

December 6, 2024

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

RE: MPSC Docket No. U-21291

Dear Ms. Felice:

Attached herewith for filing in the above-referenced matter, please find Michigan Power Limited Partnership's Petition for Rehearing.

If you have any questions, please feel free to contact my office. Thank you.

Very truly yours,

Fraser Trebilcock Davis & Dunlap, P.C.



Jennifer Utter Heston

JUH/dma
Enclosures
cc: All counsel of record

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

PETITION FOR REHEARING OF
MICHIGAN POWER LIMITED PARTNERSHIP

Dated: December 6, 2024

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NOW COMES the Michigan Power Limited Partnership (“Michigan Power” or “MPLP”), by and through its attorneys, Fraser Trebilcock Davis Dunlap and Cavanaugh, P.C., and pursuant to 1923 PA 94, MCL 460.351 et seq., and Rule 437 of the Commission’s Rules of Practice and Procedure, R 792.10437, hereby respectfully requests that the Michigan Public Service Commission (“Commission” or “MPSC”) rehear and reconsider certain aspects of its order issued November 7, 2024 (“November 7 Order”) in DTE Gas Company’s (“DTE’s”) proceeding for authority to increase its rates for the distribution of natural gas and for other relief.

I. INTRODUCTION.

Michigan Power is a Michigan limited partnership, which built and is operating a 123 MW gas-fired cogeneration facility near Ludington, Michigan, as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, 92 Stat. 3117, *inter alia*, 15 USC § 3201 *et seq*; 16 USC § 824(a-3) *et seq*; and 16 USC § 2601 *et seq*. MPLP is a gas transportation customer of DTE and is currently served under Transportation Service Rate XXLT (“Rate XXLT”). As a result, MPLP is keenly interested in DTE’s rates, terms and conditions of service approved by the Commission in this case.

On January 8, 2024, DTE filed its application, testimony and exhibits in this proceeding requesting authority to increase its natural gas rates by approximately \$266 million based on a projected test year ending September 30, 2025, as well as authority to implement a revenue decoupling mechanism and an infrastructure recovery mechanism. DTE also proposed changes to its end use transportation (“EUT”) service tariff. As part of its EUT tariff amendments, DTE sought to increase its monthly Customer Charge and its Transportation Rates, including for Rate XXLT. DTE proposed a \$4.6 million, 14.7% overall average, increase for Rate XXLT.

On November 7, 2024, the Commission issued an order in this proceeding addressing many issues. One disputed issue that the Commission did not explicitly address was the transportation service rate design. DTE included a transportation service rate design in its application based on previously approved cost allocation and rate design methodologies. The MPSC Staff, however, proposed an alternative transportation class rate design, which was opposed by Michigan Power¹ and ABATE.²

Despite not explicitly addressing the disputed transportation class rate design, the rates appended to the Commission’s November 7 Order appear to be developed using the MPSC Staff’s preferred transportation service rate design. The rates result in a nearly 15% rate *decrease* for the smallest members of the transportation class (Rates ST and LT), while imposing a 26.36% increase on Rate XXL T and an astounding 38.73% increase on Exelon. The \$8.4 million rate increase for Rate XXL T is nearly 83% *higher* than the rate increase proposed by DTE even though the Commission’s approved overall rate increase for DTE was nearly 60% *lower* than what DTE requested.

Michigan Power requests that the Commission rehear and reconsider the transportation service rate design. The Commission’s lack of any findings of fact or conclusions of law with respect to the disputed transportation rate design is a legal error that deprives parties from making informed decisions about appeals and courts from effectively reviewing the Commission’s conduct.³ Absent explicit instruction from the Commission, it was an error for the MPSC Staff, when assisting the Commission with the development of the attachments to

¹ See, Michigan Power’s Initial Brief, pp. 13-14; Michigan Power’s Reply Brief, pp. 4-6; Michigan Power’s Exceptions, pp. 11-13.

² See, ABATE’s Initial Brief, pp. 52-56.

³ “The necessity for a detailed finding of fact . . . is intended to facilitate appellate review by providing a precise statement of what evidence, on the record, supports the agency’s ruling.” Consumers Power Co v Pub Serv Comm, 78 MichApp 581, 585 (1978).

the November 7 Order, to utilize its own contested rate design. The MPSC Staff's transportation class rate design is unreasonable. The resulting rates are shocking for Rate XXLT and will have the unintended consequence of encouraging the Rate XXLT class members to pursue competitive alternatives that the adoption of Rate XXLT was meant to prevent. For the reasons stated further below, the Commission should grant rehearing and adopt DTE's transportation service rate design.

II. STANDARDS FOR REHEARING.

The Commission has the authority to alter, amend or modify any of its findings and orders. Section 1 of Public Act 94 of 1923, MCL 460.351, states, as follows:

The Michigan public utilities commission, in any proceeding which may now be pending before it or which shall hereafter be brought before it, shall have full power and authority to grant rehearings and to alter, amend or modify its findings and orders.⁴

Consistent with its statutory authority, the Commission has adopted administrative rules for practice and procedure before the Commission. Rule 437(1) of the Commission's Rules of Practice and Procedure, R 792.10437(1), pertains to rehearings and states, as follows:

A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

⁴ The public utilities commission, referred to in this section, was abolished and its power and duties were transferred to the public service commission by MCL 460.4. "The Michigan public service commission shall have and exercise all rights, privileges, and the jurisdiction in all respects as has been conferred by law and exercised by the Michigan public utilities commission." MCL 460.4.

The Commission's standards for considering petitions for rehearing have been repeatedly stated in the following terms:

Rule 437 provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. The Commission has stated many times that unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant a rehearing.

In re Indiana Mich Power Co, MPSC Case No. U-17691, p. 12 (Order denying rehearing dated August 22, 2024).

III. THE COMMISSION SHOULD REHEAR AND RECONSIDER ITS TRANSPORTATION SERVICE RATE DESIGN AND ADOPT DTE'S PROPOSED TRANSPORTATION SERVICE RATE DESIGN.

For the reasons discussed below, the Commission's November 7 Order contains legal and factual errors and will lead to unintended consequences. This petition meets the standard for granting rehearing. The Commission should grant rehearing and revise the transportation rates.

A. The Commission committed a legal error by failing to explain its decision with respect to the disputed transportation class rate design.

As a matter of law, the Commission must articulate an explanation for its action, including a rational connection between the facts found and the choice made so as not to evade judicial review.⁵ The explanation should be sufficient to allow a court to evaluate the Commission's rationale at the time of the decision.⁶ In this instance, the Commission provided

⁵ See, *Consumers Power Co v Pub Serv Comm*, 78 MichApp 581, 585 (1978).

⁶ *Id.*

no explanation for the use of the Staff’s disputed transportation class rate design, a rate design that is loosely based on a fundamentally flawed high-low pressure framework that has never been used prior for DTE. The Commission’s lack of a ruling and stated rationale on the disputed issue is a legal error.

Section 85 of the Michigan Administrative Procedures Act (“APA”), MCL 24.285, mandates that administrative agencies issuing orders in a contested case make findings of fact and conclusions of law.⁷ Section 85 of the APA applies to the Commission.⁸ “The necessity for a detailed finding of fact, as outline in Section 85, is intended to facilitate appellate review by providing a precise statement of what evidence, on the record, supports the agency’s ruling.”⁹ Absent findings of fact, a reviewing court cannot determine if the Commission’s decision was supported by the requisite “competent, material and substantial evidence on the whole record.”¹⁰ Further, the absence of a rationale for its decision deprives parties of the ability to exercise sound judgement on the propriety of an appeal.¹¹

The transportation class rate design was a disputed issue in this contested case proceeding. The Commission’s November 7 Order, however, does not contain any discussion

⁷ “A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record.” MCL 24.285.

⁸ See, *Cities of Grosse Pointe Part et al v. Pub Serv Comm.*, 93 MichApp 596, 598 (1980).

⁹ *Consumers Power Co v Pub Serv Comm*, 78 MichApp 581, 585 (1978).

¹⁰ *Id.*

¹¹ “The failure to accompany the decree by an opinion may thus deprive litigants of the means of exercising a sound judgment on the propriety of an appeal. An the appellate court, being without knowledge of the grounds of the decision below, is denied an important aid in the consideration of the case, and will ordinarily be subjected to much unnecessary labor.” *Nunn v George A Cantrick Co, Inc et al*, 113 MichApp 486, 492 (1982), quoting *Virginian R Co v United States*, 272 US 658, 675 (1926).

of the disputed transportation class rate design. As such, it is not possible to determine what facts the Commission relied upon to support the transportation class rate design reflected in the attachments to the November 7 Order. The Commission's lack of any ruling on the disputed issue in the November 7 Order is a legal error.

B. It was an error to utilize the Staff's disputed transportation class rate design absent an ordered directive from the Commission.

Further, it was an error for the MPSC Staff, when providing assistance to the Commission, to decide to utilize what appears to be its own transportation class rate design to prepare the rates reflected in the attachments to the November 7 Order absent direction from the Commission to do so. The Commission only speaks through its orders¹² and there is nothing in the November 7 Order directing the use of the Staff's disputed transportation class rate design. Absent explicit instruction from the Commission contained within a signed order to change the rate design, the default rate design should have been the one contained in DTE's application consistent with prior DTE rate orders.

C. The MPSC's Staff's transportation class rate design is unreasonable and should not be used to set transportation rates in this case.

The Staff's alternative transportation class rates are loosely based on DTE's alternative cost of service study that focuses on high- and low-pressure. Staff claim that they used this cost of service study to 'inform rate design'. Staff presented in this case transportation rates that are not based on any cost of service study, but an amalgamation of studies. Staff admitted that it is dubious to rely upon the alternative study without an accompanying reexamination of the

¹² "These alleged representations by Hartman and EBS are disturbing *because the Commission only speaks through its orders . . .*" Order dated August 10, 2004, MPSC Case No. U-14225, p. 2 (emphasis added); see also, *Tiedman v Tiedman*, 400 Mich 571, 576 (1977) ("The rule is well established that courts speak through their judgments and decrees, not their oral statements or written opinions."), and the unpublished opinion in *Consumers Energy Co v Pub Serv Comm*, MichCtApp Case No. 296853 (January 24, 2012), "The PSC speaks through its orders."

transportation rate design, but Staff claimed that it is too difficult to re-examine rates in this case.¹³ Such an approach is not sound ratemaking.

The alternate cost of service study presented in this case is not adequate for ratemaking purposes. Michigan Power's witness explained the numerous reasons why the unsupported and unexamined alternative study should not be a basis for setting rates.¹⁴ ABATE's witness Ms. York likewise provided numerous reasons why the alternative study is not ready for use.¹⁵ DTE itself does not support using the alternate study saying that the alternate study has not been determined to better align cost causation with cost allocation for all rate classes.¹⁶ There are serious deficiencies with the alternative study making any use of the study, including "as a guide" to 'inform rate design,' suspect an unsupportable.¹⁷ The Staff's transportation class rate design should be rejected.

D. The Rate XXL rate will have the unintended consequence of causing rate shock. .

The resulting rate for Rate XXL customers is not reasonable and will have the unintended effect of causing rate shock. The MPSC Staff consider any overall increase in a customer's bill above 10% to potentially cause rate shock.¹⁸ Attachment A to the November 7 Order shows that Rate XXL's overall average rate increase is 26.36%. This rate increase is in addition to the 26.14% rate increase approved for Rate XXL in the Commission's December 9, 2021 order in MPSC Case No. U-20940, DTE's most recent prior rate proceeding. Rate XXL's transportation rates have increased by nearly 60% in just three years. In contrast,

¹³ 4 Tr. 1663.

¹⁴ 4 Tr. 815-18.

¹⁵ 4 Tr. 1300-1308.

¹⁶ DTE's Initial Brief, p. 137.

¹⁷ See, 4 Tr. 815-18 and 1300-1308.

¹⁸ See, Order dated December 9, 2021, MPSC Case No. U-20940, p. 221.

residential rates increased by 1.78% in 2021¹⁹ and by another 0.47% in the November 7 Order,²⁰ while Rate ST and LT transportation rates declined. In its order dated July 31, 2017 in MPSC Case No. U-18124, the MPSC previously capped the rate increase to Rate XXL due to rate shock concerns. The overall increase for Rate XXL customers is more than 2.5 times the typical level of increase where rate shock is a concern and above the prior rate cap adopted by the Commission to avoid rate shock to this same class of customers. The Commission should reduce the Rate XXL rate.

E. The repeated, dramatic increases in the Rate XXL rate will have the unintended consequence of customers pursuing competitive alternatives to the detriment of DTE's other ratepayers.

In 2009, DTE (then Michigan Consolidated Gas Company), proposed Rate XXL for its largest transportation customers. DTE explained that that Rate XXL was needed for very large customers “to mitigate further losses to interstate pipeline bypass or fuel switching.”²¹

DTE's witness explained:

Based on my past experiences, MichCon's marketing efforts and competitiveness in retaining and attracting very large loads must be maintained to keep costs competitive for all customers. If large customers are charged rates that effectively subsidize the remainder of the transportation class, the ability to attract or maintain these loads will be diminished. These customers typically have multiple locations behind other utilities, they have alternate fuel options, and, due to their large size, they have bypass options with the interstate pipelines that require that MichCon continually assess, modify and create service distinctions to provide the Company with the opportunity to retain and attract these customers. Further, without the retention of these loads, the burden of cost recovery will fall on the remaining customers.²²

¹⁹ See, Attachment A, page 1 of 3, to Order dated December 9, 2021, MPSC Case No. U-20940.

²⁰ See, Attachment A, page 1 of 4, to the November 7 Order.

²¹ 5 Tr. 1207, ln 5-6, MPSC Case No. U-15985.

²² 5 Tr. 1207, ln 7-18, MPSC Case No. U-15985.

DTE recognized that Rate XXLT customers “are very sophisticated energy buyers and financially motivated to lowering its [sic] energy costs, plus many are located near an interstate pipeline.”²³ DTE’s witness then relayed how a recent doubling of a large transportation customer’s rate inspired a customer with an 18-20 Bcf annual load to build a direct connect 0.5 miles to an interstate pipeline to establish a bypass alternative.²⁴ Thus, Rate XXLT was specifically proposed to create a cost-based transportation rate that could compete with bypass alternatives to interstate pipelines.²⁵

The repetitive, dramatic increases in the Rate XXLT rate noted above will have the unintended consequence of Rate XXLT customers evaluating bypass alternatives to DTE altogether. The loss of large loads will result in less revenue contribution to recover DTE’s costs to the detriment of DTE’s other ratepayers.

IV. CONCLUSION AND PRAYER FOR RELIEF.

For all the reasons explained in the preceding sections of this Petition for Rehearing, MPLP respectfully requests that the Commission grant rehearing with respect to its transportation class rate design and adopt revised transportation rates utilizing DTE’s rate design, as discussed herein.

²³ 5 Tr. 1208, ln. 4-6, MPSC Case No. U-15985.

²⁴ 5 Tr. 1209-10, MPSC Case No. U-15985.

²⁵ 5 Tr. 1210-11, MPSC Case No. U-15985.

Respectfully submitted,

FRASER TREBILCOCK DAVIS DUNLAP &
CAVANAUGH, P.C.
ATTORNEYS FOR MICHIGAN POWER LIMITED PARTNERSHIP



Date: December 6, 2024

By: _____

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STATE OF MICHIGAN

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to increase its rate schedules and rules) Case No. U-21291
governing the distribution and supply of)
natural gas, and for miscellaneous)
accounting authority.)
_____)

CERTIFICATE OF SERVICE

The undersigned certifies that, on the 6th day of December, 2024, a copy of **Michigan Power Limited Partnership’s Petition for Rehearing** in the above docket on the persons identified on the attached service list by electronic mail and filed it electronically with the Michigan Public Service Commission.

/s/ Deborah A. Hefka
Deborah A. Hefka



MPSC Case No. U-21291
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