

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,)
to implement the provisions of Section 173(1) of) Case No. U-15803
2008 PA 295.)
_____)

In the matter, on the Commission's own motion,)
to approve procedures and forms for use with the) Case No. U-15919
interconnection and net metering programs.)
_____)

At the March 18, 2009 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On October 6, 2008, Governor Jennifer M. Granholm signed into law 2008 PA 295 (Act 295), the Clean, Renewable, and Efficient Energy Act. Section 173(1) of Act 295 provides that the Commission "shall establish a statewide net metering program by order issued not later than 180 days after the effective date of this act." MCL 460.1173(1). In addition to the statutory obligation to establish a statewide net metering program by April 4, 2009, Section 173 of Act 295 also requires the Commission to promulgate rules implementing net metering by that date.

On October 21, 2008, the Commission issued an order opening this docket and inviting all interested persons to file comments on the required net metering program by November 3, 2008. Twenty-six parties filed comments, which are addressed herein.

On February 4, 2009, in Case No. U-15787, the Commission issued an order providing notice of a public hearing and the opportunity to comment on the draft interconnection and net metering rules. The public hearing took place on March 3, 2009, and comments were received until March 6, 2009. Today, the Commission simultaneously issues an order in that docket responding to the comments on the draft rules, and formally adopting net metering and interconnection rules. Those rules will be forwarded to the Legislative Service Bureau (LSB) and the State Office of Administrative Hearings and Rules (SOAHR) for certification as soon as possible, and the Commission is seeking a waiver of the 15 days required to expire before certification by the Joint Commission on Administrative Rules (JCAR), thus allowing the rules to take effect no later than April 4, 2009.

Regardless of whether the rules have taken effect by that date, this order serves to institute, beginning today, the statewide net metering program that is reflected in the rules, with one exception. The rules require each electric utility to file applications for approval of proposed interconnection procedures and forms within 90 days of the effective date of the rules or by July 3, 2009, whichever is sooner. R 460.615(1). The Commission observes that there is a great deal of immediate and long-standing demand for interconnection and net metering for small projects (category 1, 20 kilowatts or less), and finds that access to the program, for this category, should be accelerated. *See*, R 460.601a(f). No later than May 4, 2009, all electric utilities shall file proposed interconnection applications, interconnection agreements, and net metering applications, and alternative electric suppliers (AES) shall file proposed net metering applications, *for category 1*

projects only, in a new docket opened today for the purpose of receiving these filings, in Case No. U-15919.¹

The Comments

The Michigan Electric and Gas Association (MEGA) comments that: (1) utilities should be directed to transfer existing net metering customers from the current programs to the new program to the extent practicable; (2) utilities should be directed to file tariffs that include the statutory requirements; (3) the existing generator interconnection application should be adopted as the uniform application form, with the relevant break changed from 30 kilowatts (kW) to 20 kW; (3) the existing net metering program should provide the framework for temporary time limits while the rulemaking is pending; (4) process time limits should be based on those in the Wisconsin Administrative Code; (5) the order should include authorization of a contemporaneous surcharge for utilities serving less than one million base retail customers to recover net metering program costs not borne by net metering customers; and (6) the Commission should clarify that the utility power displaced by customer generation in a billing period is based on the full retail rate.

The Detroit Edison Company (Detroit Edison) comments that 2000 PA 142 prevents avoidance of non-bypassable securitization surcharges and costs, and the company continues to have active securitization surcharges pursuant to the Commission's orders. Detroit Edison requests that the Commission determine a reasonable means for recovering such charges from net metering customers.

¹Forms and procedures for category 2-5 projects that are filed later pursuant to R 460.615 shall also be filed in Case No. U-15919.

Consumers Energy Company (Consumers) comments that the statute does not provide for payment of interconnection costs associated with customers of 20 kW or less, and cites to the requirements that meters be provided to customers up to 150 kW. Consumers comments that to the extent these interconnection and metering costs are borne by other customers, the cost of service based rate directives of Section 11 of 2008 PA 286 will be violated. Consumers additionally comments that: (1) the ratemaking and financial treatment of charges associated with net metering customers under 20 kW must be clarified; (2) implementation and administrative costs incurred by the company in complying with the statewide net metering program should be recoverable through nonfuel base rates; (3) the net metering consensus agreement approved in the March 29, 2005 order in Case No. U-14346 should be formally terminated; (4) the Commission should clarify that the \$100 application fee, when paid by a retail open access (ROA) customer, is paid to Consumers to cover the initial costs of administering the net metering program, and not to an AES; (5) the existing generator interconnection and operating agreement should continue to be used, though simplified for customers at 20 kW or less; (6) the existing interconnection application for generator output below 30 kW should continue to be used for generators at or below 20 kW; (7) the Commission should authorize the company to provide notice to customers who, at the end of a 12 month billing cycle, have exceeded their site usage, that the customer may have no more than three billing cycles to remedy the situation and may be removed from the net metering program; and (8) as the program matures, Consumers should be authorized to use advanced metering infrastructure (AMI) data to credit excess generation for net metering customers at Midwest Independent Transmission System Operator, Inc. (MISO) prices.

The Association of Businesses Advocating Tariff Equity (ABATE) comments that all customers able to provide electric power should be given incentives to do so. ABATE further

comments that: (1) the “eligible electric generator” referred to in Section 179, who can own renewable energy credits (RECs), should be the customer and not the utility; (2) the statute fails to address the situation where generating systems are owned or leased by a third party but installed at a customer’s facility and available for net metering and should be eligible for participation and the generation of RECs; and (3) the statute contains an internal contradiction in that Section 177(4) states that net metering customers shall not receive credit for electric utility transmission or distribution charges, and Section 7(j) states that net metering is to apply “to the full retail rate to the net of the bidirectional flow of kilowatt hours across the customer interconnection with the utility distribution system.” ABATE urges the Commission to provide RECs to customers to the fullest extent of the law.

The Michigan Sustainable Energy Coalition (MSEC) comments that the time limits established in the Commission’s electric interconnection rules should be incorporated into the net metering program. MSEC urges the Commission not to allow time requirements to be dictated by tariffs. MSEC comments that 18 CFR 292.309(d)(1) creates a rebuttable presumption that utilities must purchase energy from facilities that generate less than 20 kW.² MSEC also comments that the Commission should ensure that AESs who provide service to net metering customers are fully compensated. MSEC points out that Section 173(1) provides for grandfathering of existing net metering customers, and urges the Commission not to require these customers to resubmit their applications or undergo further testing of their equipment. MSEC urges the Commission to review all interconnection and standby costs to ensure that there is no overcharging. Finally, MSEC recommends that utilities be required to publicize net metering through billing inserts.

²The cited regulation refers to megawatts. *See*, 18 CFR 292.309(d)(1).

Constellation NewEnergy, Inc. (CNE) comments that the statute does not address how net metering applies to AESs, and points out that the current net metering program does not apply to AESs. CNE comments that utilities interface with customers on the basis of tariffs, whereas AESs conduct business exclusively by contract, often individually negotiated. CNE suggests that the Commission consider implementing expedited complaint processing akin to the processes for slamming and cramming in the telecommunications area. CNE suggests that the Commission's authority to rectify noncompliance under the statute does not apply to AESs, because the statute only references electric utilities. CNE further comments that: (1) the net metering program can not extend to existing contracts between AESs and customers; (2) AESs should negotiate in good faith with customers desiring to net meter, with the Commission serving as a potential mediator; (3) AES net metering contracts may set forth the ownership of RECs, and may contain prices, terms, equipment, and conditions specific to nonresidential customers; and (4) the Commission should hold a public hearing on the program requirements prior to their adoption.

Energy Michigan comments that the statutory language is not always clear on which requirements apply to AESs as well as regulated utilities. Energy Michigan comments that: (1) the role of the AES should be to provide forms to customers that wish to net meter and pass those forms to the utility; (2) despite the language of Section 175(2), the Commission should designate the regulated utility as having primary responsibility for all metering supply, installation, and testing, because AESs have no mode of recovery of interconnection or metering costs; (3) distribution costs for generators under 20 kW should be reimbursed (if allowed) by the utility, not by the AES, at the power supply component price set out in the AES contract with the customer; (4) the regulated utility should be required to supply standby power to net metering customers of AESs, if the regulated utility is entitled to collect standby charges; AESs should receive information from

utility meters regarding excess power delivered by an AES net metering customer to the grid; and (5) the Commission may not authorize a program that impairs existing AES/customer contracts. Energy Michigan argues that existing contracts should be allowed to run their course, and, after expiration, new contracts may be implemented that recognize the new net metering program.

The Environmental Law & Policy Center (ELPC) comments that there are two ambiguities in the act. ELPC points out that the act contemplates two different billing programs for systems below and above 20 kW, called “true” and “modified” net metering, respectively (Section 173(5)(d) and (e)); however, the act contains only one section that describes the calculation of net metering credits (Section 177(4)). ELPC posits that, because the latter section provides that customers shall not receive credits for electric utility transmission or distribution charges, it should be applied only to modified net metering customers, and not to true net metering customers. ELPC describes a second ambiguity in reference to standby charges, in that the definition of modified net metering at Section 7(j) describes how standby charges are to be calculated, but does not say when they are appropriate; and Section 175(1) provides for standby charges for customers at 150 kW or greater. ELPC urges the Commission to clarify that no standby charges shall be imposed upon systems under 150 kW.

Like ELPC, the City of Ann Arbor comments that a fair interpretation of Act 295 should ensure that systems under 20 kW are credited for all net excess generation at the full retail rate, and no standby charges are incurred by systems under 150 kW. The City of Ann Arbor urges the Commission to credit true net metering customers at the full retail rate for any negative net metered quantity, because credit from summer generation should be available against winter use. The City of Ann Arbor further urges the Commission to find that standby costs for customers over 150 kW “are not real and need not be collected.”

Syndeveco, Inc., filed comments that primarily address the rules that will be promulgated pursuant to Section 173(1). Syndeveco comments that: (1) the rules should be specific as to which sections of an installation are under the authority of the local electrical inspector and which are the responsibility of the utility; (2) the rules should define the level of involvement of the utility in subsequent additions to an interconnection installation; (3) customers with more than one meter should be given the opportunity to choose the service to be net metered; (4) the rules should allow for the use of new equipment that has yet to be developed; (5) the rules should provide that a licensed professional engineer is required to execute the overall design of all interconnected power generation equipment; (6) municipalities should be required to accept all compliant net metering installations; (7) the Commission's net metering rules should preempt local zoning regulations; (8) large utilities should be required to provide the meters for net metering; and (9) net metering customers who cannot receive credit for delivery charges should not be charged delivery charges.

The Great Lakes Renewable Energy Association (GLREA) comments that: (1) all current net metering customers should be grandfathered into the program at no cost; (2) true net metering customers should receive net excess generation credits at the full retail rate; (3) no additional insurances should be required; (4) current interconnection time limits should be adopted; and (5) the Commission should review interconnection and standby costs for overcharges.

The Michigan Independent Power Producers Association (MIPPA) comments that AESs cannot provide interconnection, and the AES should receive compensation for the energy delivered by the net metering customer to the utility, because the AES "has paid for the power by having its bill reduced." MIPPA suggests that to the extent that both the AES and the utility's billings are reduced, there could be an equitable sharing of the value of the power received.

MIPPA also comments that the utilities should be required to provide backup and maintenance power to 150 kW to 500 kW net metered systems.

The Interstate Renewable Energy Council (IREC) comments that larger systems should be allowed, and that interconnection and net metering rules should be kept separate. IREC states that the 150 kW cap places Michigan behind 21 other state net metering programs. IREC advocates the full retail rate for true net metering credits. IREC urges the Commission to avoid applying standby charges to systems in the 20 kW to 150 kW range. IREC recommends standby charges set at zero for all intermittent resources such as solar and wind, at all sizes. IREC argues that determination of a customer's needs should be based on anticipated annual energy usage and not on anticipated peak demand. IREC further comments that: (1) there should be no limit on program duration; (2) the rules should offer safe harbor language to prevent new charges for meter reading or inspection; (3) renewable generation net metered systems should be interconnected in the same way that other systems are; (4) fees should be kept low or offered on a sliding scale; (5) insurance requirements and disconnect switches are unnecessary; and (6) utilities should consider relying on testing results from installers rather than physically inspecting all equipment.

The E Cubed Company comments that combined heat and power systems should be allowed to net meter.

Rep. Paul E. Opsommer comments that: (1) the 1% threshold should not be enforced until applicants have actually been enrolled in the program; (2) application fees should be charged only once; (3) the 1% threshold should not be diminished by efficiency programs or lower demand in later years; (4) customers should be allowed to have generators of any size, and to generate energy for any non-net-metering purpose; and (5) interconnection costs and fees should not allow for profit for the utility.

The Roosevelt Institution comments that: (1) schools should be exempt from the 1% threshold; and (2) utilities should be required to install advanced meters at no cost to customers.

Joshua S. Barclay comments that modified net metering is simply net billing and is inadequate. He further comments that, under a system of monthly billing, his own net metering system would lose retail credit for 55% of the energy sent to the grid. Mr. Barclay recommends that billing be on an annual basis in order to mitigate this disincentive to net meter, with the customer still paying monthly installments on a predicted annual total. He argues that annual billing is simple and transparent. He urges the Commission to determine a fair and equitable monthly charge to supplant per kilowatt-hour (kWh) delivery charges for net metering customers. He comments that Act 295 will cause customers at greater than 20 kW to pay delivery charges for energy that they deliver to themselves and that never enters the grid. He describes this as subsidizing the utilities.

Mel L. Barclay comments that Act 295 may have illegal features that are inconsistent with the Federal Power Act. He comments that Act 295 puts up barriers to net metering. He advocates annualized billing, so that energy produced in the summer months can be returned to the producer in the winter months.

Christina A. Snyder comments that Act 295 does not allow for true net metering, and that billing should be kept as simple as possible. She comments that the Commission should review transmission and distribution charges.

Tom and Laura Vanden Bosch comment that Michigan is rich in wind resources.

Frank Thierry recommends that Michigan follow the net metering program in use in Germany.

Michael Flynn recommends use of annual accounting and billing with unlimited rollover of excess generation for later use.

Gary Bauer comments that sustainable energy should offset resource demand, and recommends that the net metering rules allow commercial wind turbines to operate during peak demand and produce at least 80% of their capacity during those times “or they should not be allowed to reverse meter.”

Brion Dickens comments that, with his current net metering operation, he never receives a regular monthly bill, and his billing has become haphazard and extremely complicated. He emphasizes the importance of one bi-directional meter. He recommends that there be no distribution charge for power that he creates and uses himself.

Donald C. Lechnar comments that Section 173(2) does not clarify measurement between an interval meter and a demand meter when measuring the 1% limit. He suggests alternative methods for determining when the 1% limit is hit according to the type of meter used. He further suggests that the 1% limit is too low and the Commission should make efforts to raise it. He suggests specific rules for meter replacement that do not require customers to pay the cost of replacing an interval meter. He suggests that there should be no ancillary service penalties created by the utilities. He comments that pricing should be in accord with the existing respective commercial node for each meter. He urges strong protection of RECs for customers.

Thomas W. Bowes comments that, for systems of 20 kW or less: (1) net metering equipment, application, and approval requirements should be consistent for all utilities; (2) only one bi-directional meter should be required; (3) no external disconnect switch should be required; (4) utilities should not maintain a list of pre-approved inverters; and (5) no additional insurance or indemnities should be required. Mr. Bowes comments that Michigan has a large base of qualified and underemployed electricians and electrical contractors who can be relied upon to install safe and reliable distributed generation systems.

The Statewide Net Metering Program

In addition to the statutory obligation to establish a statewide net metering program by April 4, 2009, Section 173 of Act 295 also requires the Commission to promulgate rules implementing net metering by that date. Simultaneously with this order, the Commission today issues an order in Case No. U-15787 formally adopting the interconnection and net metering rules that form the basis of the program.

The Commission hereby establishes the net metering program described in the approved rules. There is no limit on the program's duration. As provided in Rule 40(1), each electric provider, as defined in Rule 1a(r), is directed to file within 30 days of the effective date of the rules or by May 4, 2009, whichever comes first, net metering tariff sheets consistent with the program described in the rules. As provided in Rule 40(2), each AES, as defined in Rule 1a(a), is directed to file by the same date an alternative electric supplier net metering program plan consistent with the program described in the rules.

The vast majority of comments are addressed by the rules, as will be discussed below. Many commenters' suggestions have been incorporated into the rules. Those comments not addressed by the rules are addressed in this order.

Part 1 of the rules contains the General Provisions. These cover definitions, adoption of standards by reference, prohibited practices, designated points of contact, alternative dispute resolution, appointment of experts, and waivers from the rules.

Rule 4 provides that an electric provider shall not charge a net metering customer any fee or charge, or require any additional equipment, insurance, or any other requirement that is not specifically authorized by the interconnection and net metering standards, unless that fee, charge, or requirement would apply to other similarly situated customers; and an electric provider or AES

shall provide net metering customers electric service at non-discriminatory rates that are identical to the rates the customer would be charged if they were not net metering. This rule ensures that special penalties will not accrue to net metering customers.

Part 2 of the rules contains the Interconnection Standards. These cover electric utility interconnection procedures, interconnection fees, application and interconnection processes, modifications to the project, insurance, disconnection, and easements and rights-of-way.

Rule 15 requires each electric utility to file an application for approval of proposed interconnection procedures and forms within 90 days of the effective date of the rules, or by July 3, 2009, whichever is sooner. Projects are broken down into categories according to their size (category 1 is 20 kW or less, category 2 is greater than 20 kW to 150 kW, category 3 is greater than 150 kW to 550 kW, category 4 is greater than 550 kW to 2 megawatts (MW), and category 5 is above 2 MW). Rule 1a(f)-(j), Rule 15(2)-(3). Rule 15 contains requirements for category 1-5 applications. After submission and review of the initial applications for approval of proposed interconnection procedures and forms, the Commission will select a uniform application form for use by all utilities within each category. The Commission has found that certain existing applications and forms have been difficult for customers to use. Because the net metering program instituted by this order, and described in the approved rules, is a completely new program with vastly different duties, obligations, and parameters from the existing voluntary program, the Commission finds that it is necessary to adopt new application forms for both interconnection and net metering. The new forms will be adopted at the conclusion of the approval process for each utility's interconnection procedures and forms. The forms will be uniform for each category.

Rule 20(2) provides that category 2 and 3 project applications must contain a one-line diagram that is signed by an electrical contractor licensed by the State of Michigan or signed and sealed by

a licensed professional engineer, and category 4 and 5 project applications must contain a one-line diagram that is sealed by a professional engineer licensed by the State of Michigan. The timing of project approvals is set out in Rule 20: the electric utility has 10 working days to notify the applicant that the application is complete; the utility then has 10 working days to complete its application review; the utility then must complete its engineering review and notify the applicant of the results within time periods of 10 to 45 days, depending on the category of the application (the size of the interconnection project). If a distribution system study is required, similar time periods are imposed. Where necessary, distribution system upgrades are accomplished within a mutually agreed upon time period. Within 10 working days after notification that installation and inspections are complete, the utility shall notify the applicant of its intent to visit the site, inspect the project, and witness the commissioning tests, or its intent to waive those rights. Within five working days of receipt of the completed commissioning test report, the utility shall notify the applicant of its approval or disapproval of the interconnection.

These requirements create new time periods for completing interconnection projects. The Commission finds that the previously required interconnection time periods will not provide sufficient time for the necessary reviews, approvals, and other interconnection activities, particularly for the larger projects. The Wisconsin Administrative Code was consulted and provided a starting point for examining appropriate time limits. The time limits in the draft rules were found to be more consistent with the larger, mandatory net metering program that is established by this order than the old interconnection time periods. Additionally, the new time periods are based on the phases of the project and will allow customers to remain aware of where their project is in the process, as opposed to the old time periods that dealt with the entire project

through one time period and provided applicants with less information as the project moved towards completion.

Utilities are not required to physically inspect interconnections. Rule 20(11) provides that the utility may waive its right to physically inspect the project and witness the commissioning tests. Rule 20(13) provides that a copy of the interconnection application must be supplied by the applicant to an AES with the applicant's net metering application. Rule 22 describes the utility's role in project modifications. Rule 24 provides that utilities may not require additional liability insurance or naming of the utility as an additional insured for category 1 and 2 interconnection projects; however, category 3 through 5 projects shall require general liability insurance of a minimum of \$1,000,000. The existing interconnection rules leave decisions regarding insurance to the contract process, and, in some circumstances, certain utilities currently require up to \$500,000 in insurance for projects with systems of 20 kW or less. The new rules provide that no additional insurance may be required by utilities for category 1 or 2 projects. The Commission finds that it is reasonable to require additional liability insurance for projects of greater than 150 kW.

Rule 26 describes the narrow circumstances wherein a project may be disconnected.

Part 3 of the rules contains the Net Metering Standards. These cover the application process, applications and fees, program size, equipment, meters, billing and credit for true and modified net metering customers, RECs, and penalties.

Rule 40 provides that each electric provider shall file initial net metering program tariff sheets, and each AES shall file an AES net metering program plan, within 30 days of the effective date of these rules, or by May 4, 2009, whichever is sooner. The Commission will issue orders approving the tariff sheets and program plans.

Rule 40(5) provides that participation in the program shall be based on the order in which applications are received.

Rule 40(7) limits each applicant to the amount of generation capacity designed to meet the customer's electric needs. Generation capacity may be determined, at the option of the customer, by either nameplate capacity or an estimate of the expected annual kilowatt-hour (kWh) output of the generator(s); and electric need may be determined, at the option of the customer, by either annual energy usage over the previous 12-month period measured in kWh, or the maximum integrated hourly demand measured in kW over the previous 12-month period for customers with metered demand data, or, where there is no data or the customer is making on-site changes, by mutual agreement between the electric provider and customer (or AES and customer).

Rule 42 provides that a Commission-approved uniform net metering application form and process shall be used by all electric providers and AESs. The Commission will adopt such uniform forms for each category of project for use by all utilities after submission of the proposed forms pursuant to Rule 15. Rule 42 sets out the timing for application processing for electric providers and AESs for both situations where the interconnection application is submitted at the same time, and where an executed interconnection agreement already exists. Rule 42(4) provides that if the application is withdrawn, the application fee shall be refunded.

Rule 42(5) provides for the grandfathering of customers participating in the net metering program under the Commission's March 29, 2005 order in Case No. U-14346. These customers shall be transferred to the statewide program established by this order within 30 days of the Commission's approval of the electric provider's³ net metering tariff. These customers will retain any net excess generation credits, and will not be required to comply with the application,

³There are no net metering AES customers to transfer to the new program.

interconnection, fee, or system requirements established in the rules. In light of the fact that all existing net meterers will be transferred to the new program, the Commission finds that the docket in Case No. U-14346 should be closed after filing of the final net metering reports for the time period ending June 30, 2009.

Rule 42(6) provides that the net metering application fee shall not exceed \$25, and the combined total of net metering and interconnection application fees shall not exceed \$100 for systems at 20 kW or less. For an AES customer who wishes to net meter, the interconnection application fee of \$75.00 is payable to the utility, and the net metering application fee of \$25.00 is payable to the AES. *See*, Rules 18(2), 20(13), and 42(3).

Rule 44 provides that all completed applications that are pending at the time that a utility reaches the net metering program size limit set forth in MCL 460.1173(2) shall be processed and the applicants shall be allowed to participate. The Commission concurs with the commenters who wish to see the program expanded and schools exempted. However, the current size of the program has been set by the Legislature in Act 295.

Rule 46 addresses the need for new generation and net metering equipment and installation procedures to meet all current local and state electric and construction code requirements. These requirements are not preempted by the rules.

Rule 48 addresses meter requirements. For generators at 20 kW or less, net usage may be determined using the existing meter, if it is capable of reverse registration. Since most meters currently in use are capable of reverse registration, there should not be a significant need for meter replacement. If a meter upgrade or modification is required, an electric provider that serves over one million customers (Detroit Edison and Consumers) shall provide a meter or meters capable of measuring the flow of energy in both directions at no charge to the net metering customer. (The

cost of the meters is a cost of operating the program.) Utilities with less than one million customers shall also provide such meters to net metering customers who need them, at the incremental cost of the meter above that for meters provided to similarly situated non-generating customers. All electric providers shall provide a generating meter to a requesting customer at cost.

For generating systems greater than 20 kW to 150 kW, electric providers are similarly required to provide meters where necessary. Rule 48(2)(c) states that generator meters shall be provided to these customers at no cost to the customer. For customers with systems above 150 kW, the customer shall pay the cost of providing any new meters. AMI costs beyond those charged to similarly situated non-net metering customers shall not be charged to net metering customers or to the program. The rules create no barriers to the utilities' future use of AMI.

Rule 50 addresses billing and credit for customers generating 20 kW or less. These customers shall be credited at the full retail rate for the net of the bidirectional flow of kWh across the interconnection with the utility during the billing period or during each time-of-use pricing period. The full retail rate includes the power supply and distribution components of the cost of service. Rule 1a(v). The distribution component of this credit for a net metering AES customer shall be paid by the utility. It does not include any system access charge, service charge, or other charge assessed on a per meter basis. Securitization surcharges shall be paid on net usage. Providers should address the issue of applying surcharges to net meterers in months where there is negative net usage in their proposed tariffs. Credit for excess generation shall appear on the next bill, and shall be carried forward for use in subsequent billing periods. Rule 50 provides that, at the end of each calendar year, the utility or AES shall carry forward the remaining credit amount. Rule 50(3), (4).

Rule 52 addresses billing and credit for customers generating more than 20 kW. These customers also receive credit for negative net metered quantities during the billing period. Customers generating in excess of 150 kW shall pay standby charges, and customers below that level shall not. No standby charges will apply to intermittent resources such as wind and solar because these resources cannot exceed 150 kW. Rule 1a(t)(i), Rule 1b(1). Excess kWh shall be carried forward for use in subsequent billing periods, but net metering credits may not be applied to distribution charges. Annual credits are handled in the same way as for the smaller customers. Rule 52(7) describes how the credit per kWh for kWh delivered to the electric provider's distribution system shall be determined by the Commission and describes three options: (1) by the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric provider's distribution service territory, (2) for net meterers on a time-based rate schedule, by the same measure during the time-of-use pricing period, or (3) by the electric provider or AES's power supply component of the full retail rate during the billing period or time-of-use pricing period.

Rule 54 addresses RECs, and provides that RECs are owned by the generator, and may be purchased by or traded with the electric provider.

Rule 56 addresses penalties, and provides that, upon a complaint or the Commission's own motion, if the Commission finds after notice and hearing that an electric provider has not complied with the net metering requirements of Act 295, the Commission shall order remedies and penalties necessary to make whole a customer or other person who has suffered damages as a result. This rule does not apply to AESs. *See*, MCL 460.1181, 460.1171.

The rules do not create a process for removing customers from the net metering program. Rule 40 addresses how to measure the applicant's generation needs. The Commission believes

that these restrictions on how to measure need will serve to limit the program to those who are generating for their own use.

The rules do not address cost recovery. The Commission expects electric providers to seek cost recovery in rate cases. Reasonable and prudent implementation and administrative costs will be recoverable through base rates. Interconnection and standby costs will be reviewed by the Commission in every rate case.

Generating systems owned by third parties are addressed under “self service power” in 2008 PA 286 (Act 286). *See*, MCL 460.10a(12), 460.10q(4).

The Commission has determined that customers with more than one meter should select the meter to be used for net metering and plan their project accordingly.

The net metering program does not impair existing contracts between AESs and their customers, except to the extent that the contract contains language prohibiting net metering. The Commission is unaware of any such contracts. Act 295 requires that the program be offered to all customers in this state. MCL 460.1173(1). Statutory enactments and amendments may impair existing contracts where there is a significant and legitimate public purpose for such impairment, and the means adopted to implement the legislation are reasonably related to the public purpose. *Health Care Assoc Worker’s Compensation Fund v Bureau of Worker’s Compensation*, 265 Mich App 236; 694 NW2d 761 (2005). The rules address some aspects of how the program will be offered and implemented by the AES, but do not dictate what future contracts should look like. Additionally, the rules provide the opportunity to seek a waiver. R 460.612.

Commenters will note that the Commission has agreed with the vast majority of the comments made. Many comments, and many aspects of the rules, are addressed by the language of Act 295. The full retail rate for excess generation for customers at or under 20 kW has been implemented

because the Commission finds that this was the Legislature's intent where the act states that "net metering customers with a system capable of generating 20 kilowatts or less qualify for true net metering" (Section 173(5)(d)), and "[t]rue net metering' means a utility billing method that applies the full retail rate to the net of the bidirectional flow of kilowatt hours" (Section 13(c)). Likewise, the rules implement standby charges for customers over 150 kW because the Commission finds that this was the Legislature's intent where the act states that "[a] customer with a system capable of generating more than 150 kilowatts shall pay standby costs" (Section 175(1)).

Commenters who are currently net metering will note that, in light of the provision of true net metering, they will not lose any retail credit for their excess generation. Additionally, net usage based bills will be much easier to understand. The rules set no billing time period, because this is covered by the Commission's billing rules. However, because billing will be based on net usage and credit will be carried over to the next billing period, there should no longer be an advantage to annual billing.

THEREFORE, IT IS ORDERED that:

A. The statewide net metering program described in Section 173 of 2008 PA 295 is commenced according to the terms of this order.

B. No later than May 4, 2009, all electric utilities shall file proposed interconnection applications, interconnection agreements, and net metering applications, and alternative electric suppliers shall file proposed net metering applications, for category 1 projects only, in Case No. U-15919.

C. All utilities are directed to file net metering reports in Case No. U-14346 by September 30, 2009 for the time period ending June 30, 2009. This will be the final net metering report filed in the Case No. U-14346 docket.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of March 18, 2009.

Mary Jo Kunkle, Executive Secretary