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**Timothy J. Lundgren**

Direct: 616 / 336-6750  
[tjlundgren@varnumlaw.com](mailto:tjlundgren@varnumlaw.com)

April 17, 2018

Ms. Kavita Kale  
Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
P.O. Box 30221  
Lansing, Michigan 48909

**Re: Case No. U-20156 In the matter of the Complaint of Greenwood Solar, LLC  
against DTE Electric Company**

Dear Ms. Kale:

Attached for electronic filing in the above-referenced case, please find the Complaint of Greenwood Solar, LLC against DTE Electric Company concerning violations of the Public Utility Regulatory Policies Act of 1978, MCL 460.6v, and related Commission orders. If you have any questions, please feel free to contact my office. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM

Timothy J. Lundgren

TJL/kjc

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Complaint of )  
Greenwood Solar LLC against )  
**DTE Electric Company** concerning )  
violations of the Public Utility Regulatory )  
Policies Act of 1978, MCL 460.6v, and )  
related Commission orders. )  
\_\_\_\_\_ )

Case No. U-20156

**COMPLAINT OF GREENWOOD SOLAR, LLC  
AGAINST DTE ELECTRIC COMPANY**

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Greenwood Solar, LLC ("Greenwood Solar"), a wholly owned subsidiary of Geronimo Energy, by and through its counsel, Varnum LLP, pursuant to Section 8 of Act 419 of 1919, as amended, MCL 460.58, and Subpart E of the Rules of Practice and Procedure before the Michigan Public Service Commission ("Commission"), R 792.10439 *et seq.*, files this Formal Complaint regarding DTE Electric Company's ("DTE's") violations of MCL 460.6v, of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 USC 2601 *et seq.*, and of the rules of the Federal Energy Regulatory Commission ("FERC") promulgated thereunder, 18 CFR Part 292, *et seq.*, as implemented by the Commission. Greenwood Solar hereby respectfully requests that this Commission order DTE to comply with State and federal law and Commission orders by negotiating in good faith a sale of capacity and energy from Greenwood Solar to DTE under a Purchase Power Agreement ("PPA") pursuant to the requirements of PURPA and MCL 460.6v.

## **I. PARTIES**

1. Complainant, Greenwood Solar, is a FERC-registered Qualifying Facility ("QF"), owned by Geronimo Energy and located within the service territory of DTE, with a projected nameplate capacity of 20 MWac.

2. Respondent, DTE, is a public utility regulated by the Commission, and an electric utility subject to PURPA, with its principal offices located at One Energy Plaza, Detroit, MI 48226-1221.

## **II. JURISDICTION**

3. Greenwood Solar is a QF within the meaning of sections 201 and 210 of PURPA, 16 USC 796 and 824a-3; 18 CFR 292.101(b)(1).

4. As this Commission has previously recognized, "Section 210 [of PURPA] mandated that state regulatory agencies, such as this Commission, establish procedures for the treatment of electric power generation by nonutility cogenerators and small power producers using renewable resources qualifying under the standards contained in Section 201."<sup>1</sup>

5. The Commission has further recognized that:

Section 210(f) of PURPA expressly provides that state regulatory authorities shall implement PURPA and the FERC rules for each electric utility for which they have ratemaking authority. Under the FERC rules, that implementation may consist of "the issuance of regulations, an undertaking to resolve disputes between qualifying facilities and electric utilities or any other action reasonably designed to implement" the law (18

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<sup>1</sup> *In re., on the Commission's own motion, to implement provisions set forth in Title II, Section 210, Cogeneration and Small power Production, of the Public Utility Regulatory Policies Act (PURPA) of 1978 (PL 95-617), Final Order, Case No. U-6798, August 27, 1982, p. 1.*

CFR 292.401). In short, PURPA requires states to provide a forum for dispute resolution.<sup>2</sup>

6. In addition, MCL 460.6v requires that the Commission implement PURPA's requirements and "ensure that the rates for purchases by an electric utility from and rates for sales to, a qualifying facility shall, over the term of a contract, be just and reasonable and in the public interest, as defined by PURPA." MCL 460.6v(4)(a). The Commission is also to ensure that an electric utility does not discriminate against a QF (MCL 460.6v(4)(b)).

7. Adjudication of this dispute is therefore within the jurisdiction of the Commission.

8. Furthermore, the Commission has jurisdiction over this Complaint under Section 8 of Act 419 of 1919, as amended, MCL 460.58, which provides that, "[u]pon complaint in writing that any rate, classification, regulation or practice charged, made or observed by any public utility is unjust, inaccurate, or improper, to the prejudice of the complainant, the commission shall proceed to investigate the matter."

### **III. STATEMENT OF FACTS**

9. On December 12, 2017, Greenwood Solar provided notice by letter (see Attachment A) of its intent to enter into a contract with DTE for the sale of energy and capacity from its 20 MWac, FERC-registered QF pursuant to PURPA. Greenwood Solar thereby notified DTE of its legally enforceable obligation to purchase power from Greenwood Solar. See 18 CFR § 292.303.

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<sup>2</sup> *In re. Midland Cogeneration Venture Limited Partnership for approval of capacity charges contained in a power purchase agreement with Consumers Power Company, Opinion and Interim Order*, Case No. U-8871, January 31, 1989, p. 68 (emphasis added).

10. On Thursday, December 21, 2017, Greenwood Solar received a response from DTE (see Attachment B) indicating that since the Greenwood Solar project is larger than 100 kW, Greenwood Solar would need to negotiate a different form of PPA with DTE than the standard offer contract.

11. DTE's December 21, 2017, response also asserted that the utility had "no additional capacity needs in the next ten years." Attachment B.

12. On January 24, 2018, Greenwood Solar provided a response to DTE's December 21, 2017 reply, which included a proposed PPA for sale of capacity and energy to DTE and asked DTE to provide comments within 14 calendar days of receipt. See Attachment C.

13. Additionally, Greenwood Solar's January 24, 2018, response requested that DTE provide any waivers of its must purchase obligations for capacity that it had sought and obtained from FERC pursuant to PURPA Section 210 and 18 CFR § 292.303. Attachment C.

14. On February 6, 2018, Ms. Michelle Larue from DTE called Ms. Denise Hugo of Geronimo Energy to confirm receipt of the PPA.

15. On February 14, 2018, Ms. Hugo sent an e-mail to Ms. Larue (see Attachment D) summarizing the substance of the February 6, 2018 call and providing Greenwood Solar's response to the issues raised by Ms. Larue on behalf of DTE.

16. Notably, Ms. Larue sought to have Greenwood Solar delay its discussions with DTE while the utility created a standard form of PPA, despite the fact that Greenwood Solar's 20 MW size exceeds the size subject to a standard offer contract under DTE's current tariff.

17. Ms. Larue also continued to assert that DTE does not have an obligation to purchase capacity from Greenwood Solar, despite DTE having failed to provide any evidence of

waivers from FERC of its must purchase obligation with respect to capacity purchases under PURPA Section 210.

18. Additionally, Ms. Larue asserted that DTE's position is that PPA negotiations should await finalization of the engineering study phase of the interconnection process.

19. Ms. Hugo noted in her February 14, 2018 e-mail in reply to DTE, that Greenwood Solar wants to proceed with PPA discussions in tandem with the interconnection process. Attachment D.

20. Ms. Hugo's February 14, 2018 email reiterated that Greenwood Solar was still awaiting a substantive response from DTE to the proposed PPA offered on January 24. Attachment D.

21. On March 21, DTE sent a letter to Ms. Hugo, which among other things noted that "[c]urrently, purchases of electric output from . . . Qualified small Power Producing Facilities (QFs) by DTE Electric are addressed in tariff . . . Rider No. 6 . . . ." See Attachment E.

22. DTE's March 21 letter also asserted that DTE had no additional capacity need at this time and that it would only pay for energy and not capacity, and further stated that position was consistent with DTE's current Rider No. 6. Attachment E.

23. In response to DTE's March 21 letter, Counsel for Geronimo and Greenwood Solar sent a letter on March 26, 2018 to Ms. Larue objecting to DTE's unilateral assertion of no capacity need and to its refusal to negotiate for purchase of Greenwood Solar's capacity, and once again offering to negotiate a PPA immediately – this time under the requirements of Rider No. 6. See Attachment F.

24. The March 26 letter on behalf of Geronimo and Greenwood Solar requested a response from DTE by March 30 to the offer to negotiate a PPA under the requirements of Rider No. 6. As of this date, no response has been received from DTE to the aforementioned repeated attempts to engage DTE in negotiations over a PPA.

#### IV. COMPLAINT

**A. Count I: DTE's Failure to Engage in Substantive Negotiations of an Agreement for Purchase of Capacity and Energy Violates Greenwood Solar's Rights Under PURPA.**

25. PURPA imposes a mandatory purchase obligation on each "electric utility." PURPA §3(4); 16 USC 2602(4). Pursuant to 18 CFR 292.303, "[e]ach electric utility *shall purchase . . . any energy and capacity which is made available from a qualifying facility.*" (emphasis added).<sup>3</sup>

26. DTE, which is an "electric utility" under PURPA, has sought and received a waiver from FERC, which has relieved it of its mandatory purchase obligation for QFs over 20 MWs.<sup>4</sup> However, there has been no such waiver granted for smaller QFs.

27. Greenwood Solar is a 20 MW QF for which DTE continues to have a federal, mandatory purchase obligation. PURPA § 3(4); 16 USC 2602(4).

28. Greenwood Solar has offered energy and capacity to DTE for purchase.

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<sup>3</sup> *Public Service Co. of New Hampshire v. New Hampshire Electric Cooperative, Inc.* 83 FERC ¶ 61,224, reh'g denied, 85 FERC ¶ 61,044 (1998). ("Section 210(a) of PURPA provides generally that electric utilities must offer to purchase electric energy from any QF that can deliver power to the utility.").

<sup>4</sup> 18 CFR 292.309(e) & 292.311; *The Detroit Edison Company: Order Granting the Application to Terminate Mandatory Purchase Obligation*, Docket No. QM10-2-000, order dated April 15, 2010 granting application to terminate mandatory purchase obligation for facilities over 20 MW. [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=13808527](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=13808527).

29. Despite this, DTE has refused to negotiate in good faith a PPA with Greenwood Solar, despite Greenwood Solar's multiple attempts to engage the utility in substantive negotiations.

30. DTE's insistence that PPA negotiations await finalization of the engineering study puts Greenwood Solar in the position of having to wait upon actions by the utility before any agreement can even begin to be negotiated. Such delay is unnecessary as the studies are more about payment of costs for the interconnection than the feasibility of the project, and Greenwood Solar pays the interconnection costs under the Commission's regulations.

31. Furthermore, by making PPA negotiations await finalization of the engineering study, DTE is able to indefinitely delay the establishment of an agreement, in violation of PURPA.

32. By refusing to negotiate a PPA, DTE has effectively refused to purchase the energy and capacity made available by that QF at either the established avoided cost rate or at an otherwise just and reasonable rate under PURPA. As the FERC has stated:

Thus, under [FERC's] regulations, a QF has the option to commit itself to sell all or part of its electric output to an electric utility. **While this may be done through a contract, if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable obligation will be created pursuant to the state's implementation of PURPA.** Accordingly, a QF, by committing itself to sell to an electric utility, also commits the electric utility to buy from the QF; these commitments result either in contracts or in non-contractual, but binding, legally enforceable obligations. **For purposes of section 210(m) of PURPA and termination of the requirement that an electric utility enter into new contracts or obligation to purchase from a QF, the Commission has stated that the term obligation means "legally enforceable obligation."** The Commission has also stated that a utility may not avoid the creation of an obligation, which cannot be terminated in



a proceeding under section 210(m) of PURPA, by refusing to sign a contract. [Emphasis added].<sup>5</sup>

Thus, as DTE has refused to contract with Greenwood Solar on terms required by PURPA, the Commission must enforce the federal obligation on the utility.

33. DTE's must-purchase obligation is not waived by the fact that the Commission is in the process of establishing new avoided cost rates for DTE, in Case No. U-18091, nor that the Commission has initiated an inquiry into the determination of utility capacity needs over a 10-year planning horizon, in Case No. U-20095. DTE's PURPA proceeding appears to be in stasis since early October 2017. And although the Commission has initiated a new proceeding on 10-year planning horizon capacity needs, DTE has a pending proceeding to build a 1100 MW natural gas combined cycle generation plant in Case No. U-18419, and filed a Renewable Energy Plan case in Case No. U-18232 on March 29, 2018 in which it is seeking to add over 800 MW of new utility-owned renewable capacity. In short, DTE's pending proceedings seeking to fill its energy and capacity needs for itself cannot displace its federal must-purchase obligations under PURPA. Nor can delay in reaching a final order in U-18091 provide an excuse for DTE to evade its must-purchase obligations.

34. DTE's actions are discriminatory against Greenwood Solar and so violate PURPA and MCL 460.6v(4)(b).

35. DTE can either negotiate an agreement with Greenwood Solar based on the Commission's last avoided cost determination, or else negotiate a reasonable rate and seek Commission approval. What it cannot do is to continue to ignore its responsibility under federal

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<sup>5</sup> *Virginia Electric Power Company*, FERC Docket No. QM15-1-000; 151 FERC ¶ 61,038, Order dated April 16, 2015 (citations omitted) ("*VEPCO*").

law to purchase Greenwood Solar's capacity and energy and to threaten the viability of the Greenwood Solar project through inactivity.

36. Therefore, for the reasons set forth herein, Greenwood Solar requests that the Commission require DTE to immediately begin to negotiate to enter into a PPA with Greenwood Solar for the purchase of energy and capacity as required by federal law.

**B. Count II: DTE Cannot Unilaterally Refuse to Purchase Capacity Offered by Greenwood Solar.**

37. DTE has repeatedly asserted to Greenwood Solar that the utility does not have a capacity need and does not intend to purchase capacity from Greenwood Solar.

38. At the same time that DTE was making these assertions, it was before the Commission seeking approval for a new addition of utility-owned capacity in the amount of 1100 MW.<sup>6</sup>

39. DTE has now also filed a Renewable Energy Plan seeking to acquire over 800 MW of new renewable energy capacity that it would itself own (see U-18232).

40. By refusing to buy QF capacity and instead seeking to build its own, DTE is choosing to ignore the plain requirements of federal law at 18 CFR § 292.303(a), which require that, "[e]ach electric utility shall purchase, in accordance with §292.304, unless exempted by §292.309 and §292.310, any energy and capacity which is made available from a qualifying facility ... ." The FERC understands this language to require a utility to purchase capacity if it is made available by the QF: "The Commission's regulations require that a utility purchase any energy and capacity made available by a QF." *FLS Energy, Inc.*, 157 FERC ¶ 61211, EL17-5 (Dec 15, 2016), p. 8. The FERC has also explicitly rejected the argument made by a utility that

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<sup>6</sup> See filings in Case No. U-18419.

it did not have to purchase capacity from a QF under PURPA because it "had no capacity need." See *West Penn Power Co.*, 71 FERC P 61153, EL95-20 (May 8, 1995).

41. Despite its plain legal obligation, DTE persists in its refusal to contract for purchase of capacity from Greenwood Solar, even while it fails to provide any FERC waivers of its obligations.

42. As FERC has stated:

[O]ne of the principal reasons Congress adopted section 210 of PURPA was because electric utilities had refused to purchase power from non-utility producers. Congress thus required the Commission to prescribe rules that the Commission "determines necessary to encourage cogeneration and small power production." In section 210(a) of PURPA, Congress also required electric utilities to purchase electric energy from QFs, which the Commission, in section 292.303 of its regulations, interpreted as imposing on electric utilities an obligation to purchase all electric energy and capacity made available from QFs.<sup>7</sup>

43. Federal law and FERC rules envision that the state public regulatory commissions must implement PURPA, in part, to protect QFs in their state. As such, FERC has noted that:

PURPA directs the [FERC] to prescribe "such rules as it determines necessary to encourage cogeneration and small power production." PURPA, in turn, directs the states to "implement" the rules adopted by the Commission. A "state commission may comply with the statutory requirements by issuing regulations, by resolving disputes on a case-by-case basis, or by taking other actions reasonably designed to give effect to [the FERC's] rules."<sup>8</sup>

44. This Commission, therefore, may act on this Complaint to resolve the dispute between Greenwood Solar and DTE in the absence of a final determination in U-18090 and U-20095. In fact, it is necessary to do so in order to protect Greenwood Solar from the deleterious effects of further delay.

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<sup>7</sup> *Cedar Creek Wind, LLC*, 137 FERC ¶ 61,006 at P 30 (2011), ("*Cedar Creek*"), citing *FERC v. Mississippi*, 456 U.S. at 750 (emphasis added); 16 USC 824a-3(a) (2006); 18 CFR 292.303 (2011).

<sup>8</sup> *Cedar Creek*, 137 FERC ¶ 61,006 at P 30 (2011) (citations omitted, brackets added).

45. Therefore, for the reasons set forth herein, Greenwood Solar requests that the Commission reject DTE's unilateral assertion that it has no obligation to purchase capacity from Greenwood Solar and order DTE to negotiate for such purchase.

**C. Count III: DTE's Failure to Engage in Substantive Negotiations of an Agreement for Purchase of Capacity and Energy Violates Greenwood Solar's Rights Under DTE's Rider No. 6.**

46. Contrary to DTE's assertion in its March 21 letter, Rider No. 6 does not allow the utility to unilaterally refuse to negotiate for purchase of QF capacity.

47. Sheet No. D-82.00 of Rider No. 6 requires that for new facilities having a capacity of over 100 kW, sales of capacity and energy "will be made under negotiated agreement." By effectively refusing to negotiate the terms of sale of energy and capacity either under the form of PPA provided by Geronimo or under a form of PPA provided by DTE, DTE has violated the requirements of its tariff that it negotiate with QFs for sales of energy and capacity.

48. Additional delays by DTE in negotiating the terms of a PPA threatens the viability of the Greenwood Solar project by causing delays in the project schedule and timeline.

49. Therefore, DTE should be required to negotiate a PPA under the terms of its current tariff, Rider No. 6. For it to do otherwise is to discriminate against Greenwood Solar's QF capacity and energy.

**V. PRAYER FOR RELIEF**

50. For the foregoing reasons, Greenwood Solar hereby respectfully requests that this Commission take the following actions:

- a. Enter an order requiring DTE to immediately begin to negotiate in good faith a power purchase agreement with Greenwood Solar, or else to accept the form of PPA offered by Greenwood Solar;
- b. Require DTE to purchase both capacity and energy from Greenwood Solar at a just and reasonable avoided cost that does "[n]ot discriminate against qualifying cogeneration and small power production facilities";
- c. Grant such other and further relief as is deemed lawful and appropriate.

Respectfully submitted,

Varnum, LLP  
Attorneys for Greenwood Solar, LLC

April 17, 2018

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Tim Lundgren (P62807)  
Laura Chappelle (P42052)  
The Victor Center, Suite 910  
201 N. Washington Square  
Lansing, Michigan 48933  
517-482-6237

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# **ATTACHMENT A**



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**Timothy J. Lundgren**

Direct: 616 / 336-6750  
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December 12, 2017

Ms. Michelle Lynn Larue  
DTE Electric Company  
414 S. Main St, Suite 600  
Ann Arbor, MI 48104

Re: Greenwood Solar, LLC

Dear Ms. Larue:

We are writing on behalf of Greenwood Solar, LLC ("Greenwood Solar") to DTE Electric Company ("DTE Electric") to commence discussions under Michigan law and Section 210 of The Public Utilities Regulatory Policies Act of 1978 ("PURPA") for Greenwood Solar as a Qualifying Facility ("QF") to enter into contract with DTE Electric to purchase the energy and capacity made available from Greenwood Solar in accordance with DTE Electric's obligations under 18 CFR § 292.303. We understand that the Michigan Public Service Commission ("MPSC") has yet to make a final determination as to DTE Electric's avoided costs in Case No. U-18091. Nevertheless, we wish to open discussions with DTE Electric at this time, anticipating that as the contested case process is completed, a decision from the MPSC in U-18091 is imminent.

Greenwood Solar is a 20 MW AC solar generating facility with an expected in service date of December 31, 2019, located in St. Claire County at the following coordinates: west 82.700 degrees longitude, north 43.092 degrees latitude. Greenwood Solar was certified as a small power production facility with approximately 20 MW of capacity via a filing with the Federal Energy Regulatory Commission ("FERC") on December 1, 2017, with a QF docket number of QF18-303.

Greenwood Solar intends to follow FERC's regulations and Michigan's implementation of PURPA to supply energy and capacity to DTE Electric "pursuant to a legally enforceable obligation for the delivery of energy and capacity over a specified term" in accordance with 18 CFR § 292.304(d) and the MPSC's Orders in Case No. U-18091. Greenwood Solar requests a 20-year power purchase agreement with DTE Electric at the avoided cost rate to be set in the upcoming MPSC Order in U-18091.

December 10, 2017

Page 2

Please respond to this notice of PURPA obligation within ten business days of the date of this letter by responding to Tim Lundgren at [tjlundgren@varnumlaw.com](mailto:tjlundgren@varnumlaw.com) or P.O. Box 352, Grand Rapids, MI 49501-0352.

Sincerely,

VARNUM

A handwritten signature in black ink, appearing to read "Tim Lundgren", with a stylized flourish at the end.

Timothy J. Lundgren

Cc: Angela P. Wojtowicz

TJL/kc

12541774\_1.docx



## **ATTACHMENT B**



### PURPA Qualifying Facility Notification

This letter is to inform you that if you intend your project to be a PURPA Qualifying Facility, please see DTE Electric Rider No. 6 and note that Standard Offers are for projects less than 100kW. Consistent with the current Company tariff, the terms and conditions for a Power Purchase Agreement (PPA) for any facility greater than 100kW would be negotiated. Furthermore, any PPA that we negotiate in connection with a PURPA qualifying facility will be negotiated consistent with all PURPA rules, including the one-mile rule. The Company presently forecasts that it has no additional capacity needs in the next 10 years.

# **ATTACHMENT C**



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**Tim Lundgren**

[tjlundgren@varnumlaw.c@varnumlaw.com](mailto:tjlundgren@varnumlaw.c@varnumlaw.com)

January 24, 2018

Ms. Michelle Lynn Larue  
DTE Electric Company  
414 S. Main St, Suite 600  
Ann Arbor, MI 48104

Re: Greenwood Solar, LLC

Dear Ms. Larue:

On December 12, 2017, Greenwood Solar, LLC (“Greenwood Solar”) provided you with notice of its intent to enter into a contract with DTE Electric Company (“DTE”) for the sale of energy and capacity from its 20 MW, FERC-registered Qualifying Facility under the terms of the Public Utilities Regulatory Policies Act of 1978 (“PURPA”). Greenwood Solar thereby established a legally enforceable obligation on the part of DTE to purchase power from Greenwood Solar. See 18 CFR § 292.303. On Thursday, December 21, we received a response from DTE indicating that as the Greenwood Solar project is larger than 100 kW we would need to negotiate a different form of power purchase agreement (“PPA”) with DTE than the standard offer. Therefore, please see attached the form of contract under which Greenwood Solar proposes to sell energy, capacity, and renewable energy credits from the Greenwood Solar project to DTE.

We noted that in DTE’s December 21 response, you claimed that DTE has “no additional capacity needs in the next ten years.” You will see that the proposed PPA offers to sell the capacity from the Greenwood Solar project to DTE. If DTE has sought and possesses current and valid waivers from FERC exempting it from its purchase obligations with respect to capacity under PURPA Section 210 and FERC regulations at 18 CFR § 292.303, then please provide such waivers. In the absence of such regulatory waivers, Greenwood Solar continues to invoke DTE’s must-purchase obligation and asserts that it has satisfied all requirements for establishing a legally enforceable obligation under PURPA.

Please review the attached PPA and provide any comments on it within 14 calendar days of receipt. We look forward to working with DTE toward a successful project.

Sincerely,

VARNUM

A handwritten signature in black ink, appearing to read 'Timothy J. Lundgren', with a stylized, flowing script.

Timothy J. Lundgren

Cc: Angela P. Wojtowicz

**FILED UNDER CONFIDENTIAL SEAL**

**RENEWABLE ENERGY PURCHASE AGREEMENT**

**BETWEEN**

**[BUYER]**

**AND**

**[SELLER]**

## **ATTACHMENT D**

## Champagne, Kim J.

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**From:** Denise Hugo <dhugo@geronimoenergy.com>  
**Sent:** Wednesday, February 14, 2018 2:08 PM  
**To:** Michelle Lynn Larue  
**Cc:** Nathan B. Franzen; Betsy Engelking; Lundgren, Timothy J.  
**Subject:** Response to 2/6 phone conversation re QF Greenwood Solar

Hi Michelle –

Thank you for your call on 2/6 at 3:30p Central to discuss Geronimo Energy's QF, Greenwood Solar 20 MW. Here is a summary of my understanding of the call, if I have misrepresented anything here please let me know in writing.

On our call you confirmed receiving our starting point PPA form and price proposal. You mentioned DTE is working on a starting point PPA template for all suppliers under PURPA and you would like to use DTE's form to negotiate the PURPA contract. You indicated this PPA template will be available in the coming weeks. You also mentioned DTE believes their avoided costs will vary from the price proposal Geronimo submitted. DTE understands that they have energy purchase obligations under PURPA but does not understand that DTE has capacity purchase obligations under PURPA. You would propose to start negotiations once the QF finalizes the engineering study phase of the interconnection application process. DTE understands this to be the moment when actual viability of a project may be known. In following this process, the interconnection agreement and/or facilities agreement would be negotiated in parallel with the PPA.

Regarding DTE's proposal to use a PPA template for all suppliers under PURPA, Geronimo notes that as a 20 MW project Greenwood is not subject to a "standard contract" and we don't intend this project to be subject the same template as all other suppliers under PURPA. We have presented a utility-scale starting point PPA we are willing to be bound by, and see no reason why the parties should not start negotiating those terms now. There is no need to wait for a standard offer template, and in fact this could be interpreted as a delay tactic on behalf of DTE.

Regarding DTE's belief that their avoided costs will vary from the price proposal Geronimo submitted (which was based on the most recent avoided cost calculations from MPSC for a Michigan utility), we have presented an offer we are willing to be bound by, and unless a counter offer is made we understand it to be the basis for contract going forward.

Regarding the fact that DTE does not understand their obligation to purchase capacity, my counsel provided the following case law excerpts for your consideration: FERC's implementing regulations at 18 CFR § 292.303(a) require that, "[e]ach electric utility shall purchase, in accordance with §292.304, unless exempted by §292.309 and §292.310, any energy and capacity which is made available from a qualifying facility ... ." The FERC understands this language to require a utility to purchase capacity if it is made available by the QF: "The Commission's regulations require that a utility purchase any energy and capacity made available by a QF." (FLS Energy, Inc., 157 FERC ¶ 61211, EL17-5 (Dec 15, 2016), p. 8.) The FERC has explicitly rejected the argument made by a utility that it did not have to purchase capacity from a QF under PURPA because it "had no capacity need." See West Penn Power Co., 71 FERC P 61153, EL95-20 (May 8, 1995). FERC's language addressing capacity need in the *City of Ketchikan, Alaska* case does not provide support for DTE's position. *City of Ketchikan, Alaska*, 94 FERC P 61293, EL01-26, March 15, 2001). In *Ketchikan*, the utility sought and obtained a waiver from FERC of its obligation to purchase capacity. Should DTE possess any such FERC waiver, we would request that it be provided to us as a demonstration of DTE's lack of obligation under 18 CFR 292.303(a). Unless and until such a waiver is provided, DTE continues to have a must purchase obligation to Greenwood Solar for its capacity. Furthermore, in *Ketchikan* FERC observed that a waiver of capacity purchase obligations were appropriate only under limited circumstances: "Accordingly, an avoided cost rate need not include capacity unless the QF purchase will permit the purchasing utility to avoid building or buying future capacity. Thus, while utilities may have an obligation under PURPA to purchase from a QF, that obligation does not require a utility to pay for capacity that it does not need." However, as DTE has attested in its Application in U-18419, the utility possesses "a substantial capacity and energy



supply need beginning in 2022." DTE Application in U-18419, p. 4. Because DTE is currently seeking to add significant new capacity to its portfolio, the Greenwood project could "permit [DTE] to avoid building or buying future capacity." *Ketchikan*, p. 5. For these reasons, we do not accept DTE's unsupported, unilateral claim that it is not subject to FERC's rules requiring it to purchase the energy and capacity that Greenwood Solar makes available.

We reject DTE's proposal to start negotiations on a PPA once Greenwood Solar has finalized the engineering study phase of the interconnection application process. Greenwood Solar is happy to continue progressing toward an interconnection agreement with DTE, but rejects the idea that this and PPA negotiations cannot proceed simultaneously. We would further note that lack of an interconnection agreement, like lack of a signed contract, is not determinative of when a legally enforceable obligation has been established. We would direct you to a FERC order rejecting a Montana Commission requirement that a QF have a signed interconnection agreement to establish a legally enforceable obligation. *FLS Energy, Inc.*, 157 FERC ¶ 61211, EL17-5 (Dec 15, 2016) ("The Montana Commission's requiring a signed interconnection agreement is no different than requiring a utility-signed contract, and equally impermissible."). We highlight yet again that LEO was established on 12/12/17 when we notified DTE of our intent to engage in negotiations. Greenwood Solar is a viable project with interconnection application submitted, fee paid, full site control, and QF registered status. Furthermore, it has offered a form of agreement with all major terms in place which it is willing to be bound by. We do not agree with DTE's desire to wait until the engineering study is finalized to determine whether this is a real and viable project.

Regarding next steps and timing, we understand a reasonable timeline to execute the PPA is 120 calendar days, assuming 3 turns of the agreement from each party with a maximum 15 calendar day turnaround response time on each turn. As Geronimo provided an agreement we are willing to be bound by on 1/24/18, we anticipate a response from DTE which would accept the agreement as presented, redline terms of the agreement, or provide an alternative agreement for our review.

We would be happy to set up a call to discuss these points further. In the meantime, we await DTE's response to the PPA provided.

-Denise

## Denise Hugo

*Director, Origination*

7650 Edinborough Way, Suite 725

Edina, MN 55435

Main: 952.988.9000

Direct: 952.955.8130

[Geronimo Energy](#)



# **ATTACHMENT E**



3/21/2018

Denise Hugo  
Director, Origination  
Geronimo Energy  
7650 Edinborough Way, Suite 725  
Edina, MN 55435

Subject: Greenwood Solar, LLC (DE-02782)

Dear Ms. Hugo,

In response to your lengthy e-mail of February 14, 2018, DTE Electric Company (DTE Electric or Company) does not agree with many of Geronimo's various conclusions, assertions and characterizations and reserves all of its rights now and in the future. DTE Electric will further respond with a PPA utilizing our template "non-standard" agreement once your project has demonstrated a reasonable degree of viability and otherwise consistent with the facts and circumstances described below. Electric generation is installed for a variety of reasons and with a variety of expectations and those reasons and expectations sometimes change as a project progresses through the development process. An application for interconnection to DTE Electric Company's distribution system does not create or imply any commitment by DTE Electric Company. As an applicant for generation interconnection with the DTE Electric distribution system, please be advised of the following:

- There are presently several pending administrative proceedings at the MPSC that may materially impact DTE Electric and PURPA Qualifying Facilities (QFs). DTE Electric cannot predict the timing, impacts or outcomes of any of those pending administrative proceedings or associated appeals or any future administrative proceedings or associated appeals. DTE Electric does not guarantee timing, pricing, or any other terms and conditions with respect to PURPA and QFs and reserves all of DTE Electric's rights to pursue the Company's interests in pending and future administrative proceedings and any associated appeals, as deemed appropriate by DTE Electric in its sole judgment.
- Currently, purchases of electric output from Qualified Cogeneration Facilities and Qualified Small Power Producing Facilities (QFs) by DTE Electric are addressed in tariff Rider No. 5 and Rider No. 6 respectively.
- The Company forecasts that it has no additional capacity needs at this time.
- DTE Electric payments to QFs under a PURPA PPA would be for energy-only consistent with Rider Nos. 5 and 6.
- Any PURPA PPA will be negotiated consistent with PURPA, including but not limited to the one-mile rule.



**DTE Energy®**

Please indicate your acknowledgement of receipt by signing below and return to me at michelle.larue@dteenergy.com.

Sincerely,

DTE ELECTRIC COMPANY

Acknowledgement:

Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT F**



201 North Washington Square • Suite 910  
Lansing, Michigan 48933  
Telephone 517 / 482-6237 • Fax 517 / 482-6937 • www.varnumlaw.com

**Tim Lundgren**

tjlundgren@varnumlaw.c@varnumlaw.com

March 26, 2018

Ms. Michelle Lynn Larue  
DTE Electric Company  
414 S. Main St, Suite 600  
Ann Arbor, MI 48104

Re: Greenwood Solar, LLC

Dear Ms. Larue:

I am writing in response to your letter to Ms. Hugo dated March 21, 2018, with the subject line Greenwood Solar, LLC (DE-02782). Ms. Hugo's February 14 email notes your verbal confirmation of receipt of the PPA that was sent to you on January 24, 2018. In your March 21 letter you state that DTE will "further respond" by providing a draft PPA "once your project has demonstrated a reasonable degree of viability and otherwise consistent with the facts and circumstances described below." DTE thereby erects two hurdles to beginning PPA negotiations: 1) achievement of undefined criteria of viability, apparently left to the utility's own discretion, and 2) agreement with DTE's unsupported claims of no capacity need. These barriers to even beginning contract negotiation, which would require capitulation to DTE's unilateral assertions and negotiating positions, appear to be a blatant attempt by DTE to further delay and forestall discussions around the terms of a PPA.

As DTE has now refused reasonable attempts to either proceed with discussions based on the PPA that Geronimo provided two months ago on January 24, or to provide a different form of PPA under which discussions to sell capacity and energy to DTE may proceed, Geronimo intends to take additional steps to secure its legal rights, as discussed below.

In your letter of March 21 you call our attention to Rider No. 6. We note the requirement in that tariff that DTE be provided with notification of QF certification at FERC. As we noted in our December 12, 2017 letter to you, Greenwood Solar has a FERC QF docket (QF18-303) indicating its status as a QF certified at FERC. However, to forestall any further concern over Greenwood Solar's status, we hereby attach the FERC Form 556 that was filed with FERC to achieve that certification status.

We also note that under Rider No. 6, sales of capacity and energy by new facilities to DTE for facilities having a capacity of over 100 kW "will be made under negotiated agreement." See Sheet No. D-82.00. Geronimo is prepared to proceed with establishing the "negotiated

March 26, 2018

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agreement" required under Rider No. 6 immediately. We see no basis in the tariff for DTE to further delay, or to claim that it has no capacity purchase obligation. Please provide your agreement that DTE will immediately begin negotiating for the purchase of energy and capacity from Greenwood Solar under the terms of Rider No. 5 by March 30, 2018 or we intend to file a complaint against DTE for its violations of Michigan and federal law.

Sincerely,

VARNUM

A handwritten signature in black ink, appearing to read "Timothy J. Lundgren", with a stylized, cursive script.

Timothy J. Lundgren

Cc: Angela P. Wojtowicz

Encl.