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October 7, 2024

VIA ELECTRONIC CASE FILING

Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
Lansing, Michigan 48917

Re: Case No. U-21291 – 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

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Reply to Exceptions** and **Proof of Service** in the above referenced proceeding.

Sincerely,

CLARK HILL PLC
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cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of)	
DTE GAS COMPANY for authority)	Case No. U-21291
to increase its rates, amend its rate)	
schedules and rules governing the)	ALJ Jonathan F. Thoits
distribution and supply of natural gas,)	
and for miscellaneous accounting authority)	
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**REPLY TO EXCEPTIONS OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, CLARK HILL PLC, files its Reply to Exceptions in this proceeding initiated by DTE Gas Company (“DTE” or the “Company”) before the Michigan Public Service Commission (“Commission”) in accordance with the schedule established by the presiding Administrative Law Judge (“ALJ”).

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I. INTRODUCTION

The Proposal for Decision (“PFD”) issued in this case made reasonable and appropriate determinations regarding the Company’s projected main replacement program costs, a reasonable equity ratio and return on equity (“ROE”), and the rejection of the Company’s proposed inflation factors. These recommendations were supported by competent, material, and substantial evidence on the record. The Company’s Exceptions to these findings and recommendations variously mischaracterize the evidentiary record or the PFD’s reasoning in an attempt to secure a rate increase which is not reasonable or prudent. Accordingly, to ensure just and reasonable rates the Commission should reject DTE’s Exceptions and adopt the recommendations set out below.

II. ARGUMENT

A. The PFD properly found the Company’s proposed Main Replacement Program costs were excessive.

The Company objected to the PFD’s recommendation to limit DTE’s average main retirement each year to meet the eighteen-year pace approved in Case No. U-18999 (a yearly minimum goal mileage of 190 miles) rather than the 206 miles proposed by DTE. (DTE Exceptions at 17-19; PFD at 95.) The Company’s objection is unreasonable and should be rejected.

In this proceeding the Company requested capital expenditures for the Main Replacement Program of \$265 million in the historical test year, \$468 million in the projected bridge period, and \$68 million in the projected test year period (a total of \$801 million) associated with an annual target of 206 miles. (See Exhibit A-2, Schedule B5.3; DTE Initial Br at 60-61.) It also acknowledged that ABATE proposed “to reduce main renewal targets to 190 miles annually,” along with “a corresponding reduction in Main Replacement Capital Expenditures of \$62 million.” (DTE Initial Br at 61.) The only objection DTE raised to this recommendation was an assertion that it “fails to take into account the increased costs associated with more complex grids selected

using the results of the Company's Probabilistic Risk Assessment" and "DTE needs the flexibility to replace as few as 190 miles annually without a reduction in expenditures." (DTE Initial Br at 61; see also DTE Reply Br at 12-13.) In other words, DTE argued that while it was requesting cost recovery associated with replacing 206 miles of mains, it should be permitted to collect that same amount of revenue while only replacing 190 miles of mains. In response to this argument the PFD properly recommended ABATE's proposed cost recovery disallowance.

In its Exceptions DTE raised a number of alternative erroneous objections to the PFD's recommendation to adopt ABATE's proposal. First, DTE characterized ABATE's recommendation as "merely a change in the number of miles replaced" and "an adjustment that may affect capital spend, but has no impact on the dollars already spent on main replacement." (DTE Exceptions at 17-18.) This is a misleading description, as evidenced by DTE's own framing of ABATE's recommendation in the Company's Initial Brief. ABATE proposed a reduction in the future target for main replacement along with an associated projected cost recovery disallowance. It is not the PFD which "misconstrues ABATE's argument," it is the Company which has apparently revised its perspective on ABATE's recommendation in a manner inconsistent with its prior acknowledgement that ABATE proposed "to reduce main renewal targets to 190 miles annually and propose[d] a corresponding reduction in Main Replacement Capital Expenditures of \$62 million." (DTE Initial Br at 61.) ABATE recommended a lower future main replacement target and corresponding reduction in revenues. The PFD adopted this recommendation and the Company's attempt to cast ABATE's proposal as "merely a change in the number of miles replaced" without any associated cost recovery modification should be rejected.

In addition, for the first time in Exceptions, the Company argued that "[t]hese dollars have been or will have been spent on main replacement and the assets are or will be in service by the

time the order in this case is issued,” and claimed the PFD’s recommended disallowance for recovering future projected costs amounts to “retroactive ratemaking and confiscatory rates.” (DTE Exceptions at 17-18.) This argument is impermissible under the Commission’s Rules of Practice and Procedure. *In the Matter, on the Commission’s Own Motion*, order of the Public Service Commission, entered September 8, 2022 (Case No. U-20879) (“[T]he presentation of a new proposal within the company’s exceptions is outside the scope of exceptions under the Commission’s Rules of Practice and Procedure”).

Further, the Company’s argument that the PFD’s recommended disallowance of projected cost recovery for expenses associated with excess future main replacement targets would entail “a write-off of investments already made by the Company” is nonsensical and is contradicted by the Company’s further assertion that the PFD’s proposed disallowance “limits DTE Gas to replacing only 190 miles per year” and “would ensure that DTE Gas meets only the 190-mile target.” (DTE Exceptions at 17-19.) The PFD’s recommendation does not amount to disallowing cost recovery which has already been approved; it simply aligns future projected revenues with a more reasonable main replacement target. In addition, the Company’s claim that it is restricted to replacing only 190 miles per year is inapposite. There is nothing preventing DTE from pursuing higher main replacement targets and seeking recovery after those costs are already incurred. Indeed, as demonstrated in this proceeding, in four of its last five rate cases the Company also reported a historic test year revenue sufficiency, meaning it is already being compensated at higher levels than are necessary to cover its costs. (ABATE Initial Br at 7-8.) The Company therefore has the flexibility it needs and can seek any additional necessary cost recovery while undertaking any reasonable and prudent additional replacements.

The Company's exception to the PFD's recommended cost recovery disallowance is therefore unreasonable. As such the Commission should reject the same and adopt the PFD's recommended \$62 million disallowance.

B. The PFD's equity ratio and ROE recommendations reflect the Company's risk and should be approved.

1. A reasonable equity ratio for the Company is no higher than 50%.

The Company argued that its equity ratio should be higher than 50%. (DTE Exceptions at 21-23.) This claim is inconsistent with the record in this proceeding and should be rejected.

The Company claimed that despite the Commission's former directives for balanced capital structures, "movement toward a 'more balanced' capital structure should appropriately be taken in steps rather than all at once." (*Id.*) Of course, given that the Company's current equity ratio is 51%, a move to 50% is, in fact, a gradual step, particularly as DTE Electric has maintained this same equity ratio and the Company has had years to make this adjustment. See *In the Matter of the Application of DTE Electric Co*, order of the Public Service Commission, entered December 1, 2023 (Case No. U-21297), p 176. Indeed, the PFD noted that "the Commission directed DTE to move to a 50/50 balanced capital structure in 2018, and despite having six years to transition to a balanced capital structure, DTE continues to slow-walk – indeed, reverse course on -- any such transition." (PFD at 131.) As such a 50% equity ratio is reasonable in this proceeding.

The Company also claimed that "given the high interest rates in the market and the Company's short-term debt, it would be unwise and unreasonable to lower the Company's capital structure to less than 51% equity" and "a decrease in the requested 51.5% equity capital structure will require a corresponding increase in ROE to ensure a fair, risk adjusted return and maintain the Company's financial health." (DTE Exceptions at 23-24.) As explained in the voluminous record testimony in this proceeding these claims are overstated and should be rejected. First, the

reasonable proxy group used to estimate an appropriate ROE for DTE has a 50% equity ratio excluding short-term debt and a 44.4% equity ratio including short-term debt. (See Walters 4 Tr 1361-64.) In other words, the market supports reducing the Company's ROE to 50%. (See PFD at 126-27 (noting "that DTE's equity capitalization ratio as adjusted falls to approximately 49.8% when short-term debt is included in the leverage calculation")). Further, a 50% equity ratio and a reduced ROE are consistent with industry trends and DTE's peers, including the proxy group. (*Id.*; Walters 4 Tr 1361-64) As the PFD stated, "the Commission previously stated that a period of heavy capital expenditures is an 'ideal opportunity' to rebalance a capital structure to reach a 50/50 debt/equity balance" and "DTE Gas's current and historical credit ratings published by S&P Global Ratings, Moody's and Fitch Ratings for the previous five years show DTE with a solid and consistent credit rating." (PFD at 128-30.) The Company's concerns are therefore overstated and should be rejected.

The Company's exception on this issue is contrary to Commission direction and the comparable figures for a reasonable proxy group. As such the Commission should adopt the PFD's recommendation and approve a 50% equity ratio for DTE.

2. The PFD's 9.4% ROE recommendation is reasonable and should be approved.

The Company argued that the PFD's 9.4% ROE recommendation is unsupported and lower than that proposed by multiple parties to this proceeding. (DTE Exceptions at 24-28.) As the PFD's recommendation is reasonable given the evidentiary record the Commission should adopt the same.

The Company claimed that "the PFD's recommendation is untethered from the evidence in this case and is wholly unsupported." (*Id.*) This claim is inaccurate. Multiple parties testified to reasonable ROE ranges encompassing 9.4%. (See e.g., PFD at 148 (noting the low-point of Staff's

range was 9.30%), Walters 4 Tr 1416 (noting a reasonable range of 9.1% to 9.8%), Bandyk 4 Tr 957-58 (setting out a range of 8.90% to 9.90% and explaining that “an ROE lower than 9.46% would be a market-based cost of equity for DTE Gas”).) Indeed, the Company’s own Exceptions acknowledged that the “PFD lists the average ROEs determined by the parties based on the limited models accepted by the ALJ to determine a range of ROEs from 9.0–10.5% with an average of 9.5%.” (DTE Exceptions at 25.) As the PFD observed in reviewing and analyzing the evidence in this case, “the ROEs recommended by ABATE and CUB each are reasonable, supported by the accepted evidence and commensurate with returns on investments having corresponding risks,¹ albeit at rates well above the returns currently garnered by riskier companies in the general market, and are in accord with the Supreme Court standards.” (See PFD at 133-227.) The PFD’s voluminous and detailed discussion of the record evidence establishes the competent, material, and substantial basis for the PFD’s 9.4% ROE recommendation.

The Company’s more specific objections are also erroneous. For instance, DTE claimed that “ABATE Witness Walters’ analysis misses the mark by failing to recognize in his testimony the easing and tightening by the Federal Reserve, which has shown an uptick in allowed ROEs for utilities since about 2020.” (DTE Exceptions at 27.) As explained in Mr. Walters’ Direct Testimony, in a section labeled “Federal Reserve Monetary Policy,” the “Fed had previously lowered the Federal Overnight Rate for securities and had engaged in a Quantitative Easing program where the Fed was buying, on a monthly basis, Treasury and mortgage-backed securities in order to moderate the demand in the marketplaces and support the economy.” (Walters 4 Tr

¹ This explicit finding invalidates DTE’s claim that the PFD’s recommendation is “inconsistent” with the *Hope* and *Bluefield* decisions, which DTE describes as providing “that the ROE should ‘be commensurate with returns on investments in other enterprises having corresponding risks.’” (DTE Exceptions at 25-26.)

1344-50.) The “the market’s reaction to the Fed’s actions” has included a “rise in the Federal Funds Rate” which has “far outpaced the rise in Utility and Treasury yields while the spread of Utility bonds over Treasury bond yields have stabilized recently.” (*Id.*) Further, the “FOMC has recently shown signs of success in, and remains committed to, stabilizing consumer prices and promoting maximum employment through its monetary policy tools.” (*Id.*) In addition, “[i]ndependent economists, surveyed by Blue Chip Financial Forecasts, expect current capital costs to increase at mixed rates over the near term, while maintaining levels that are still low by historical standards.” (*Id.*) For example, “independent projections show that the consensus is the federal funds rate will increase at a rate much faster than that of long-term interest rates as measured by the 30-year Treasury bond” and “[i]nflation, as measured through the Gross Domestic Product (“GDP”) price index, is expected to cool off in the near to intermediate term.” (*Id.*) Further, “increases in the federal funds rate do not necessarily translate into increases in longer-term yields.” (*Id.*) In other words, Mr. Walters spent a considerable amount of his testimony analyzing Federal Reserve actions and demonstrated that nothing about them indicate a ROE higher than that recommended by the PFD is appropriate.

The Company also argued that the “PFD erroneously and unilaterally disregards the average ROEs awarded to gas utilities in the present year” and selectively argued that “the PFD points to ABATE’s summary of ROEs in the PFD’s analysis as ‘consistent evidence of recently authorized ROEs for gas utilities rendered by other state commissions across the country,’” such that because “ABATE and DTE Gas both supplied summaries of recent authorized ROEs from S&P data in similar form, one cannot be found to be lacking when the other is ‘consistent evidence to be relied upon.’” (DTE Exceptions at 27-28.) This claim mischaracterizes the PFD. Specifically, the PFD did not only “point[] to ABATE’s summary” as “consistent evidence,” it stated that “Staff,

the Attorney General, and ABATE each offered consistent evidence of recently authorized ROE's for gas utilities rendered by other state commissions across the country for 2022 and 2023." (PFD at 211.) In other words, the "consistent evidence to be relied upon" referenced by the PFD was not just provided by ABATE, but by the Attorney General and Staff as well.

Regarding the deficiencies of DTE's presentation on this point the PFD did not even cite ABATE's testimony; it instead stated the following:

On rebuttal, Dr. Villadsen states that the average ROE for gas utilities for 2024 (through May 20, 2024) is 9.9%. However, the only support Dr. Villadsen offers for his assertion is his own graph without data points or other information. Unlike Mr. Coppola's Ex. AG-29, Dr. Villadsen does not provide information regarding the dates of the rate orders, the name and location (state) of the utility, and the specific rates which make up the asserted average, with which the other parties, this ALJ and ultimately the Commission can assess whether there are any outliers which might be unduly influencing the average. Thus, this PFD finds that Dr. Villadsen's statement of the average ROE for gas utilities for 2024 through May, 2024 is unsupported. [(PFD at 212.)]

Thus, the PFD did not adopt an inconsistent standard as DTE suggests, it compared DTE's testimony with the Attorney General's and found the Company's to be lacking. The Company's claim that "[g]iven that ABATE and DTE Gas both supplied summaries of recent authorized ROEs from S&P data in similar form, one cannot be found to be lacking when the other is 'consistent evidence' to be relied upon" is a misstatement of the PFD's reasoning on multiple levels and should be disregarded.

The PFD's recommendation is therefore consistent with and well-supported by the record in this case. The Company's objections to the contrary are overstated and should be rejected. As such the Commission should adopt the PFD's recommended 9.4% ROE.

C. The Company's proposed inflation factors are unreasonable.

The Company argued that the Commission should approve its inflation rates of 3.2% for 2023, 2.9% for 2024, and 2.9% for 2025. (DTE Exceptions at 40-41.) As these inflation figures

are unreasonable the Commission should instead adopt those recommended by ABATE. (See ABATE Exceptions at 4-5.)

First, the Company did not produce any workpapers to support its 3.0% assumption for the expected labor cost escalation, instead merely relying on historical practices for the non-represented workforce and existing collective bargaining agreements for represented employees. (Cooper 4 Tr 2689.) Further, while the Company supplemented this argument with historical annual pay increases over 2019-2023, this analysis included executive pay and incentive compensation, which is not reflective of the average salary of the Company's larger workforce. (Cooper 4 Tr 2690; Exhibit AB-20 at 4.) In addition, the historical annual employee pay analysis did not take into account changes in the number of employees throughout the calendar year. If instead the Company looked at the year-over-year change in average salary, the Company's own workpapers would have shown an average pay increase of 1.1% in 2020, 2.7% in 2021, 1.8% in 2022, and 0.6% in 2023, for an average increase of 1.5%. (See Exhibit AB-20 at 1-3.)

Further, the Company used the CPI-U (Consumer Price Index for Urban Customers) to determine the appropriate non-labor inflation rate, which resulted in proposed non-labor inflation rates of 4.1% for 2023, 2.9% for 2024, and 2.2% for 2025. (*Id.*) Comparing these rates to the Blue Chip Economic Indicators industry expert consensus GDP Chained Price Index over the same time period (2.6% for 2023, 2.2% for 2024, and 2.2% for 2025) demonstrates they are inflated for each year until 2025. (*Id.*) As explained in ABATE's Initial Brief the GDP Chained Price Index is a more accurate projection of the inflation rates DTE will likely face. (ABATE Initial Br at 13-15.) The Commission should therefore approve the Blue Chip GDP Chained Price Index rates presented by ABATE for the Company's O&M inflation factors.

The Company's proposed inflation rates are therefore unreasonable and should be rejected. The Commission should instead adopt the rates set forth in ABATE's Initial Brief for the reasons stated therein. (See *Id.*; ABATE Exceptions at 4-5.)

III. RELIEF REQUESTED

WHEREFORE, ABATE requests the Commission issue an Order adopting ABATE's positions as outlined in its Direct and Rebuttal Testimony, as well as its Initial and Reply Briefs and its Exceptions and Reply to Exceptions.

Respectfully submitted,

CLARK HILL PLC

Stephen A.

By: **Campbell**

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Date: October 7, 2024

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)
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and for miscellaneous accounting authority)
_____)

Case No. U-21291

ALJ Jonathan F. Thoits

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF WAYNE)

Stephen A. Campbell, being first duly sworn, deposes and says that on October 7, 2024, he did cause to be served the *Association of Businesses Advocating Tariff Equity's Reply to Exceptions*, as well as this *Proof of Service* in the above docket, via electronic mail, to the persons identified on the attached service list.

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SERVICE LIST
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