



CITY OF ANN ARBOR, MICHIGAN

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September 25, 2024

VIA ELECTRONIC CASE FILING

Ms. Lisa Felice, Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
Lansing, MI 48917

RE: MPSC Case No. U-21291

Dear Ms. Felice,

Attached please find the **City of Ann Arbor's Exceptions to the Proposal for Decision and Proof of Service** for the above referenced case.

Please contact me if you have any questions.

Sincerely,

Valerie Jackson
Assistant City Attorney,
City of Ann Arbor

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE GAS COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of natural gas, and for miscellaneous accounting authority.

U-21291

ALJ Jonathan F. Thoits

**EXCEPTIONS TO THE PROPOSAL FOR DECISION
BY THE CITY OF ANN ARBOR**

Intervenor the City of Ann Arbor (“Ann Arbor” or “the City”), by its counsel, files its Exceptions to the Proposal for Decision (“PFD”) issued by the presiding Administrative Law Judge, the Honorable Jonathan F. Thoits (“ALJ”), on September 4, 2024 in the above-captioned proceeding initiated by DTE Gas Company (“DTE,” “DTE Gas,” or “the Company”) before the Michigan Public Service Commission (“MPSC” or “the Commission”) for and in accordance with the schedule established in the PFD. Specifically, the City:

- I) Excepts to the PFD’s finding regarding coordination with local governments;
- II) Excepts to the PFD’s finding regarding the reasonableness and prudence of certain pipe replacement projects in the City;
- III) Excepts to the PFD’s suggestion that willingness to coordinate projects with DTE indicates approval of the underlying DTE projects;
- IV) Excepts to the PFD’s failure to address the City’s request to make a finding regarding the proper treatment of the risk of obsolescence due to decarbonization;
- V) Requests the Commission make a finding that the risk of obsolescence due to decarbonization is properly included as a factor to be considered when calculating

depreciation rates and is not a proper factor to be considered when calculating the rate of return on equity (“ROE”);

- VI) Expects to the PFD’s finding that the City did not support its assertion that DTE gas leaks are causing damage to City trees; and
- VII) Requests the Commission provide guidance on the proper venue for a claim for damages related to trees impacted by gas leaks on DTE’s system.

I. ANN ARBOR’S EXCEPTIONS REGARDING COORDINATION AND CAPITAL PROJECTS IN ANN ARBOR

A. Ratepayers Should Not Have to Pay for Costs That Could Be Avoided by DTE Taking Reasonable and Prudent Steps to Identify Opportunities for Coordination with Local Governments.

The PFD concluded that “DTE need not be put on notice that the Commission might consider costs to be imprudently incurred if DTE has failed to take advantage of opportunities for cost savings,” explaining, “every utility regulated by the Commission is aware of that from the Commission’s prior orders,” and finding, “DTE should not be required to report on systematic changes it has made to coordinate its infrastructure projects with other utilities and local governments in an effort to reduce costs and disruptions.” PFD, p. 96. The City, however, notes that the Order in the most recent DTE Electric Company rate case suggests that prior orders alone have proven insufficient to cause the utility to comply with MPSC-ordered requirements. See, Case No. U-21297, Order, Dec. 1, 2023, p. 361, 375 (requiring DTE to include “a demonstration of its efforts to improve communication and coordination with local governments regarding construction activities,” in part because “coordinating with its affiliates may reduce project costs”).

As discussed in Section IV(A) of Ann Arbor’s initial brief, an opportunity for such cost-saving coordination between DTE and Ann Arbor was only discovered by chance during the parties’ franchise negotiations. This means it is likely that coordination opportunities exist in many other communities, as well as between DTE Gas and DTE Electric, but there is no process for identifying them. Had the parties not accidentally discovered that both Ann Arbor and DTE had planned projects in same area on Page Avenue, the projects likely would have proceeded separately without the benefit of cost savings, and ratepayers would be stuck paying costs that could have been easily avoided. The Page Avenue project had appeared in Ann Arbor’s publicly

available Capital Improvement Plan (“CIP”)) for many years. DTE Gas and DTE Electric also have a capital planning project horizon that is planned years in advance. Ann Arbor’s Initial Brief, p. 14-15. It is simply not reasonable to expect ratepayers to bear costs that DTE could easily avoid by annually accessing the publicly available CIPs of local governments, and conferring with its sister Company, to identify possible overlaps in the geography of planned DTE and local government projects. Coordinating such projects could potentially eliminate the costs associated with digging up and restoring roads and/or sidewalks multiple times, as well as costs related to mobilization and traffic control.

As indicated in Section I(A) of its reply brief, Ann Arbor is not suggesting that DTE must attempt to coordinate every one of its projects in order to recover costs, but rather that failure to perform basic due diligence in the scheduling and design of its infrastructure projects (e.g., not even looking at publicly available CIPs to identify potential coordination opportunities in its service area) is needlessly driving up costs, and ratepayers should not have to pay for those avoidable costs. Accordingly, Ann Arbor requests the Commission require DTE Gas to demonstrate efforts to better coordinate infrastructure projects with local governments to prevent ratepayers from bearing needlessly duplicative – and easily avoidable – costs, but with sufficient specificity to avoid a repeat of DTE Electric Company’s approach to complying with a similar order. in Case No. U-21297.

B. Costs Associated with the Replacement of Plastic or Protected Coated Steel Pipes in Ann Arbor Should Be Disallowed.

Ann Arbor excepts to the PFD’s finding that DTE has demonstrated that the expenditure of \$20,420,354 on pipe replacement projects in Ann Arbor is reasonable and prudent. Ann Arbor takes particular exception to the projects involving the replacement of plastic or protected coated

steel pipes. As indicated in the PFD, DTE witness Janness attempted to justify such pipe replacements by stating they were done to raise the grid's operating pressure. 4 Tr 651.

The City finds this justification problematic for at least two reasons. First, as the PFD noted "our society is undergoing a fundamental energy transition in which society is shifting away from fossil fuels and towards renewable forms of energy ... [which] may result in substantial reductions in the amount of gas delivered." PFD, p. 409. It is not reasonable or prudent for the Company to be spending millions of dollars to increase the operating pressure of a system that is predicted to be delivering substantially *less* gas in the near future, particularly in Ann Arbor, which has put DTE on notice that it does not expect fossil gas use in the City will extend past 2050. *See*, Stults, 3 Tr 514.

Second, as DTE witness Janness testified, "A leak from a high pressure distribution pipeline in a populated area can have greater consequences than a failure on a transmission line in a less populated area." 4 Tr 619. Thus, by raising the operating pressure on the system in Ann Arbor, the Company is potentially increasing the amount of fugitive gas emitted from leaks on that system, leading to greater consequences. Ann Arbor witness Robert Ackley detected 165 locations throughout the City with elevated methane levels, indicating likely gas leaks at each of these locations. He opined that leakage from gas pipelines were responsible for the 50 leaks that the City identified for further investigation, which were selected in large part based on higher initial methane detections. That means there are at least 50 and as many as 165 locations in Ann Arbor where increasing the pressure on the system would likely increase the amount of fugitive methane escaping into the air. Witness Ackley testified that it would cost approximately \$825,000 to repair Ann Arbor's approximately 165 leaks. However, rather than a strategy focused on repairing every known leak in the Ann Arbor system at a cost of under \$1 million, the

Company is spending over \$20 million to completely replace only some of the pipelines throughout the City, many of which are completely safe (and should be for several decades) and only being replaced to raise the operating pressure, which will exacerbate the consequences of existing (and future) leaks on the system. Ackley, 3 Tr 486-93. This is neither reasonable nor prudent.

Accordingly, any expenditure for pipe replacements in Ann Arbor that are intended to increase operating pressure – such as replacements of plastic or protected coated steel pipes -- should be disallowed unless replacement of a particular pipe is the only method to remedy an unsafe condition.¹

C. Ann Arbor’s Willingness to Coordinate Projects with DTE Does Not Equate to the City’s Approval of Those DTE Projects.

In reaching its conclusion to recommend rejecting Ann Arbor’s proposed disallowance of \$20,420,354 for projects in the City that Ann Arbor believes are unnecessary, the PFD partially relied on DTE witness Janness’ testimony regarding the fact that some of these projects were pulled ahead to resolve utility and/or road resurfacing conflicts with the City. PFD, p. 97-98. This suggests that the PFD equated the City’s willingness to coordinate projects in an attempt to reduce costs and disruptions with the City’s approval of the underlying DTE projects and all costs associated with them. This is a false assumption, and contrary to the City’s testimony in this case. Ann Arbor both does not believe these projects are necessary (Stults, 3 Tr 523-24) and believes that if the Company is going to do them anyway, the projects ought to be done in a way that limits waste and disruptions (Stewart, 3 Tr 501-03; Stults, 3 Tr 524-26).

¹ The City notes it does not object to replacement of pipelines necessary for safety reasons, but the Company has not demonstrated that these pipelines required replacement instead of repair, and Mr. Ackley has opined that replacement is unlikely to be necessary.

There is no statutory support for the proposition that local governments that coordinate with the utility on a planned project thereby concede that the project is necessary and its costs are appropriate for inclusion in rates. If the Commission were to find that coordination with the utility forecloses the City's ability to argue that the underlying project is unnecessary, Ann Arbor would be forced to choose between reducing the burdens to its residents (and potentially ratepayers) of a project the Company wishes to do, or challenging the reasonableness or prudence of that project in the future. The Commission does not have the power to make management decisions, like ordering the Company not to undertake projects it believes to be unreasonable; it can only deny cost recovery for unreasonable expenses. *Union Carbide Corp v Pub Serv Comm'n*, 431 Mich 135, 148; 428 NW2d 322 (1988). Therefore, the Commission should not find that local governments cede their argument against cost recovery of a project by cooperating with a utility's management decision to undertake that project.

In short, the Commission should reject the PFD's reasoning that the City's willingness to coordinate the timing of projects with DTE is evidence that the City concedes the reasonableness or prudence of the underlying DTE projects, especially in light of sworn testimony to the contrary.

II. ANN ARBOR'S EXCEPTIONS REGARDING THE PROPER TREATMENT OF THE RISK OF OBSOLESCENCE DUE TO DECARBONIZATION

A. The PFD Failed to Directly Address Ann Arbor's Argument Regarding the Proper Treatment of the Risk of Obsolescence Due to Decarbonization.

In its initial brief, Ann Arbor specifically recommended, "The Commission find that depreciation, and not ROE, is the appropriate mechanism for compensating DTE for any infrastructure obsolescence related to climate change." Ann Arbor's Initial Brief, p. 2. Ann Arbor extensively discussed the reasoning behind this recommendation and the importance of the Commission making such a finding in its briefing. *Id.* at 4-8.

Though the PFD included some broad statements regarding DTE witness Dr. Villadsen’s improper consideration of certain risks in her ROE calculations (“Dr. Villadsen is misconstruing the relevant risk applicable to establishing a reasonable ROE;” “the Supreme Court makes clear that the relevant risk for purposes of establishing a reasonable ROE is not the financial risk ... Dr. Villadsen describes.” (PFD, p. 223)), it did not directly address whether the risk of obsolescence due to decarbonization was one of these improperly considered risks. Thus, Ann Arbor takes exception to the PFD failing to address its recommendation to make a specific finding that it is improper to consider the risk of obsolescence due to decarbonization in ROE calculations because such risk is properly included in the calculation of depreciation rates, and cannot be included in both – otherwise DTE would be doubly compensated for this risk.

B. The Commission Should Make a Clear Ruling That the Risk of Obsolescence Due to Decarbonization is an Appropriate Consideration in Calculating Depreciation Rates and Thus Should Not Be Considered When Setting the Rate of Return on Equity.

As stated above, Ann Arbor discussed the importance of this issue and the reasoning behind it extensively in its initial brief. Without repeating those arguments, the City requests that the Commission make a clear ruling that the risk of obsolescence of DTE’s assets due to decarbonization should be considered as a factor when calculating appropriate depreciation rates, and thus, conversely, should not be considered as a factor when calculating an appropriate rate of return on equity.

Ann Arbor acknowledges that it has made the same request of the Commission in the ongoing DTE Gas depreciation case (Case No. U-21384). DTE Gas has objected to any statement regarding ROE by the Commission in U-21384 as outside the scope of the depreciation case. DTE Gas Replies to Exceptions to the PFD, Docket No. U-21384-0086, p. 6-7. If the Commission makes the City’s recommended finding in that case, there is no need for the

Commission to make the same finding in this case. Because depreciation and ROE are alternatives for inclusion of foreseeable obsolescence risk but each item is handled in separate dockets, however, the City does not want to end up in a situation where this issue has not been fully resolved. E.g. *Washington Gas Light Co v Baker*, 188 F2d 11, 19–20; 88 US App DC 115 (1950). The Commission should make clear to DTE and its shareholders that no return can be earned for those years in which the asset is obsolete, so that risk can be properly factored into management decisions regarding whether to make investments.

III. ANN ARBOR'S EXCEPTIONS REGARDING TREES

A. The PFD Erred in Finding Ann Arbor Did Not Support Its Assertion that DTE Gas Leaks Are Causing Tree Damage.

Ann Arbor submitted expert testimony regarding the impacts of methane gas on tree health, as well as an expert report that identified specific locations in Ann Arbor where elevated methane levels were detected, including a subset of 50 leaks for which the witness ruled out other potential causes of the methane detected and concluded the readings were the result of leaks from DTE pipelines. These locations were identified through a physical survey of the City with calibrated equipment to detect methane by an expert with decades of experience in leak detection. The City's expert further identified with particularity individual trees exhibiting signs of methane gas damage at some of those 50 locations with elevated methane levels attributable to pipeline leaks. Ackley, 3 Tr 486-90. Specifically, Ann Arbor witness Robert Ackley identified 31 trees in the City with methane gas in their root zones and/or drip lines and opined that this was the cause of the observed vegetation damage. *Id.* at 488. Nowhere in the record does DTE deny the existence of gas leaks at any of the locations identified in Mr. Ackley's study, including the locations of the 31 identified trees. Despite the foregoing facts, the ALJ found that Ann

Arbor did not support its assertion that the identified trees were dying as a result of DTE gas leaks.

Ann Arbor urges the Commission to reject this finding because the City provided sufficient and un rebutted expert evidence to support its assertion that DTE gas leaks are causing damage to trees, and specifically to the 31 trees identified by Mr. Ackley. Alternatively, if the Commission adopts the PFD's finding , Ann Arbor requests the Commission provide guidance on what additional evidence would be required to make a showing that DTE gas leaks are killing trees.

B. Ann Arbor Requests the Commission Clarify the Proper Venue for Claims for Damages Related to Trees Impacted by Leaks on DTE's Gas System.

The PFD concluded, "Ann Arbor is free to pursue any cause of action it feels it may have for damages caused by gas leaks, ... [but] a rate case is not an appropriate case to do so." PFD, p. 396. If the Commission agrees with the PFD's conclusion, the City notes that the Commission should state whether and in what kind of proceeding the MPSC would appropriately consider such evidence. In other words, if the Commission follows the PFD and finds the rate case is not the appropriate docket in which to consider this evidence, Ann Arbor requests the Commission provide guidance on the proper venue for a claim for damages related to trees impacted by gas leaks on DTE's system.

September 25, 2024

Respectfully Submitted,

CITY OF ANN ARBOR



By: _____

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STATE OF MICHIGAN
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ALJ Jonathan F. Thoits

PROOF OF SERVICE

On the date below, an electronic copy of the **Exceptions to the Proposal for Decision** by the **City of Ann Arbor** was served on the following:

Name/Party	E-mail Address
Michigan Office of Administrative Hearings and Rules Jonathan F. Thoits, ALJ	thoitsj@michigan.gov
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The statements above are true to the best of my knowledge, information and belief.

Dated September 25, 2024

CITY OF ANN ARBOR



By: _____

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