TROPOSPHERE LEGAL

October 7, 2024

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48909

RE: MPSC Case No. U-21291

Dear Ms. Felice:

Attached please find the following document for e-filing:

- Reply to Exceptions by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan; and
- Proof of Service.

Thank you for your assistance in this matter.

Sincerely,

Digitally signed by Christopher Bzdock
Date: 2024.10.07 16:30:36 -04'00'

Christopher M. Bzdok
chris@tropospherelegal.com

Cc: Parties to Case No. U-21291

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.	Case No. U-21291

REPLY TO EXCEPTIONS BY MICHIGAN ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND CITIZENS UTILITY BOARD OF MICHIGAN

October 7, 2024

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I. INTRODUCTION

The Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and the Citizens Utility Board of Michigan (MNSC) submit this reply to exceptions by DTE Gas Company and Staff. MNSC continues to believe that the Proposal for Decision (PFD) is detailed, thoughtful, and comprehensive – and that the Commission should adopt most of the PFD's recommendations.

To recap, in this rate case, DTE Gas claimed a revised revenue deficiency of $262.4 million for a test year ending September 30, 2025.[1] DTE seeks to increase revenues from residential customers by about 9%.[2] The largest drivers of the rate increase are very large capital expenditures and a substantial requested increase in DTE's authorized return on common equity (ROE). DTE also sought to increase its spending on the IRM, which will increase surcharges and drive further rate increases when the IRM expenditures are rolled into rate base in the future. As noted in MNSC's exceptions, this case also included for the first time issues related to the economic sustainability of DTE Gas's business model, in light of declining sales and the energy transition.

The PFD thoroughly evaluates DTE's requests and claims in this case and makes solid and well-supported recommendations. The PFD case recommends a revenue deficiency of $98 million. The PFD recommends an ROE of 9.4% after evaluating that issue in remarkable depth and detail. The PFD also made key findings and recommendations regarding DTE's Community Expansion Project (CEP) capital expenditures, Responsibly Sourced Gas expenses, demand response

[1] Proposal for Decision (PFD), Appendix A, line 8, column c.

[2] *Id*., Attachment 2.

programs, issues concerning the Future of Heat and the energy transition, and DTE's Low-Income Assistance (LIA) credit.

DTE takes exception to many of the PFD's recommendations, but does not demonstrate that those recommendations are anything but sound and well-supported. This reply will address DTE's exceptions relating to Cathodic Protection Costs, Main Replacement, ROE, the Mesick Buckly and Peach Ridge CEPs, demand response, Responsibly Sourced Gas, and Environmental Justice and the Energy Transition; and Staff exceptions relating to ROE and the LIA credit.

II. REPLY TO EXCEPTIONS

A. Reply to DTE regarding Infrastructure Recovery Mechanism.

1. Given that DTE has acquiesced to the PFD's recommendation to deny approval to add Cathodic Protection expenditures to the IRM, MNSC do not object to the company's position that the correct amount of those expenditures should be included in rate base for the projected test year.

DTE projects capital expenditures for Cathodic Protection totaling $2,199,000 for the projected test year ending September 30, 2025.[3] DTE witness Rajan Telang explained that the company did not include any test year expenditures for Cathodic Protection in rate base as Routine Capital, but instead included them all in the IRM.[4] That includes historical and bridge period expenditures too: "Cathodic protection capital is not included in the historical, bridge or projected period Routine Distribution capital expenditures in Exhibit A-12, B5, line 2. Rather, these

[3] Exhibit A-12, Schedule B5, line 28, column f.

[4] Telang Direct, 4 TR 1859-60.

expenditures are included in IRM capital expenditures, Exhibit A-12, B5, Line 28, for the historical, bridge, and October to December 2024 periods."[5]

The PFD recommends disapproval of DTE's request to include Cathodic Protection in the IRM, based on testimony by Attorney General witness Sebastian Coppola and MNSC witness Alice Napoleon.[6] In its exceptions, DTE acquiesces to that recommendation by making no arguments that the Commission should reject the PFD's recommendation or include Cathodic Protection in the IRM.[7] Instead, DTE asserts that the PFD's recommendation "is not a disallowance of cathodic protection costs but rather a determination regarding how such costs will be recovered."[8] DTE asserts that the PFD did not include the Cathodic Protection expenditures in its calculation of rate base, and requests that the Commission include them by adopting DTE's proposed corrected amounts in Section I of the company's exceptions.[9] DTE calculates an impact to revenue deficiency of $372,000 from moving $7.4 million of capital expenditures from the IRM to base rates in the projected test year.[10]

MNSC does not object to including the correct and verified amount of test year capital expenditures for Cathodic Protection from the IRM to rate base. That said, the Commission should require DTE to explain its calculations. As noted above, DTE's capital exhibit projects $2.2 million of Cathodic Protection capital expenditures in the test year – not $7.4 million.[11] DTE reports $7.4

[5] *Id*.

[6] PFD, pp. 87 and 92.

[7] DTE Exceptions, p. 17.

[8] *Id*.

[9] *Id*.

[10] DTE Exceptions, p. 4.

[11] Ex A-12, Schedule B5, line 28, column f.

million in Cathodic Protection capital expenditures in the 2022 historical year.[12] It is not clear that those expenditures were part of the IRM, since the Commission never approved the request to include Cathodic Protection in the IRM for 2022. If they were included in the IRM and not in rate base, that raises the question whether they were included in the IRM surcharge for 2022, 2023, and 2024.

In sum, because DTE acquiesces to the PFD's recommendation to reject the company's request to include Cathodic Protection expenditures in the IRM, MNSC does not object to DTE's request to include the projected test year expenditures for Cathodic Protection in rate base. However, it is unclear whether DTE is correctly calculating the revenue deficiency associated with including those expenditures. Further, in light of Mr. Telang's testimony, it is unclear how DTE treated the revenue requirements for the historical and bridge period expenditures. Therefore, the Commission should require DTE to explain its calculations and confirm that they correctly implement the outcome on this issue.

2. <u>The Commission should adopt the PFD's recommended disallowance of Main Replacement capital expenditures.</u>

For the test year, DTE projected $68 million of main replacement capital expenditures in base rates and sought preapproval under the IRM for another $274 million of main replacement capital expenditures.[13] MNSC requested that the Commission reduce the IRM amounts for 2025 and beyond because DTE had not supported its projected cost increases for main replacements especially, and the Attorney General also requested that the Commission cap IRM spending at a reduced level. The PFD recommended rejecting these requests, and both MNSC and the Attorney

[12] *Id*. at column b.

[13] Ex A-12, Schedule B5, line 23, column f; Ex A-12, Schedule B5.3, line 2, column g.

General took exception to that recommendation.[14] However, the PFD recommended adopting ABATE's request to reduce Main Replacement capital expenditures by $62 million, and DTE takes exception to that recommendation.[15]

MNSC replies to support the PFD's recommendation to reduce Main Replacement capital expenditures by $62 million, for the reasons given by ABATE and the PFD. Further, MNSC adopts and incorporates its exception on IRM spending levels as providing additional support for reducing Main Replacement capital expenditures, for the reasons stated in MNSC's exceptions.

B. Reply to DTE Regarding Mesick-Buckley and Peach Ridge CEPs: The Commission Should Adopt the PFD's Recommendation To Disallow The Mesick Buckley And Peach Ridge CEPs

The PFD is succinct in explaining how MNSC's proposed disallowances for the Mesick-Buckley and Peach Ridge customer expansion projects ("CEPs") are justified by DTE Gas's unrealistic customer subscription levels. DTE Gas has systematically overestimated subscription levels for CEPs, leading to under-recovery of new customer contributions.[16] In effect, existing customers have been over-subsidizing new expansion projects because fewer customers are attaching than DTE Gas anticipates.

Across fifteen similar sized CEPs, DTE overestimated customer connections by about 50 percent.[17] As the PFD puts it: "for every 300 projected customers, DTE has connected only about 200."[18] DTE Gas' customer subscription counts have been on average 80 percent of projected

[14] PFD, p. 85; MNSC Exceptions, pp. 29-41; AG Exceptions, pp. 11-14.

[15] PFD, p. 95; DTE Exceptions, pp. 17-19.

[16] MNSC Initial Brief p 32.

[17] Hopkins Direct, 4 TR 869.

[18] PFD, p. 99.

counts in Year 1, and drop to just two-thirds of projected counts by Year 3.[19] Data analyzed by Dr. Hopkins, shown below, demonstrates that it is not reasonable to estimate that 100 percent of customers will subscribe to expansion projects in five years, given substantial shortfalls in nearly every CEP.[20]

Project	Projected Customers	Connected to Date	Shortfall
Ellsworth	371	201	170 / 46%
NW Torch Lake	692	446	246 / 36%
Elk Tip	319	191	128 / 40%
NE Torch Lake	927	464	463 / 50%
Epsilon/Pickerel Lake	391	334	57 / 15%
Cherry Homes/Northport	340	222	118 / 35%
Evanston	336	237	99 / 29%
Lake Skegemog	324	212	112 / 35%
Myers Lake - Peterson Farms	496	332	164 / 33%
Ferry Road	320	148	172 / 54%
Holton Duck Lake	373	231	142 / 38%
Higgins Lake	419	212	207 / 49%
Arthur St	307	257	50 / 16%
Blue Lake	432	245	187 / 43%
W County Line	348	193	155 / 45%

Despite this contradictory historical data, DTE Gas estimates that 100 percent and 92 percent of customers will subscribe to the Mesick-Buckley and Peach Ridge expansion projects within five years, respectively.[21] And DTE Gas assumes additional customers in the first 20 years of the Mesick-Buckley project, on the basis of speculative "miscellaneous growth."[22] Notably, no other CEP with more than 300 customers in the past assumed any miscellaneous growth.[23]

MNSC witness Hopkins calculates that DTE's overestimates in the past resulted in under-recovery of $6 to $11 million. If past trends hold, and if two-thirds, rather than 100 percent of

[19] Hopkins Direct, 4 TR 869.

[20] Hopkins Direct, 4 TR 868-69.

[21] *See* MNSC Initial Brief p 23.

[22] Hopkins direct, 4 TR 871.

[23] Hopkins direct, 4 TR 872.

customers attach within five years, Dr. Hopkins calculated that the Mesick-Buckley and Peach Ridge CEPs would face revenue shortfalls of $838,000 and $912,000 respectively.[24] As a result of this analysis, Dr. Hopkins recommended a disallowance of $838,000 and $912,000 for each of the CEPs.[25] The PFD agreed with the analysis, rooted in historical data, and found that DTE's customer projections "are unrealistic and thus unreasonable."[26]

1. DTE Gas' Exceptions Oppose The CEP Disallowances Without Disputing the PFD's Finding that DTE Gas' Projections Were "Unrealistic and Thus Unreasonable"

DTE Gas' Exceptions fail to address Dr. Hopkins analysis and do not attempt defend the company's projections.

a. DTE Gas' Receipt of the Low Carbon Infrastructure Enhancement and Development Grant is Unrelated to DTE's Inaccurate Customer Projections

DTE Gas makes a puzzling argument, implying that because DTE Gas received grants to bring gas to underserved areas, including Mesick-Buckley and Peach Ridge, its customer attachment assumptions are therefore correct.[27] The grants are entirely unrelated to the issue at hand in this rate case: whether DTE Gas' spending on the Mesick-Buckley and Peach Ridge CEPs is just and reasonable. The Commission's grants do not contradict the PFD's findings that DTE Gas' CEPs have historically subscribed only two-thirds of projected customers within five years.

[24] *Id.*

[25] *Id.*

[26] PFD, p. 101.

[27] DTE Gas Exceptions, p. 20.

b. *DTE Gas' Contention that MNSC Incorrectly Calculates Customer Connection Shortfall Is Both Misleading and False*

DTE Gas makes the false claim that "MNSC incorrectly calculates customer connections" because not all of the 15 past CEPs analyzed by Dr. Hopkins have five years of data on customer counts.[28] This argument holds little weight. Data that shows that DTE Gas' projections fell far short in Years 1 through 4 should not be ignored because DTE Gas does not have Year 5 data yet. Further, there is no Commission rule or precedent that states that inaccurate customer projections must be ignored until they are inaccurate for five years. Of course, four of the fifteen CEPs analyzed *do* have five years of data, and none of those projects come close to the 100 percent subscription rate assumed by DTE Gas.

Contrary to DTE Gas' assertions, there is *ample* data available to determine customer connection shortfalls and typical attachment rates. There is certainly enough data to determine that DTE Gas' estimates of 100 percent attachment rate and miscellaneous growth are not reasonable. Of the 96 CEPs that DTE has undertaken since 2016, only six have met the target customer count, and of the 30 CEPs undertaken during or before 2019 (with five years plus of data), only two have met their customer count.[29] DTE Gas retains the burden of proving its projections are accurate.[30] While it ignored past data showing that projections have not been met, MSNC analyzed connection data to show projections have not been met. DTE Gas provided no counter-analysis, and its attempts to obfuscate a glaring issue with its projections should be dismissed.

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[28] DTE Exceptions, p.21

[29] MNSC initial Brief, p. 24.

[30] *Dillon v Lapeer State Home & Training School,* 364 Mich 1, 8; 110 NW2d 588 (1961), *and BCBSM v Governor,* 422 Mich 1, 88-89; 367 NW2d 1 (1985); Case No. U-7484, August 30, 1983, Order, p. 10; Case No. U-8030-R, July 9, 1987, Order, pp. 16-17.

C. Reply to DTE and Staff regarding Return on Common Equity: The Commission should adopt the PFD's recommended ROE of 9.46%.

In this case, DTE submitted testimony from Dr. Bente Villadsen of the Brattle Group purporting to show that the company's cost of equity is 10.25% – or 35 basis points higher than DTE's current approved ROE. As in other recent DTE cases, Dr. Villadsen relied on methods, adjustments, and proxy companies that the MPSC has repeatedly rejected in recent cases. The PFD spent 64 pages comprehensively reviewing all of the evidence on ROE, and then made 30 pages of meticulous findings on every contested factual issue. Based on those extensive findings, the PFD recommended that the Commission approve an ROE for DTE Gas of 9.40%. DTE takes exception, but barely scratches the surface of the PFD's analysis. The ALJ's analysis is unassailable, and the Commission should adopt the PFD's recommendation.

1. Reply to DTE and Staff regarding the risk premium model.

As its first argument, DTE asserts that the ALJ ignored the risk premium model and his reasoning for doing so is "flawed."[31] But DTE's assertion mischaracterizes what the PFD actually did. Far from ignoring the risk premium model, the PFD discussed it extensively and made three important findings and two recommendations.[32] First, the PFD found the reasons for rejecting the risk premium model stated by CUB witness Bandyk in his testimony and by FERC in Opinion 569 to be "persuasive."[33] However, the PFD also found that because the Commission has previously considered risk premium model results, "it would be premature to reject the use of this model in this case" before other parties had a chance to address whether the MPSC should continue to use

[31] DTE Exceptions, p. 24.

[32] PFD, pp. 206-209.

[33] PFD, p. 209.

it.[34] Therefore, the PFD recommended that "the Commission direct the parties in DTE's next rate cases to address whether this model remains an appropriate method for determining an ROE."[35]

In addition, the PFD found that DTE's regression-derived risk premium estimate is inflated and thus should not be considered.[36]

DTE and Staff take exception to the PFD's findings and recommendation on the use of the risk premium model. DTE also takes exception to the PFD's finding that DTE's risk premium estimate is inflated. This brief responds to both.

a. PFD findings on use of the risk premium model.

With respect to use of the risk premium model, the PFD first notes that the ALJ in DTE Electric's last rate case rejected Dr. Villadsen's use of the risk premium model.[37] The PFD in that case found "that the approach of performing a risk premium analysis based on a regression of the returns awarded by regulatory commissions relative to the treasury interest rate is not a compelling analysis…"[38] The PFD in U-21297 found Attorney General witness Coppola's testimony persuasive that the risk premium model "wrongly assumes that treasury bond yields are the primary driver in ROE decisions by regulators;" that the model is "not connected to stock market performance and investor expectations of returns on investment;" and that utility commissions often base ROE decisions on "gradualism."[39]

[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] PFD, p. 207.

[38] Case No. U-21297, October 5, 2023, PFD, p. 484. The Commission Order in U-21297 did not make express findings on this point.

[39] Case No. U-21297, PFD p. 484, citing Coppola Direct, 6 TR 3750.

The PFD next reviewed CUB witness Bandyk's testimony that "the Risk Premium model introduces into the ROE calculation the reliance on ROEs set by other regulatory commissions, and that the result of its application is divergent from the results from methods that are "underpinned by fundamental financial principles"[40] The PFD noted that DTE witness Villadsen acknowledges that "the risk premium model is not underpinned by fundamental financial principles in the manner of the CAPM and DCF estimates," though she claims the risk premium method has merit on other grounds.[41]

Next, the PFD noted that FERC rejected use of the risk premium method after "an extensive analysis" in Opinion 569.[42] The PFD acknowledged that FERC reversed itself in Opinion 569-A;[43] but noted that the D.C. Circuit vacated Opinion 569-A "because FERC failed to offer a reasoned explanation for its decision to reintroduce the Risk Premium model 'after initially, and forcefully, rejecting it.'"[44]

The PFD concluded this issue by stating it "finds Mr. Bandyk's and FERC's reasoning in Opinion 569 rejecting the Risk Premium model persuasive."[45] However, because the MPSC has previously considered risk premium results, the PFD found "it would be premature to reject the use of this model in this case before" other parties had a chance to address whether the MPSC should continue to use it.[46] Therefore, the PFD recommended that "the Commission direct the

[40] PFD, p. 207, citing Bandyk Direct, 4 TR 964.

[41] PFD, p. 207.

[42] PFD, p. 208, discussing FERC Opinion 569, 169 FERC 61129 (2019), par. 341.

[43] PFD, p. 209, citing FERC Opinion 569-A, 171 FERC 61154 (2020), par. 104.

[44] PFD, p. 209, discussing *MISO Transmission Owners v FERC*, 45 F.4th 248, 263-264 (CA DC Cir. 2022).

[45] PFD, p. 209.

[46] *Id*.

parties in DTE's next rate cases to address whether this model remains an appropriate method for determining an ROE."[47]

b. Reply to DTE on use of the risk premium method.

DTE argues first that, "although it may be persuasive whether FERC endorses a particular model, it is not a requirement for this Commission or the parties advocating before it to restrict their recommendations to only those from FERC."[48] However, that is plainly *not* what the PFD did. The PFD discussed: (1) the ALJ's findings on this issue in Case No. U-21297; (2) Attorney General witness Coppola's testimony in it in U-21297; (3) Mr. Bandyk's testimony on the risk premium model in this case; (4) Dr. Villadsen's rebuttal to Mr. Bandyk on the risk premium model; *and* (5) FERC's opinions on the risk premium model and subsequent reversal by the D.C. Circuit.[49] The PFD expressly relied on both Mr. Bandyk's testimony *and* FERC's discussion of this issue. DTE does not address Mr. Bandyk's testimony, or the PFD's reliance on it, in the company's exceptions.

Second, DTE argues that "as acknowledged by the PFD, FERC determined in Opinion 569-A that it is appropriate to use the Risk Premium model to estimate a reasonable ROE."[50] DTE reasons that "[i]f reliance on FERC's approved models is a signal for its appropriateness in Michigan, it is inappropriate for the ALJ to dismiss the use of the Risk Premium model as one of many used in support of the recommendations in this case simply by preference."[51]

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[47] *Id*.

[48] DTE Exceptions, p. 24.

[49] PFD, p. 209.

[50] DTE Exceptions, p. 24.

[51] *Id*. at 24-25.

DTE's argument is puzzling. DTE chides the ALJ for not giving sufficient weight to Opinion 569-A, but the company fails to acknowledge that the D.C. Circuit vacated Opinion 569-A in *MISO Transmission Owners v FERC*. The Court noted that in Opinion 569, FERC had "concluded that any 'additional robustness' the risk-premium model added to its methodology was 'outweighed by the disadvantages of its deficiencies.'"[52] The Court noted that FERC found the risk premium method "defies general financial logic by keeping the Return stable regardless of capital-market conditions;" is not relied on by investors; is less accurate than the DCF and CAPM models; "is largely redundant with" the CAPM, "so adding it would overweight risk-premium methodologies against" the DCF; and "presents 'particularly direct and acute' circularity problems because it uses past FERC-allowed Returns to set the new ones."[53]

In light of these devastating prior findings about the risk premium model, the Court held that FERC's reversal in Opinion 569-A failed to "provide a 'reasoned explanation' for its decision to disregard 'facts and circumstances that' justified its prior choice."[54] The Court held that FERC ignored the basic financial principles that otherwise undergirded its decision to reject the risk premium model, without a compelling explanation.[55] The Court also held that "FERC failed to adequately explain why it no longer mattered that investors don't use this model."[56] The Court also held that "FERC failed to meaningfully address its own concerns about the risk-premium

[52] 45 F.4th at 263.

[53] *Id*. at 263-264.

[54] *Id*. at 264.

[55] *Id*.

[56] *Id*.

model's circularity."[57] And the Court held that "FERC never engaged with its earlier concerns about the overweighting of risk-premium theory."[58]

For all of these reasons, the Court held that "FERC failed to offer a reasoned explanation for its decision to reintroduce the risk-premium model" and therefore, FERC's re-adoption of the risk premium model was arbitrary and capricious.[59] DTE's reliance on Opinion 569-A to support use of the risk premium model – after the D.C. Circuit so thoroughly eviscerated that opinion – is without merit.

c. Reply to Staff on use of the risk premium method.

For its part, Staff acknowledges that "the PFD in this case does not outright reject the RPM model, but rather asks the Commission to 'direct the parties in DTE's next rate case to address whether [the RPM] remains an appropriate method for determining an ROE.'"[60]

In support of its position, Staff first asserts that while FERC opinions "may provide guidance and considerations for appropriate models to use in calculating ROE, these opinions are not dispositive."[61] While that is true, neither witness Bandyk, MNSC, nor the PFD suggested otherwise. Witness Bandyk did not cite either FERC opinion in his testimony.[62] He emphasized that setting ROEs based on the difference between treasury interest rates and other approved ROEs is circular, is not based on fundamental financial principles, and is inequitable to customers

[57] *Id*.

[58] *Id*.

[59] *Id*.

[60] Staff Exceptions, p. 5, partially quoting PFD, p. 209.

[61] Staff Exceptions, p. 6.

[62] See Bandyk Direct, 4 TR 964.

because, historically, approved ROEs are higher than the market cost of equity.[63] And, as noted above, the PFD discussed not only the FERC orders but also the PFD and testimony in U-21297 and Mr. Bandyk's testimony in this case.[64]

Staff next states that "CUB witness Bandyk did not demonstrate in this case that Staff's RPM analysis was flawed. Rather, that it is the Company's use of approved ROEs as part of its RPM that is flawed."[65] Mr. Bandyk did not comment on Staff's RPM analysis at all. He filed direct testimony explaining why DTE's use of the risk premium model was not valid and why he declined to use the method. Staff's testimony was filed the same day as Mr. Bandyk's so he had no reason to address it. However, his critique against the model still holds – as does the D.C. Circuit's holding that including both the risk premium model and CAPM over-weights risk premium methods against the DCF.

Next, Staff states that "ROE witnesses in Michigan have long used the RPM to develop their ROE recommendations in rate cases and the Commission has often approved ROEs based on record evidence that included this methodology."[66] However, Staff does not cite any cases or orders, and does not explain why the fact that the Commission approved ROEs in cases where the record included testimony on the risk premium model means there was any benefit to the decision that resulted from the witnesses' use of that model.

Finally, Staff states that "[t]he Commission has a history of staying agnostic on what models are presented, and hearing arguments both for and against any model on a case-by-case

[63] *Id*.

[64] PFD, pp. 206-209.

[65] Staff Exceptions, p. 7.

[66] *Id*. at 8.

basis."[67] To the contrary, the Commission in DTE Gas's 2021 rate case stated: "The Commission concurs with the ALJ's observation that 'the Commission has consistently taken a traditional approach to establishing ROE, focusing on the most commonly used, fundamental approaches to determining a just and reasonable ROE…'"[68] And of course, party who benefits most from more ROE models being allowed into a rate case is the one with the superior resources: the utility.

For all of these reasons, MNSC submits that the Commission should reject Staff's position and adopt the PFD's recommendation to consider this issue further based on testimony in the next rate case.

d. PFD's finding that DTE's risk premium result is inflated.

As to the PFD's finding that DTE's risk premium result is inflated, the company calls this finding "conclusory and unsupported."[69] But that is just not accurate. DTE's risk premium estimate is 10.2% – compared to 9.1% for Staff, 9.8% for the Attorney General, and 9.9% for ABATE.[70] It is true that there is a missing word in the PFD's finding on this issue. It states: "This PFD agrees with [ ] that DTE's regression-derived Risk Premium estimate is inflated and thus should not be considered."[71] However, the PFD's review of the testimony strongly suggests the ALJ was agreeing with ABATE witness Christopher Walters:

> Regarding Dr. Villadsen's Risk Premium analysis, Mr. Walters states Dr. Villadsen's regression-derived risk premium estimates of 6.26% for gas utilities is significantly higher than the equity risk premiums

[67] *Id*. at 8-9.

[68] Case No. U-20940, December 9, 2021, Order, p. 91.

[69] DTE Exceptions, p. 25.

[70] PFD, p. 146 (citing Villadsen Direct, 4 TR 2490-2491); PFD, pp. 210-211.

[71] PFD, p. 209.

> realized in 2023, which produces an excessive risk premium estimate and overstates the cost of equity.[72]

In addition, or alternatively, the PFD may have been agreeing with Staff witness Joseph Ufolla:

> Mr. Ufolla states that he disagrees with DTE's risk premium analyses. He notes that Dr. Villadsen uses a regression analysis in her risk premium model, while Staff prefers the use of a more traditional risk premium model that is more widely accepted in the ratemaking process, and that because she employs the use of approved ROE instead of earned ROE (like Staff's model), Dr. Villadsen's data set only reaches back to 1992. For these reasons, Staff maintains its preference for its own Risk Premium models that have a larger data set, and basis in earned ROE.[73]

Either way, there is substantial evidence in the record to support the ALJ's conclusion that DTE's regression-based risk premium result is inflated.

In sum, the PFD provides cogent reasons for rejecting use of the risk premium model, but recommends a more modest step of requesting testimony on that issue in DTE's next rate case. And the PFD rejects DTE's risk premium result based on testimony from Staff and ABATE that Dr. Villadsen's approach exaggerates the model's output. The PFD's findings and recommendations on these points are solidly grounded in the evidence and soundly reasoned, and the Commission should adopt them.

2. Reply to DTE's other ROE arguments.

DTE makes several other arguments regarding the PFD's recommended ROE that MNSC responds to next.

[72] PFD, p. 180; see also, PFD, p. 206.

[73] PFD, p. 153; see also, PFD, pp. 206-207.

a. Range of ROE model results.

First, DTE complains that the ALJ's recommended ROE is below the average and midpoint of the range of ROEs in the models the ALJ accepted.[74] The PFD listed the results of those models as ranging 9.0 to 10.5%, with an average of 9.5%.[75] DTE states that the PFD's recommendation of 9.4% "is not only below the average of this range but also lower than the midpoint of the ALJ's range (9.75%) and lower than the recommendations of every other party in the case."[76]

MNSC offer two responses to DTE's argument. First, the company cites no authority stating that a utility's ROE must be set at the average or midpoint of the range of ROE model results offered by the parties. To the contrary, "[t]he Commission is not bound by any particular method or formula in determining just and reasonable rates."[77] Instead, "[w]hat is important is whether the result reached is just and reasonable."[78]

Second, the PFD explained that it had concerns about the range of ROE model results offered by the parties. "This PFD notes that some of the parties' ranges do not appear to be based on or have any correlation to the results of the models used."[79] For example, in its review of the evidence the PFD noted that "Staff's DCF and CAPM ROE ranges shown in Chart 4 do not correlate to Mr. Ufolla's testimony regarding his DCF and CAPM model results, nor to Mr. Ufolla's DCF and CAPM calculation exhibits."[80] The PFD also noted that "most of the parties'

[74] DTE Exceptions, p. 25.

[75] PFD, pp. 210–211.

[76] DTE Exceptions, p. 25.

[77] *Building Owners & Managers Ass'n of Metropolitan Detroit v Public Service Comm,* 424 Mich 494, 510; 383 NW2d 72 (1986).

[78] *ABATE v Public Service Comm,* 208 Mich App 248, 266; 527 NW2d 533 (1994).

[79] PFD, p. 200.

[80] PFD, p. 153, fn. 832, providing detailed testimony and exhibit citations.

model results were based on including improper proxy companies or making improper adjustments. As such, this PFD does not consider the asserted ranges to lend any independent support for the determination of a reasonable ROE."[81] Again, DTE offers no specific arguments for why it believes the PFD erred in its findings that parties' testimony about ROE model results did not match their actual results, or about the use of improper proxy companies and improper adjustments.

b. DTE fails to demonstrate that lowering its ROE is confiscatory or otherwise contrary to law.

Next DTE argues that the PFD's "initial proposed ROE of 8.0-8.5% ignores the entire record in this case and is so low as to be confiscatory."[82] However, as DTE recognizes, the PFD ultimately recommended a much higher ROE of 9.4% as a move toward the market cost of equity. Further, the U.S. Supreme Court held that "the guiding principle" for determining the constitutionality of rates is whether a rate is "so unjust as to be confiscatory."[83] A rate is confiscatory if it is "so unjust as to destroy the value of property for all the purposes for which it was acquired," and thereby "practically deprive the owner of property without due process of law."[84] On the other hand, such a claim will fail where the "overall impact" of the utility commission's order is not confiscatory.[85] Plainly, an ROE for shareholders of 9.4% a – or even 8.0 to 8.5% – does not destroy the value of DTE Gas's property.

[81] PFD, p. 200.

[82] DTE Exceptions, p. 25.

[83] *Duquesne Light Co v Barasch*, 488 US 299, 307 (1989) (internal quotations and citations omitted).

[84] *Id*.

[85] *Id*. at 312.

DTE also argues that there "is no support in this case, or in ratemaking generally, for a 50-basis point reduction to a gas utility's ROE to purely 'move towards the range of general market returns.'"[86] DTE adds that "general market returns is not the appropriate standard or benchmark for establishing a utility ROE;" and that the *Hope* and *Bluefield* standards, which have governed utility rate setting for decades, provide that the ROE should "be commensurate with returns on investments in other enterprises having corresponding risks."[87]

DTE's argument is curious.[88] In *Bluefield,* the U.S. Supreme Court explained that a "public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties…"[89] However, a utility "has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures."[90] In *Hope*, the Court explained that "the ratemaking process involves a balancing of the investor and the consumer interests."[91] An ROE that is above the range of general market returns – as the ALJ found – is not commensurate with returns on investments in other enterprises having corresponding risks. Similarly, an ROE that is above the range of general market

[86] DTE Exceptions, p. 25.

[87] *Id*. at 25-26.

[88] *Bluefield Waterworks & Improvement Co v Pub Serv Comm of West Virginia*, 262 US 679; 679; 42 S Ct 675; 67 L Ed 1176 (1923) and *Fed Power Comm v Hope Natural Gas Co*, 320 US 591; 64 S Ct 281; 88 L Ed 333 (1944).

[89] *Bluefield Waterworks & Improvement Co v Pub Serv Comm of West Virginia*, 262 US 679; 692-693; 42 S Ct 675; 67 L Ed 1176 (1923).

[90] *Id*.

[91] *Fed Power Comm v Hope Natural Gas Co*, 320 US 591, 603; 64 S Ct 281; 88 L Ed 333 (1944).

returns does not balance investor and consumer interests. (This brief will address the evidence showing that DTE's ROE is above-market further in section d, below.)

As to DTE's argument that the recommended reduction in its ROE is somehow unprecedented, in the company's past rate cases the ALJs have consistently found that DTE's ROE is inflated and needs to be reduced:[92]

Case No.	Order date	Resolution Type	PFD Recommendation	Order ROE
U-17999	12/9/2016	Adjudication	10.0%	10.1%
U-18999	9/13/2018	Adjudication	9.6%	10.0%
U-20642	8/20/2020	Settlement	--	9.9%
U-20940	9/09/2021	Adjudication	9.5%	9.9%
U-21291	TBD	Adjudication	9.4%	TBD

As the table shows, in 8 years DTE Gas's ROE has been reduced by a total of 0.2%. It has only been reduced 0.1% via adjudicated decision. And it has been exactly the same, at 9.9%, for more than four years. In every case with a PFD, the ALJs have recommended reducing DTE's ROE by a greater amount than the Commission ultimately reduced it. Different ALJs have recommended reducing DTE Gas's ROE by 40 basis points in U-18999, 40 basis points in U-20940, and 50 basis points in this case. Eight years ago, in U-17999, the ALJ recommended and

[92] Table sources: Case No. U-17999, December 9, 2016, Order, p. 25; Case No. U-17999, October 5, 2016, PFD,p. 48; Case No. U-18999, September 13, 2018, Order, p. 53; Case No. U-18999, July 16, 2018, PFD, p. 86; U-20642, Approving Settlement, Order, August 20, 2020; Case No. U-20940, December 9, 2021, Order, p. 92; Case No. U-20940, PFD, p. 138.

ROE of 10.0% but also recommended that the Commission "should also strongly consider reducing the rate at some point in the future."[93]

In DTE Gas's last adjudicated rate case, in 2021, the ALJ recommended that the Commission reduce DTE's ROE from 9.9% to 9.5%.[94] The Commission agreed with a number of the PFD's findings, but ultimately approved 9.9% – agreeing with DTE Gas "that because of the ongoing COVID-19 pandemic, there may be continued uncertainty in the capital markets that may affect the cost of capital."[95]

In sum, the ALJ's recommended reduction to DTE Gas's ROE in this case is hardly new or unprecedented. In fact, the ALJ's analysis and conclusions are consistent with the analysis of three other ALJs who have closely examined the evidence on this issue over the past eight years. And the Commission's concern in U-20940 about the COVID-19 pandemic has presumably abated. The PFD's recommendation in this case is not only sound and thoroughly supported, a meaningful reduction in DTE's ROE to bring it closer the market cost of equity is well overdue.

c. The PFD correctly finds that evidence on average ROEs from Staff, the Attorney General, and ABATE is more credible than DTE's evidence.

Next, DTE argues that the PFD erred by giving more weight to evidence submitted by Staff, the Attorney General, and ABATE regarding recent ROEs awarded to other gas utilities than the PFD gave than to DTE's evidence.[96] The PFD found that "Staff, the Attorney General, and ABATE each offered consistent evidence of recently authorized ROE's for gas utilities rendered

[93] Case No. U-17999, October 5, 2016, PFD, p. 48.

[94] Case No. U-20940, PFD, p. 138.

[95] Case No. U-20940, December 9, 2021, Order, p. 92.

[96] DTE Exceptions, pp. 26-27.

by other state commissions across the country for 2022 and 2023."[97] The PFD summarized the ROE data from each of those parties as being in the range of 9.5 to 9.6% – with the high outliers being California, some very small utilities in Florida, and Michigan.[98]

The PFD noted that Dr. Villadsen claimed in rebuttal that the average ROE for gas utilities in the first four-and-a-half months of 2024 was much higher, at 9.9%.[99] However, the PFD found that Dr. Villadsen did not support her claim with any of the underlying data:

> 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 by unduly be influencing the average.[100]

DTE does not dispute that the only "evidence" Dr. Villadsen provided in rebuttal was a graph with a single line that purported to show the trend of average ROEs from 2006 until mid-May of 2024.[101] Nor does DTE dispute that the graph provides no information about the 2024 decisions that witness Villadsen relies on – not the names of the utilities, the jurisdictions, the dates, or even how many decisions are included in her data from 2024. Her bare graph with no supporting data contravenes MRE 703, which requires that the "facts or data in the particular case upon which an expert bases an opinion or inference shall be in evidence" – and which the Commission has held applies to these proceedings.[102]

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[97] PFD, p. 211.

[98] *Id*.

[99] *Id*. at 212.

[100] *Id*.

[101] See Villadsen Rebuttal, 4 TR 2590, Figure 11.

[102] MRE 703, held applicable to MPSC proceedings in Case No. U-16582, December 20, 2011, Order, pp 15-16 and Case No. U-17302, December 19, 2013, Order, p 3.

Rather than defend Dr. Villadsen's bare and unsupported testimony, DTE perplexingly complains that ABATE witness Walters submitted similar information, and the ALJ relied on that.[103] But the PFD, in the block quote above, very clearly contrasted Dr. Villadsen's testimony with Attorney General witness Coppola's Exhibit AG-29 – *not* with ABATE witness Walters' graph.[104] Exhibit AG-29 provides all of the detailed information regarding utility, order date, jurisdiction, etc. that is plainly absent from Dr. Villadsen's evidence. And the PFD clearly relied on the weight of all the evidence regarding average ROEs submitted by Staff, ABATE, and the Attorney General – which the PFD found to be consistent; or, in other words, mutually corroborated.

"It is for the PSC to weigh conflicting opinion testimony of the qualified ('competent') experts to determine how the evidence preponderated."[105] The ALJ did exactly that, and documented his reasoning thoroughly and in detail. The PFD correctly found that the evidence on average ROEs submitted by Staff, ABATE, and the Attorney General is credible and DTE's evidence is not. The Commission should adopt the PFD's finding.

d. The PFD correctly found that approved ROEs for regulated utilities are higher on average than market returns for riskier unregulated businesses.

Finally, DTE complains that the PFD found credible CUB witness Matthew Bandyk's evidence that the ROEs approved by state utility commissions tend to be higher than the market cost of equity for other businesses.[106] DTE argues that the PFD is wrong because of "the capital-

[103] DTE Exceptions, p. 27.

[104] PFD, p. 211, quoted *supra*.

[105] *Antrim Resources v Public Service Commission*, 179 Mich App 603, 620-621 (1989).

[106] DTE Exceptions, p. 28.

intensive nature of public utilities and the obligation to serve that is embedded in the regulatory compact."[107] The company also argues that the PFD's finding "infers that commissions, including the Michigan Public Service Commission, have consistently made the wrong determination."[108] Finally, DTE argues that the PFD should not have relied on Exhibit CUB-5, which describes "mounting evidence that investment in utility stocks has outperformed the broader market in the past and will continue to do so" – despite the fact that "[r]egulated utilities are less risky than competitive industries, and therefore are supposed to produce a lower total return over time."[109]

There are several responses to these arguments. First, DTE once again provides only a selective review of what the PFD relied on in evaluating the question of regulated utility business risk and market returns compared to other companies. The PFD relied on Exhibit CUB-5, but also relied on several other sources of evidence:

- The PFD also relied on a data compilation in Mr. Bandyk's testimony that demonstrates the gap between awarded ROEs and the market cost of equity.[110]
- The PFD also relied on Mr. Bandyk's testimony about an article in *Energy Policy*, a peer-reviewed journal, by two academics from Carnegie Mellon University who found that "[t]his growing premium does not appear to be explained by traditional asset-pricing models" and instead "it would appear that regulators are authorizing excessive returns on equity to utility investors."[111]

[107] *Id*.

[108] *Id*.

[109] PFD, p. 213, quoting Ex CUB-5, p. 1.

[110] PFD, p. 213, Bandyk Direct, 4 TR 953, Figure 2.

[111] PFD, p. 214, Bandyk Direct, 4 TR 954, citing David Rode and Paul Fischbeck, "Regulated equity returns: A puzzle." Energy Policy, Oct. 2019.

- The PFD also relied on an article by Karl Dunkle Werner, an economist with the US Treasury, and Stephen Jarvis of the London School of Economics that found a "consistent trend of excess rates of return" and that "the current approved average return on equity is markedly higher than various benchmarks and historical relationships would suggest."[112]
- The PFD also found that – with the exception of Dr. Villadsen's testimony that the paper by Dunkle Werner and Jarvis has "several faulty premises" – DTE did not "rebut the other evidence that authorized ROE returns for regulated utilities are well above general market returns, nor offer any contradicting evidence in that regard."[113]

Second, the Commission itself has recognized that the gap between utility ROEs and other market benchmarks has been growing. In DTE Gas's last rate case, the Commission found:

> The Commission notes that even as the average approved ROE across the utility sector has modestly declined in recent years, the spread between utility ROEs and other benchmarks such as the 20-year U.S. Treasury yield has increased. This could suggest that utilities, as a whole, may be benefiting from a premium in comparison to other investment opportunities, and that this premium may be in excess of the sector's risk profile.[114]

Finally, DTE insists that "market observations rely on limited academic research that does not take into consideration a utility's unique business risks…"[115] However, as the PFD noted, the Commission has already found the regulated utility industry to be less risky than unregulated businesses. In DTE Electric's 2022 rate case, the Commission expressed agreement with S&P's

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[112] PFD, p. 214, Koeppel Direct, 4 TR 954 and Ex FLO-41, Karl Dunkle Werner and Stephen Jarvis, "Rate of return regulation revisited." University of California Berkely Haas Energy Institute, April 2024.

[113] PFD, p. 216.

[114] Case No. U-20940, December 9, 2021, Order, p. 91.

[115] DTE Exceptions, p. 28.

credit report that found "DTE Electric's business risk reflects the 'very low risk' of the regulated utility industry."[116] As the PFD also noted, the U.S. Supreme Court held that "The less risk, the less right to any unusual returns upon the investments."[117] The evidence and precedents just outlined strongly support the PFD's recommendation.

. . .

In sum, after thorough analysis the PFD concluded that DTE Gas has not demonstrated the need for a higher approved ROE, and that the great weight of the evidence demonstrates that the Commission should reduce the company's ROE to 9.4%. The PFD's findings are detailed, comprehensive, and unassailable, and the action recommended is overdue. The Commission should adopt the PFD's recommendation.

D. Reply to DTE Regarding Responsibly Sourced Gas: The Commission Should Adopt the PFD's Recommended RSG Disallowance

The PFD finds that "DTE has not provided adequate support that the proposal to purchase [Responsibly Sourced Gas] will make a significant contribution to DTE's total greenhouse gas reduction goals."[118] The PFD finds DTE's proposed investment in RSG premature given "lack of industry standards" and "recent legislative and EPA initiatives on methane reductions" that are duplicative of RSG efforts.[119]

[116] Case No. U-20836, November 18, 2022, Order, p. 241.

[117] PFD, p. 216, citing *Wilcox v. Consolidated Gas Co. of New York*, 212 U.S. 19, 48-49, 29 S. Ct. 192 (1909).

[118] PFD, p. 379.

[119] *Id.* at 380.

3. DTE Gas Provides No Evidence that RSG will Make a Significant Contribution to Greenhouse Gas Reduction Goals

DTE disputes the PFD's assertion that RSG will not make a significant contribution to greenhouse has reduction goals, but provides no evidence in support. Instead, it states that RSG "by its very nature" meets environmental targets during production. DTE Gas does not explain how meeting environmental targets is correlated with reducing GHG emissions. And as Ms. Napoleon and other witnesses pointed out, there is no evidence at all that RSG reduces emissions. There is no third-party verification or industry standards for emissions reductions from RSG,[120] and there are no guarantees that federal emissions standards have not rendered RSG emissions reductions meaningless.[121] DTE Gas witness Decker conceded that RSG is unregulated and that DTE has not set standards for emissions reductions from RSG.[122] He also conceded that federal emissions standards might remove any incremental emissions benefits from RSG.[123] Perhaps most significant, witness Decker noted that only five percent of DTE's value chain are upstream emissions that can be reduced by RSG.[124] Even if RSG were to eliminate 100 percent of upstream emissions, it would only reduce DTE Gas' GHG emission by at most five percent.

DTE Gas ignores this evidence demonstrating that RSG does not provide emissions reduction benefits and instead notes that the Company has "chosen to be proactive versus reactive."[125] However, as MNSC has repeatedly pointed out, there are more proven and more cost-effective emissions reductions strategies, such as electrification, that DTE Gas is avoiding in favor

[120] Napoleon Direct, 4 TR 919.

[121] MNSC Initial Brief p 78.

[122] Decker cross, 2 TR 151.

[123] *Id.*

[124] Decker cross, 2 TR 153

[125] DTE Exceptions, p 60.

of RSG.[126] It is not reasonable for DTE Gas ratepayers to pay for uncertain and insignificant emissions reductions efforts, such as RSG.

E. Reply to DTE Regarding Demand Response: The Commission Should Adopt the PFD's Recommendation that the Commission Direct DTE Gas to Continue Offering the Smart Savers Pilot Program

1. The PFD Accurately Finds that DTE Gas Has Failed to Counter Evidence That Gas Usage was Reduced During the Smart Savers Pilot

The PFD recommends that the Commission direct DTE Gas to continue to offer the Smart Savers demand response pilot to DTE customers as "DTE's evaluation showed that its pilot reduced large amounts of gas usage during gas demand events."[127] The PFD goes on to note that DTE "has not offered any contrary evidence nor offered any explanation for why its data does not support that significant amounts of gas usage were reduced."[128] The PFD aptly notes that rather than grapple with the Smart Savers data, DTE's witnesses instead make assertions and conclusory recommendations to discontinue the demand response pilots.[129] Finally, the PFD notes that the Commission has highlighted the importance of demand response for dealing with emergency events.[130]

[126] MNSC Initial Brief, p 83.

[127] PFD, p. 366.

[128] *Id.* at 368.

[129] *Id.*

[130] *Id.*

2. DTE Gas' Exceptions Do Not Represent Accurately Findings from the Smart Savers Pilot

DTE Gas claims it "provided ample evidence that the data from these pilot programs demonstrated the programs' ineffectiveness."[131] However, the evidence it points to does not render the PFD's findings inaccurate. DTE's own data shows that in each of the five gas events during the Smart Savers Pilot, there was at least a 36 percent reduction in gas usage.[132] Only in one event was there "snapback" significant enough to result in an overall increase in gas usage.[133] Yet DTE Gas inaccurately states that each of the five Smart Savers events resulted in large snapback.[134] That is simply not accurate. Four of the five events saw substantially lower cumulative event gas usage.[135]

DTE Gas' further contention that MNSC and CEO do not address snapback in their analyses is also inaccurate. In fact, MNSC witness Napoleon included recommendations in testimony for reducing snapback effects, including pre-heating slightly prior to events.[136] CEO witness Cebulko offered that DTE could stagger customer reintegration or use remote capabilities to reduce snapback effects.[137] Of course, pilots are inherently iterative and rather than scrap the Smart Savers pilot because of a large snapback in one of five events, MNSC and other parties recommended that DTE Gas instead attempt to fix snapback. DTE Gas' contention that "the record clearly shows that the reduction in gas usage was rendered meaningless in the full context of the

[131] DTE Exceptions, p 57.

[132] Napoleon Direct, 4 TR 933.

[133] Napoleon Direct, 4 TR 931.

[134] DTE Exceptions at 58.

[135] Napoleon Direct, 4 TR 931.

[136] *Id.* at 933-34.

[137] Cebulko Direct, 4 TR 749.

pilot program" is without evidence.[138] DTE Gas provided no cost-effectiveness analysis of the Smart Savers pilot, nor did it provide any explanation as to why the 36 percent and higher reductions in gas usage in pilot events were "meaningless."

F. Reply to DTE regarding Environmental Justice and the Energy Transition: The Commission should reject DTE's request to defer any work on assessing the energy transition until conclusion of the Energy Affordability and Accessibility Collaborative.

As discussed in MNSC's exceptions, the PFD in this case found that "our society is undergoing a fundamental energy transition in which society is shifting away from fossil fuels and towards renewable forms of energy" and that "this energy transition may result in substantial reductions in the amount of gas delivered."[139] The PFD also found that "DTE has not made much if any assessment or study of how any energy transition will be accomplished and at what costs."[140] The PFD recommended that the Commission direct DTE Gas to update its Gas Delivery Plan to assess the energy transition.[141] In exceptions, MNSC agreed with the PFD's findings but disagreed with the recommended course of action.[142] MNSC urged the Commission to initiate a Future of Heat proceeding instead, for the reasons outlined by MNSC witness Asa Hopkins and in MNSC's initial brief in this case.[143]

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[138] DTE Exceptions, p 58.

[139] PFD, p. 409.

[140] *Id.*

[141] *Id.*

[142] MNSC Exceptions, pp. 27-29.

[143] MNSC Exceptions, pp. 28-29; Hopkins Direct, 4 TR 883-886; MNSC Initial Brief, pp. 14-22 (declining gas usage), 65-67 (risk of stranded assets), and 85-86 (future of heat).

In its exceptions, DTE opposes the PFD's minimal recommendation and argues against doing *anything* related to the energy transition in the foreseeable future.[144] Instead, DTE requests that the Commission "defer any work on assessing the energy transition until the conclusion of the EAAC [Energy Affordability and Accessibility Collaborative]."[145] The Commission should reject DTE's position for several reasons.

First, DTE provides no substantive facts or authority to dispute the PFD's findings that the energy transition has begun and that it threatens DTE's business-as-usual practice of growing its gas rate base in perpetuity. DTE's request that the Commission delay indefinitely any steps to begin addressing these issues emphasizes the company's failure to recognize the risks to its business and customers from warming temperatures, declining sales, and increasing electrification.

Second, the Commission should not delay DTE's obligation to assess the energy transition until the conclusion of the EAAC. Assessing the energy transition is *not* part of the EAAC's charge from the Commission.[146] Delaying DTE's obligation to assess the impact of the energy transition on its business and customers until completion of a workgroup that is *not* assessing the energy transition makes no sense – other than as a way to continue kicking the can down the road.

Further, the EAAC has no conclusion date. In its December 21, 2023 Order in Case No. U-20757, the Commission extended the EAAC's work through the end of 2024, but Staff testimony in DTE Electric's pending rate case made clear that the EAAC will continue working into 2025 with no specific end date in sight.[147] (This brief discusses the EAAC further in the reply to Staff on the Low-Income Credit, below.)

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[144] DTE Exceptions, pp. 60-61.

[145] *Id*. at 61.

[146] See Case No. U-20757, February 18, 2021; February 10, 2022; and December 21, 2023, Orders.

[147] Case No. U-21534, Cross-examination of Staff witness Elaina Braunschweig, 6 TR 3573-74.

Addressing the energy transition is an urgent matter, rather than one that can be put off, as the speed with which it is addressed will impact DTE ratepayers. The longer there is a misalignment between expanding gas infrastructure and decreasing demand, the more at risk DTE Gas customers are for paying for stranded assets for decades. Similarly, the longer DTE has resists fuel-switching, the longer DTE customers are denied the efficiency, reliability, and environmental benefits of electrification.

G. Reply to Staff regarding the Low-Income Assistance (LIA) credit: The Commission should adopt the PFD's recommendation to approve DTE's proposal to increase its Low-Income Assistance (LIA) credit from $30 to $40.

DTE's Low-Income Assistance (LIA) credit is a $30 credit available to customers with household incomes at or below 150% the federal poverty level (FPL).[148] Recognizing that the LIA credit offsets a smaller percentage of LIA participants' bills as rates increase, DTE proposed to increase the credit amount to $40 to provide the same degree of financial benefit participants received when the program began.[149] Staff objected, arguing that the Commission should delay any consideration of changes to DTE's low-income programs until after the statewide Energy Affordability and Access Collaborative (EAAC) and its Affordability, Alignment, and Assistance (AAA) subcommittee complete and file a report in Case No. U-20757, the docket convened to review the Commission's response to the COVID-19 pandemic.[150] The PFD agreed it was appropriate to delay consideration of many broader issues with DTE's low-income programs but recommended approving DTE's proposed increase to the LIA credit, finding "the LIA has proven effective, the increase is in the best interests of customers who urgently require bill relief, and th[e]

[148] PFD, p. 382.

[149] PFD, p. 383.

[150] Staff Initial Brief, pp. 31-32.

increase does not involve a change to the structure of the eligibility requirements or recovery mechanisms."[151] Staff filed exceptions opposing the PFD's recommended approval of the proposed increase. For the reasons below, the Commission should uphold the PFD and approve the proposed increase.

3. The PFD's finding that the LIA program is effective is supported by record evidence and is not premature.

In its exceptions, Staff argues that the PFD's recommendation approving the LIA credit increase is "premature" because the testimony of DTE witness Jason Sparks is the "only" evidence in the record supporting it.[152] Staff's argument fails because the PFD's recommendation is not premature, Mr. Sparks's testimony is sufficient to support it, and the record contains more supporting evidence than just Mr. Sparks's testimony.

First, it is not premature to adjudicate a proposal made in this case based on the evidence presented in this case. Administrative law judges (ALJs) have the authority and responsibility to "[c]onduct full, fair, and impartial hearing[s]," "avoid unnecessary delay in the disposition of proceedings," and "[i]ssue proposed orders, proposals for decision, and final orders and take any other appropriate action authorized by law."[153] That is what ALJ Thoits has done in this case.

Second, Mr. Sparks's testimony is sufficient to support the PFD's finding that the LIA credit is effective. It is credible, cogent, and sufficiently detailed. Staff presented no relevant evidence to the contrary. Staff only presented evidence showing that the evidence it might have liked to present

[151] PFD, p. 393.

[152] Staff exceptions, p. 4.

[153] Mich. Admin. Code R. 792.10106(1)(a),(b), and (o); see also MCL 460.6a(1), (5) (16)(a) (requiring the Commission to provide a reasonable opportunity for a "full and complete hearing" in rate cases) and MCL 460.6a(5) (requiring the Commission to decide rate case applications within 10 months).

– i.e., the anticipated report from the EAAC and its AAA subcommittee – does not exist yet. The absence of Staff's preferred evidence does not negate Mr. Sparks's testimony.

Third, Mr. Sparks's testimony is not the only evidence of the LIA program's effectiveness. Staff witness Elaina Braunschweig acknowledged that "Michigan's most vulnerable customers would benefit from additional assistance."[154] Witness Jackson Koeppel, on behalf of Soulardarity, Urban Core Collective, and We Want Green, Too (collectively referred to as the Frontline Organizations (FLO)), testified that "[f]rom the perspective of a household impacted by the affordability crisis, the absolute bill reduction is what matters."[155] The LIA credit does what matters – it reduces utility bills for people who would otherwise have a more difficult time paying them. That better alternatives may exist, or that a report may someday provide a more detailed assessment of the LIA credit's effectiveness, does not mean the LIA credit is not effective or that there is insufficient evidence of its effectiveness in this case.

4. Staff identifies no applicable authority or precedent to support its opposition to DTE's proposed LIA credit increase.

Staff argues that it would be "improper to go against the Commission's directive to consider the EAAC-AAA evaluation by determining a program is effective without supporting data and to adopt changes to a program that is currently under analysis" and that relying on Mr. Sparks's testimony "would contradict the Commission's directives to this subcommittee."[156] Staff does not clearly identify these directives, but presumably means the those in Commission Orders in Case No. U-20836 and U-20757, which Staff witness Elaina Braunschweig cited in her testimony.[157]

[154] Direct testimony of Elaina Braunschweig, 4 TR 1762.

[155] 4 TR 1047.

[156] Staff Exceptions, pp. 4-5.

[157] Braunschweig Direct, 4 TR 1761-1762.

Staff overstates and overextends these directives, which do not apply to this case, and identifies no applicable authority or precedent to support its opposition to DTE's proposed LIA credit increase.

The Commission in Case No. U-20836 instructed DTE to file a report "detailing the company's current approach to enrolling customers in the LIA credit program with current enrollment data from 2021 and 2022" in Case No. U-20757.[158] DTE complied with the Commission's directive when it filed its report on LIA program enrollment in Case No. U-20757 on March 16, 2023. The Commission also directed the EAAC to "to initiate[] . . . a stakeholder discussion of the company's report on the enrollment of customers in the LIA credit program and submit a report and recommendations to the Commission."[159] The Commission in Case No. U-20757 added an assessment of PIPP pilots to the scope of the EAAC's expected report and extended its timeline.[160] The EAAC has not yet fulfilled the directives in these two Orders.

The Commission's directives to the EAAC apply to the EAAC and define the scope of the EAAC's responsibilities. They do not apply to this case and are not grounds for narrowing the issues in this case.

Beyond these "directives," Staff has identified no authority or precedent to support its position that the Commission can decline to decide a ripe issue in a rate case because a workgroup is expected to produce a report that Staff might have presented as evidence had it existed. As DTE has stated, "Staff's recommendation would deny a positive change merely because a better one

[158] Case No. U-20836, November 18, 2022, Order, p. 407.

[159] Case No. U-20836, November 18, 2022, Order, p. 407.

[160] Case No. U-20757, December 21, 2023, Order, pp. 9-10.

might emerge in the future."[161] The PFD was right to reject it. The Commission should uphold the PFD's recommendation to adopt DTE's proposed LIA credit increase.

III. CONCLUSION

For the reasons discussed above, MNSC respectfully requests that the Commission adopt the PFD's recommendations regarding Cathodic Protection Costs, Main Replacement (or MNSC's exception), ROE, the Mesick Buckley and Peach Ridge CEPs, demand response, Responsibly Sourced Gas, and the LIA credit; and adopt MNSC's exceptions regarding the Energy Transition.

Respectfully Submitted,

Dated: October 7, 2024

By: 
Digitally signed by Christopher Bzdock
Date: 2024.10.07 16:31:36 -04'00'

Christopher M. Bzdok (P53094)
Holly Hillyer (P85318)
Troposphere Legal
420 E. Front Street
Traverse City, MI 49686
(231) 709-4400
chris@tropospherelegal.com

Dated: October 7, 2024

By: */s/ Nihal Shrinath*

Nihal Shrinath (*Pro Hac Vice*)
Sierra Club
2101 Webster St., Suite 1300
(415) 977-5566
nihal.shrinath@sierraclub.org

[161] PFD, p. 385.

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

PROOF OF SERVICE

On the date below, an electronic copy of **Reply to Exceptions by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan** was served on the following:

Name/Party	E-mail Address
Administrative Law Judge Hon. Jonathan F. Thoits	thoitsj@michigan.gov
Counsel for DTE Gas Company Carlton D. Watson Paula Johnson-Bacon Andrea E. Hayden	mpsc.filings@dteenergy.com carlton.watson@dteenergy.com paula.bacon@dteenergy.com andrea.hayden@dteenergy.com
Counsel for Michigan Public Service Comm. Heather M.S. Durian Anna B. Stirling Monica M. Stephens Michael J. Orris Lori Mayabb	durianh@michigan.gov stirlinga1@michigan.gov stephensm11@michigan.gov orrism@michigan.gov mayabbl@michigan.gov
Counsel for Department of Attorney General Joel B. King Aaron Walden	ag-enra-spec-lit@michigan.gov kingj38@michigan.gov
Counsel for City of Ann Arbor Valerie Jackson Valerie J.M. Brader	ecf@rivenoak.com valeriejackson@rivenoaklaw.com valerie@rivenoaklaw.com
Counsel for Retail Energy Supply Association Jennifer U. Heston	jheston@fraserlawfirm.com
Counsel for Michigan Power LP Jennifer U. Heston	jheston@fraserlawfirm.com
Counsel for Dearborn Industrial Generation Sean P. Gallagher	sgallagher@fraserlawfirm.com

Counsel for Billerud Americans Corp	
Timothy J. Lundgren	tlundgren@potomaclaw.com
Justin Ooms	jooms@potomaclaw.com
Counsel for Environmental Law & Policy Center, The Ecology Center, Vote Solar, and Union of Concerned Scientists, Inc.	MPSCdocket@elpc.org
Nicholas N. Wallace	nwallace@elpc.org
Daniel H.B. Abrams	dabrams@elpc.org
Carolyn Boyce	cboyce@elpc.org
Alondra Estrada	aestrada@elpc.org
Counsel for Urban Core Collective, Soulardarity, and We Want Green, Too	
Amanda Urban	t-9aurba@lawclinic.uchicago.edu
Mark N. Templeton	templeton@uchicago.edu
D. Sam Heppell	heppell@uchicago.edu
Jacob Schuhardt	jschuhardt@uchicago.edu
Madison S. Wilson	madisonswilson@uchicago.edu
Counsel for Association of Businesses Advocating Tariff Equity	
Stephen A. Campbell	scampbell@clarkhill.com
Michael J. Pattwell	mpattwell@clarkhill.com

The statements above are true to the best of my knowledge, information, and belief.

Date: October 7, 2024

By: Natasha L. Fowles Digitally signed by Natasha Fowles Date: 2024.10.07 16:32:15 -04'00'

TROPOSPHERE LEGAL, PLC
Counsel for MEC, NRDC, SC & CUB

Natasha Fowles, Legal Assistant
420 E. Front St.
Traverse City, MI 49686
Phone: 231-709-4000
Email: natasha@tropospherelegal.com