customers and \$2.28 per kW of nameplate capacity per month for small commercial customers. *Id.* at 282. The Capacity Reservation Charge proposal under Docket U-4226 is \$5.42 per kW nameplate capacity per month (secondary service) and \$4.88 per kW nameplate capacity per month (primary service) for four customer classes.

In determining whether the SAC charges were reasonable, the MPSC considered many of the issues present in the two dockets currently before the Commission, including the utility's cost of service, grid costs, cost shifting, peak demand, equity, reasonableness and distributed generation customers' needs for electricity when distributed generation systems were not producing. Ex. A, *DTE Electric* at 194-98. The MPSC ultimately denied DTE Electric's proposed SAC charges because they were not based on the cost of providing service or equitable:

The Commission agrees with the Staff, the Attorney General, the Joint Solar Advocates, GLREA, MEIBC/IEI and the ALJ and adopts the ALJ's recommendation to reject DTE Electric's SAC charge in this case. As stated by the ALJ, the company's SAC charge is neither COS [Cost of Service] - based, as required by MCL 460.6a(14), nor equitable. PDF, pp. 285-286. As ELPC noted, the utility's method for calculating the SAC charge explicitly relied on the distribution revenue deficiency and not on any cost to serve. [Citations omitted]. DTE Electric based the charge on the size of the customer's system rather than the

customer's actual usage. The Commission finds that this does not comport with the statutory requirements and is unreasonable from COS ratemaking perspective.

Id. at 198.

Because the *DTE Electric* decision is directly pertinent to the issues in this case and was not issued until after Complainants submitted their written direct testimony and other filings in these dockets, Complainants are submitting the *DTE Electric* decision as new authority for the Commission and ALJ's consideration in Dockets Nos. 32767 and U-4226.

Respectfully submitted this 21st day of May, 2019.

/s/ Clay Ragsdale

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing have been served upon the following, either by hand-delivery, electronic transmission, or by depositing a copy of the same in the United States Mail, properly addressed and postage prepaid on this 21st day of May, 2019.

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Exhibit A

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

At the May 2, 2019 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

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

ORDER

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developing the Inflow/Outflow tariff, which is a billing mechanism that can be adapted over time to ensure conformance with COS principles even as conditions change.

The Commission further finds insufficient evidence on this record to calculate a market transition adder, even if it were deemed appropriate for inclusion. *See*, 8 Tr 4245-4246.

4. System Access Contribution Charge

For new DG customers taking service under rates without demand charges, DTE Electric proposed a SAC charge “that assigns a cost per kW AC [alternating current] of nameplate system capacity based on the system-cost responsibility of distributed generation customers.” 8 Tr 3598, 3875-3876; Exhibit A-16, Schedule F9.

The ALJ agreed with ELPC, MEC/NRDC/SC, MEIBC/IBI, Soulardarity, and the Staff, who opposed DTE Electric’s proposed SAC charge, and found the charge to be neither cost-based nor equitable. PFD, p. 285. The ALJ, referring to MCL 460.6a(14), found that the proposed SAC charge is not equitable because it “is not based on a DG customer’s actual usage of DTE Electric’s distribution system but rather on the size of the customer’s system.” PFD, p. 285. The ALJ agreed with the Staff’s point that “[i]n addition to the flaws in the methodology, the Company proposes to charge only DG customers based on this method. To treat DG customers differently would effectively treat them as a separate class, which is inappropriate, as their usage is within normal variation of the residential class.” PFD, p. 286, citing the Staff’s initial brief, p. 87.

DTE Electric takes exception and argues that the ALJ’s discussion “skips over the whole point of the SAC charge”—that, without it, the company will be unable to recover the full cost of DG customers’ distribution infrastructure use. DTE Electric’s exceptions, p. 131. The company states:

The [ALJ] instead focuses on criticizing the SAC methodology (which is inaccurate as discussed below), but it is important to keep in mind throughout this discussion

what the [ALJ] is really recommending – that DG customers pay nothing despite the facts that (1) their inflow (and the resulting Company cost recovery) is reduced by the intermittent on-site usage of intermittent on-site generation; yet (2) the Company’s fixed distribution system is and must always be available to serve the DG customer if the customer’s generation system goes down and to balance, second by second, the changes in the intermittent generation from the distributed generation system (8T 3897-98).

DTE Electric’s exceptions, p. 131. DTE Electric further takes issue with the ALJ’s finding that the company failed to quantify the costs associated with the SAC. DTE Electric asserts that the evidence provided in this case demonstrates that there would be cost-shifting without the SAC charge and cites to evidence about the services provided by the grid to DG customers. DTE Electric’s exceptions, pp. 131-132, referencing 8 Tr 3670-3672 and Exhibit A-34, Schedule X-5. The company further reiterates evidence about DG customers’ additional grid use, added costs to the distribution system, and greater peak demand. DTE Electric’s exceptions, p. 132, referencing 8 Tr 3804-3804, 3650 and Exhibit A-16, Schedule F11. The company additionally contends that the ALJ did not recognize that the SAC charge would be recalculated with each rate case and that it is appropriately tailored to each DG customer’s use based on their installed capacity. The company argues that “those parties advocating for continuing cost shifting to other DTE Electric customers neglect that the Commission lacks authority to authorize cost shifting to subsidize the DG industry and the Legislature has mandated the transition away from subsidized net metering rates (*e.g.*, 8T 3593-96).” DTE Electric’s exceptions, pp. 134-135 (footnote omitted).

As to the ALJ’s assertion that its SAC proposal is not cost-based, DTE Electric states that the ALJ “is accurate to the extent that [she] recognizes that volumetric charges to DG customers will be reduced, but ignores that volumetric inflow rates do not fully account for utility costs incurred on behalf of DG customers,” which, the company argues, without some mechanism like the SAC charge, then results in distribution costs not being recovered from these customers, thus leading to

cost shifting and a burden on non-DG customers. DTE Electric's exceptions, pp. 135-136. In furtherance of its argument that its SAC charge is cost-based, DTE Electric states:

The SAC is also supported by cost of service evidence on the record. Mr. Dennis explained that the SAC was designed to recover fixed costs of the distribution system for both residential and commercial secondary customers. The distribution costs being recovered are developed by the Company's cost of service witness Mr. Lacey (Exhibit A-16, Schedule F-1.2). Based on the revenue requirement for these classes, DTE Electric developed a cost-based distribution charge (line 5, Exhibit A-16, Schedule F9) which was used in development of the SAC. Thus, the SAC is cost based (8T 3898; Exhibit A-42, Schedule FF2). The SAC is designed using the Company's distribution cost of service study (numerator) and the Company's forecasted load (denominator) so that the Company will recover its revenue requirement, nothing more or nothing less (8T 3899).

DTE Electric's exceptions, p. 136. The company further reiterates that the SAC charge would not lead to double recovery, as the SAC charge would not compensate for outflow, would not double charge for distribution services, and was calculated by utilizing on-site consumption.

As far as discrimination, DTE Electric states that "there is nothing inappropriate about treating different things differently, and DG customers are plainly different than other customers"

DTE Electric's exceptions, p. 137 (footnote omitted). The company notes the SAC charge is only designed to recover DG customers' allocable costs of the company's distribution system and is just one rate option that customers can choose if suitable to their needs.

The Joint Solar Advocates indicate strong support for the ALJ's recommended rejection of DTE Electric's proposed SAC charge. Joint Solar Advocates' exceptions, p. 1.

GLREA agrees with the ALJ's recommended rejection of the SAC charge but takes exception with the reverse, specifically the ALJ's failure to consider a positive service access contribution credit reimbursement or payment to DG and net-metering customers for the cost savings and benefits they provide. According to GLREA, the ALJ's recommended rejection "does not go far enough." GLREA's exceptions, p. 3; 8 Tr 4001-4004.

In replies to exceptions, and as stated above, DTE Electric addresses what it contends is the fundamental problem with GLREA's proposal for inclusion of a service access contribution credit. DTE Electric's replies to exceptions, pp. 54-55. The company repeats that it quantified costs associated with its proposed SAC charge, presented evidencing showing that its proposed SAC charge is cost-based, and that, without the SAC charge, subsidization would occur.

The Staff re-asserts that DTE Electric's arguments in favor of its SAC charge should be rejected.

The Attorney General contends that the ALJ adequately considered and found, based on evidentiary support, that DTE Electric's proposed SAC charge should be rejected. The Attorney General thus avers that the Commission should adopt the ALJ's findings and recommendation. Attorney General's replies to exceptions, p. 41.

MEIBC/IEI express their continued opposition to DTE Electric's proposed SAC charge and, thus, urge the Commission to adopt the ALJ's recommendation and disregard the company's exceptions. MEIBC/IEI's replies to exceptions, p. 7.

The Joint Solar Advocates reiterate that DTE Electric's inequitable SAC charge should be rejected. Joint Solar Advocates' replies to exceptions, p. 2.

GLREA states that it opposes DTE Electric's exceptions on this issue and reasserts, considering reduced costs and increased benefits, that "there is persuasive logic and rationale for the adoption of a System Contribution Credit, or positive payment to net metering and distributive generation customers, rather than an SAC charge." GLREA's replies to exceptions, p. 4.

MEC/NRDC/SC assert that DTE Electric's exception on this issue must be rejected, because the company's proposed SAC charge is not based on an equitable COS and thus violates MCL 460.6a(14). MEC/NRDC/SC contend that the company relies on the false premise that its SAC

charge reflects COS, “even though it is undisputed that the SAC was based on amount of customer usage that a customer self-serves and, consequently, the company does not serve.”

MEC/NRDC/SC’s replies to exceptions, p. 78. MEC/NRDC/SC agree with the Staff that DTE Electric’s SAC charge ““would result in DG customers paying distribution charges for electricity generated and used behind the meter as if it were delivered by the Company, which it is not.”” *Id.*, p. 79.

The Commission agrees with the Staff, the Attorney General, the Joint Solar Advocates, GLREA, MEIBC/IEL, and the ALJ and adopts the ALJ’s recommendation to reject DTE Electric’s SAC charge in this case. As stated by the ALJ, the company’s SAC charge is neither COS-based, as required by MCL 460.6a(14), nor equitable. PFD, pp. 285-286. As ELPC noted, the utility’s method for calculating the SAC charge explicitly relied on the distribution revenue deficiency and not on any cost to serve. Exhibit A-16, Schedule F9, lines 8-9. DTE Electric based the charge on the size of the customer’s system rather than the customer’s actual usage. The Commission finds that this does not comport with the statutory requirements and is unreasonable from a COS ratemaking perspective.

The Commission also rejects GLREA’s suggestion for inclusion of a positive service access contribution credit for the same reasons the Commission rejects inclusion of a market transition adder in this case.

5. Other Distributed Generation Issues

a. Eligibility of Net Metering Customers to Increase System Size

The Staff proposed that, if a net metering customer expanded their net metering system before the company’s new DG Rider 18 went into effect, then the customer could add an additional 10-

Exhibit B

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

QUALIFICATIONS
AND
DIRECT TESTIMONY
OF
PHILIP W. DENNIS

Line
No.

1 charge using the proposed D1 rates with a non-capacity rate that is TOU based, and
2 columns (e) and (f) reflect the annual revenue to be recovered through the Weekend
3 Flex Pilot fixed charge and the fixed monthly charge, respectively, using the
4 proposed D1 rates utilizing the existing rate structure (a flat per kWh non-capacity
5 charge). The tariff that is contained in Exhibit A-16, Schedule F10, utilizes the
6 pricing that results from the existing D1 rate structure. The Company proposes that
7 these rates be used until such time that the D1 TOU rate structure is implemented, at
8 which point the rates in column (d) should be implemented for Weekend Flex.

9
10 **Proposed Distributed Generation Tariff**

11 **Q. Is the Company proposing a new distributed generation program Rider in this**
12 **case?**

13 A. Yes. Exhibit A-16, Schedule F10 contains the Company's proposed Rider 18,
14 Distributed Generation Program. I designed this tariff as instructed and supported by
15 Witness Serna.

16
17 **Q. Can you please explain the charging components of the new Rider 18?**

18 A. As discussed and supported by Witness Serna, the new Rider utilizes an
19 "inflow/outflow" pricing mechanism, with a System Access Contribution (SAC)
20 charge, as described below.

21
22 **Q. Can you please explain the inflow and outflow charging components of the new**
23 **Rider 18?**

24 A. For all energy which a Distributed Generation Program customer (DG customer)
25 inflows (i.e. receives from the Company), the customer will be charged the full retail
26 rate of the rate schedule the customer is attaching the rider to. So, for instance, a Rate

Line
No.

1 Schedule D1 customer would pay the D1 retail rate for all inflow.

2

3 For all energy that a DG customer outflows (i.e. sends on to the Company's
4 distribution system), the DG customer will receive a credit. The outflow credit is the
5 monthly average real-time locational marginal price for energy at the DTE Electric-
6 appropriate load node. Outflow credits can be used in each billing period to offset
7 power supply charges of the bill. Should the outflow credits accumulated in a billing
8 period exceed the power supply portion of a customer's bill, the excess credit amount
9 will be banked and be able to be used in future billing periods to offset power supply
10 charges. Credit balances will be carried forward indefinitely. If a customer ceases
11 to participate in the Distributed Generation Program, any remaining credit balance
12 will be forfeited.

13

14 **Q. Can you please explain how the proposed Rider 18 SAC charge was calculated?**

15 **A.** The SAC is a monthly per kW of installed nameplate capacity charge. The proposed
16 SAC charges per kW of installed nameplate generation on the customer's site is
17 calculated on Exhibit A-16 Schedule, F9. Lines 1, 2, and 3 of the exhibit show annual
18 average kWh of inflow, outflow, and generation based on 2017 historic customer data
19 for customers with generation meters. Using this data, line 4 calculates the amount
20 of annual average on-site usage, including energy inflowed and generation used on
21 site. As part of the residential and secondary commercial distribution rate design, the
22 Company in this case (and in past cases) is moving toward universal consumption
23 based (kWh) distribution charges for all residential secondary customers, and for all
24 commercial secondary customers with a per kWh distribution charge. The Company
25 is doing this gradually, capping the distribution charge increase for any rate schedule

Line
No.

1 in each rate case. Line 5 of Exhibit A-16, Schedule F9 shows the universal
2 distribution charge that would exist if all residential secondary paid the same
3 distribution charge, and if all commercial secondary customers paid the same
4 distribution charge. Using these charges, line 6 calculates the total average DG site
5 distribution revenue requirement, and line 7 calculates the amount of distribution
6 revenue that would result from the total average inflow. The difference between
7 these two values (line 6 less line 7) is shown on line 8, which represents the annual
8 distribution revenue deficiency. Line 9 reflects the monthly distribution revenue
9 deficiency. Line 10 shows the average installed nameplate capacity ratings, based on
10 the same customers used to gather the inflow, outflow, and generation data. Line 11
11 then calculates the monthly SAC per kW of installed nameplate capacity. Separate
12 SAC charges are developed for residential secondary DG customers and commercial
13 secondary DG customers.

14
15 **Q. What rate schedules would the proposed Rider 18 SAC be applied to?**

16 **A.** The SAC would apply only to DG residential and commercial secondary customers
17 on a rate schedule which has distribution charges based on kWh consumption. In
18 other words, customers on rate schedules with demand based distribution rates would
19 not be subject to the SAC, as demand charges more appropriately recover distribution
20 costs.

21
22 **Q. Can you please describe Exhibit A-16, Schedule F10.1?**

23 **A.** The Commission's April 18, 2018 Order in Case No. U-18383 stated that in any rate
24 case filed after June 1, 2018, utilities must file the Distributed Generation
25 Inflow/Outflow tariff attached to that Order (the required tariff was attached to the

Exhibit C

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

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 6, 2019.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before March 25, 2019, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 5, 2019 at noon.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

**MICHIGAN ADMINISTRATIVE HEARING
SYSTEM**
For the Michigan Public Service Commission

Sally L.

Wallace

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Sally L. Wallace
Administrative Law Judge

March 5, 2019
Lansing, Michigan

supply less transmission, applies only to excess generation above monthly consumption for the billing month (e.g., "the quantity of electricity generated and delivered to the utility distribution system by an eligible electric generator during a billing period [that] exceeds the quantity of electricity supplied from the electric utility *during the billing period* shall be credited[.]") The ALJ also agrees with the Staff that subparts (a) and (b) describe alternative pricing mechanisms and that the language at the beginning of Section 177(4) cannot be ignored. Again, as DTE Electric asserts, every word and phrase of the statute must be given effect to avoid rendering any portion of the statute surplusage. Moreover, the ALJ finds that this interpretation of the statute does not conflict with Section 177(5), which only comes into play if "A charge for net metering and distributed generation customers [is] established pursuant to section 6a of 1939 PA 3, MCL 460.6a[.]" Because the SAC charge was rejected, Section 177(5) does not apply. Consistent with the analysis above, the Commission should approve the Staff's recommendation with respect to netting inflows and outflows.

4. System Access Contribution Charge

DTE Electric proposes an SAC charge to be applied to DG customers who are not on a rate with demand-based charges. Mr. Serna testified that the proposed SAC "assigns a cost per kW AC of nameplate system capacity based on the system-cost responsibility of distributed generation customers." According to Mr. Serna, charges based on volume are "an insufficient but serviceable approach" to covering the utility's fixed costs when loads are stable and predictable. However, "[w]hen stability and predictability are no longer assured, the recovery of costs must more closely match their incurrence." Mr. Serna added that because DG customers always have the option of

taking service from the company, these customers do not pay the full cost of the distribution facilities that provide this service.⁶⁸¹

Mr. Dennis testified that:

The SAC is a monthly per kW of installed nameplate capacity charge. The proposed SAC charges per kW of installed nameplate generation on the customer's site is calculated on Exhibit A-16 Schedule F9. Lines 1, 2, and 3 of the exhibit show annual average kWh of inflow, outflow, and generation based on 2017 historic customer data for customers with generation meters. Using this data, line 4 calculates the amount of annual average on-site usage, including energy inflowed and generation used onsite. As part of the residential and secondary commercial distribution rate design, the Company in this case (and in past cases) is moving toward universal consumption based (kWh) distribution charges for all residential secondary customers, and for all commercial secondary customers with a per kWh distribution charge. The Company is doing this gradually, capping the distribution charge increase for any rate schedule in each rate case. Line 5 of Exhibit A-16, Schedule F9 shows the universal distribution charge that would exist if all residential secondary paid the same distribution charge, and if all commercial secondary customers paid the same distribution charge. Using these charges, line calculates the total average DG site distribution revenue requirement, and line calculates the amount of distribution revenue that would result from the total average inflow. The difference between these two values (line 6 less line 7) is shown on line 8, which represents the annual distribution revenue deficiency. Line reflects the monthly distribution revenue deficiency. Line 10 shows the average installed nameplate capacity ratings, based on the same customers used to gather the inflow, outflow, and generation data. Line 11 then calculates the monthly SAC per kW of installed nameplate capacity. Separate SAC charges are developed for residential secondary DG customers and commercial secondary DG customers.⁶⁸²

Under Mr. Dennis's calculation, the SAC would be equal to \$2.31/kW per month for residential customers and \$2.28/kW per month for small commercial customers.⁶⁸³

DTE Electric's proposed SAC charge did not garner support. Mr. Lucas testified that through the SAC, "the Company intends to charge DG PV customers for their full

⁶⁸¹ 8 Tr 3598-3599.

⁶⁸² 8 Tr 3875-3876.

⁶⁸³ Exhibit A-16, Schedule F9.

imputed load rather than their actual inflow from the grid. This means that an average DG customer would be charged the same distribution costs whether they had a PV system or not.”⁶⁸⁴ He added, “[b]y singling out DG PV customers and subjecting them to a charge based on imputed load rather than actual load, the SAC is clearly discriminatory.”⁶⁸⁵

Mr. Rábago testified that “the SAC charge is constructed to impose 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 usage (real or hypothetical),” adding “[a]s a result, the SAC charge is based on the flawed premises that non-use of grid-supplied energy creates a basis for a charge under cost-based regulation, and that charges on self-generators should be based on sub-group deviations from forecasted usage which are then imposed on nameplate capacity rather than usage.”⁶⁸⁶ Mr. Jester opined that the SAC “is founded on the Company’s notion that it is entitled to the revenue it will otherwise forego when a customer adopts distributed generation. The Company has no such entitlement and the ‘System Access Contribution’ would therefore violate the requirement of MCL 460.6a(14) that the distributed generation tariff reflect ‘equitable cost of service’”⁶⁸⁷

Mr. Kenworthy contends that imposition of the SAC amounts to double recovery because “[w]hen a DG customer exports energy to the grid, it is consumed by neighboring customers who compensate the utility for that service at the full retail rate, inclusive of

⁶⁸⁴ 6 Tr 2409.

⁶⁸⁵ Id. at 2410.

⁶⁸⁶ 6 Tr 2497-2498.

⁶⁸⁷ 6 Tr 2208.

fully-loaded delivery charges.” Thus, “to the extent that DTE’s proposed SAC charge is meant to compensate the utility for delivering the DG customer’s exported power, it represents a double-recovery of the utility’s costs to deliver the DG exports.”⁶⁸⁸

Ms. Sherman and Mr. Koeppel also oppose the SAC. Ms. Sherman testified that the SAC “essentially creates a demand charge based on the size of the distributed generation system for those customers. In my opinion, the proposed SAC represents a significant barrier to the deployment of distributed energy generation.”⁶⁸⁹ And Mr. Koeppel characterized the SAC as an “unfair burden” on DG customers, “but also may tip the program into being unaffordable for low-income ratepayers who might otherwise have been able to participate.”⁶⁹⁰ Mr. Krause testified:

The SAC is intended to collect distribution based on the imputed energy that would have provided if the customer had not installed DG. However, as pointed out in Staff’s report, usage can increase or decrease for any number of reasons such as change in household size, EWR, or the addition of a new end use, like an electric vehicle. It is not appropriate to impute usage that would have been had not the customer installed DG, just as it would be inappropriate for any other customer who reduces their usage for any other reason. The measured amount of total inflow, whether by demand or energy, is the appropriate measure for determining distribution usage not just for DG customers, but for all customers.⁶⁹¹

In briefing, the parties opposing the implementation of the SAC generally relied on the testimony of their respective witnesses. As MEC/NRDC/SC summarizes:

[DTE Electric’s] calculation shows that the SAC does not charge DG customers based on the load they actually place on the system, or the revenue requirement of the class attributable to the DC customers’ loads. Rather, the proposed SAC would collect revenue from DG customers based on the amount of load that distributed generation customers *remove* from DTE’s distribution system by consuming their own self-generation behind the meter and that *reduces* the revenue requirement allocated to the

⁶⁸⁸ 6 Tr 2336.

⁶⁸⁹ 8 Tr 3530.

⁶⁹⁰ 5 Tr 1574.

⁶⁹¹ 8 Tr 4234.

class. Moreover, there is no connection between revenue requirement created by loads at specific peak hours and a customer's nameplate generation capacity.⁶⁹²

In its reply brief, DTE Electric insists that the SAC is cost-based, and it is required because "utility infrastructure costs would remain unrecovered and be shifted onto the remaining traditional customers without the additional SAC charge."⁶⁹³

The PFD agrees with the parties opposing the SAC. The record supports the claims of the opposing parties that the SAC charge is not COS-based, despite the company's protestations to the contrary. Although the SAC charge is ostensibly designed to recover costs associate with DG customers' more extensive use of the grid, as attested to by Mr. Serna and Mr. Mueller,⁶⁹⁴ as multiple parties point out, the cost is actually designed to recover lost revenues resulting from customers' decisions to invest in DG. As ELPC argues, "DTE's methodology explicitly relies on 'revenue deficiencies' and not cost of service[.]" pointing to "Ex. A-16, Schedule F9, Lines 8-9 (calculating 'annual distribution revenue deficiency' and 'monthly distribution revenue deficiency' for purposes of calculating the SAC). Lost revenues are not the same thing as cost of service."^{695, 696}

Because the DG tariff approved under Section 6a(14), must be COS-based, and a tariff including an SAC is not, it is not necessary to reach a determination on whether the SAC charge is "equitable" as the statute also requires. Briefly, however, and for completeness, the SAC charge is also not equitable. The fact that the SAC charge is not based on a DG customer's actual usage of DTE Electric's distribution system but rather

⁶⁹² MEC/NRDC/SC's Initial brief, pp. 129-130.

⁶⁹³ DTE Electric's reply brief, p. 209.

⁶⁹⁴ 8T 3814-3817.

⁶⁹⁵ ELPC's Initial brief, p. 13.

⁶⁹⁶ As noted above, although DTE Electric provides a litany of additional costs purportedly caused by DG customer use of the grid, these costs were in no way quantified.

on the size of the customer's system. As the Staff points out, "In addition to the flaws in the methodology, the Company proposes to charge only DG customers based on this method. To treat DG customers differently would effectively treat them as a separate class, which is inappropriate, as their usage is within normal variation of the residential class."⁶⁹⁷

5. Other Distributed Generation Issues

As discussed above, the various parties weighing in on this issue raise a number of issues that are beyond the scope of this proceeding or the Commission's authority, or that are not supported by the underlying statutes. The following issues are, however, necessary to a final resolution of the multitude of issues concerning Rider 18.

a. Eligibility of Net Metering Customers to Increase System Size

In its initial brief, the Staff recommended that if a customer expanded his or her system before Act 341 and 342 went into effect in April 2017, then that customer's entire system should be grandfathered into the net metering program for ten years beginning with the date of the expansion. DTE Electric contends that the Staff's proposal conflicts with the company's current Rider 16 tariff, which states that the contract term provides for "a single continuous period up to 10 years."

The PFD agrees with the company that the current tariff provisions should prevail and that from the beginning, the net metering program was set for 10 years.

b. Customer Termination or Withdrawal from the Program

DTE Electric proposed that if a customer decides to end his or her participation in the DG program, any remaining credits in the customer's account should be forfeited. In

⁶⁹⁷ Staff's initial brief, p. 87.