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October 23, 2024

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: **MPSC Case No. U-21534**

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find the Reply Brief of Energy Michigan, together with the Proof of Service. Thank you for your assistance in this matter.

Very truly yours,

Timothy J. Lundgren

TJL/srd

Enclosure

c. All parties of record.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE**)
ELECTRIC COMPANY for authority to)
increase its rates, amend its rate schedules and)
rules governing the distribution and supply of)
electric energy, and for miscellaneous)
accounting authority.)
_____)

Case No. U-21534

**REPLY BRIEF
OF
ENERGY MICHIGAN**

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REPLY BRIEF
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I. INTRODUCTION

This Reply Brief is filed on behalf of Energy Michigan (“Energy Michigan”)¹ by its attorneys, Potomac Law Group, PLLC, and addresses the Initial Briefs of MPSC Staff (“Staff”) and the DTE Electric Company (“DTE”). In keeping with the instructions from Administrative Law Judge (“ALJ”) Sally Wallace in this proceeding,² Energy Michigan has included responses to parties’ rebuttal of its witness’s testimony in its Initial Brief. As such, except as may be expressly modified in this Reply Brief, Energy Michigan continues to advocate the positions taken in its Initial Brief and hereby incorporates the responses to other parties’ positions already contained therein as if fully contained in this Reply Brief. Failure to address any issues or positions raised by other parties—or failure to repeat responses previously provided in Energy Michigan’s

¹ The positions expressed in this Initial Brief represent those of Energy Michigan as an organization and not necessarily the views of individual members of the organization with respect to any particular issue.

² Sent via email to the parties on September 12, 2024.

Initial Brief—should therefore not be taken as agreement with those issues or positions or as a waiver of any position previously taken in Energy Michigan’s Initial Brief.

II. ARGUMENT

A. In its SRM Calculation, DTE Wrongly Suggests that Costs Under MCL 460.6w May Fall Into Only Two Categories.

In its arguments responding to Energy Michigan’s positions on the State Reliability Mechanism Capacity Charge (the “SRM Charge”) calculation, DTE has argued throughout this case that removing DTE’s ~\$260 million of “fuel-related” costs from the “fuel” category would make no difference to the ultimate SRM Charge because doing so would only have the effect of moving them into the “capacity costs” column:

If the \$260.787 million is not considered fuel, then this amount would be considered a capacity-related cost, resulting in the amount also needing to be removed from Exhibit A-16, Schedule F1.5, line 5. Thus, witness Zakem’s recommendation would have no impact on the Company’s as-filed \$217.30/MW-day SRM capacity charge.³

This argument wrongly assumes that anything that is not a “fuel” cost must be a “capacity cost.” Section 6w(3)(a)–(b) of Public Act 341 of 2016, however, recognizes as least three broad categories of costs for the purposes of calculating the SRM Charge: “capacity-related generation costs,” “fuel costs,” and “non-capacity-related electric generation costs”:

- (a) For the applicable term of the capacity charge, include the **capacity-related generation costs** included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.
- (b) For the applicable term of the capacity charge, subtract all **non-capacity-related electric generation costs**, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected **fuel costs**, from all of the following:
 - (i) All energy market sales.

³ Initial Brief of DTE Electric Company, Case No. U-21534, Filing No. U-21534-0502 (“DTE Initial Br”), at 305–306.

- (ii) Off-system energy sales.
- (iii) Ancillary services sales.
- (iv) Energy sales under unit-specific bilateral contracts.⁴

If “fuel” is supposed to be netted against the offsets to “non-capacity-related . . . costs” enumerated in Section 6w(3)(b)(i)–(iv), it must necessarily be the case that “non-capacity-related . . . costs” are separate and distinct from “fuel costs.” The costs that add up to DTE’s ~\$260M in “fuel-related costs” are, as Energy Michigan explained in its Initial Brief,

neither capacity costs, having been excluded from that category by DTE, nor fuel costs. These costs are merely non-capacity costs left over when DTE subtracted the total costs of the purchased power from the amount that DTE designed as capacity costs, as DTE explains in footnotes to Exhibit A-26, Schedules P1 and P2. The total of the two costs (\$2,925 + \$257.862) equals \$260,787 and is a non-capacity cost that DTE labels “fuel-related” but that is not fuel. Ultimately, the fact that the source of the \$260,787 (000) DTE wants to add to its “fuel” offset is nothing more than the cost of purchased power less the amount that DTE has deemed capacity costs is damning to DTE’s claims that these are genuine fuel costs.⁵

Energy Michigan also pointed out in its Initial Brief that DTE has admitted on the record that the ~\$260M in “fuel-related” costs are not capacity costs by excluding them from production costs on Schedule F1.5, page 1, line 5 of Exhibit A-16.⁶ It cannot on rebuttal (or in briefing) turn around and claim—without evidence and with only the support of an illogical argument—that those costs really are capacity costs after all just because they are not properly fuel costs. Neither can it reasonably claim without any record evidence that “the costs from its power purchase agreements which it labeled ‘fuel-related’ are actually fuel costs.”⁷

The Commission has never previously consciously permitted DTE to use non-capacity related, non-fuel costs in the SRM Charge calculation to increase the end value of the SRM

⁴ MCL 460.6w(3)(b) (emphasis added).

⁵ Initial Brief of Energy Michigan, Case No. U-21534, Filing No. U-21534-0499 (“EM Initial Br”), at 4 (emphasis in original).

⁶ *Id.* at 8.

⁷ *Id.* at 6.

Charge.⁸ DTE’s attempt to do so here by falsely claiming that the Commission is left with no option but to include its “fuel-related” costs somewhere in the SRM Charge calculation should be rejected as poor logic and a poor attempt at obfuscation.

The Commission should not fall for DTE’s attempts to yet again work fuel-related costs into its SRM calculations and instead should (again) direct that only the true fuel cost of \$940,245 (000) be included as fuel cost properly netted against the offsets, as required in Section 6w(3)(b)(i)–(iv) of Public Act 341 of 2016.

B. The Michigan Public Service Commission Staff’s (“Staff”) Definition of the “Cost” of Capacity is Circular and Cannot Be Relied on in Support of Staff’s Positions.

Staff has objected to the analysis of Energy Michigan’s witness Mr. Zakem, which concluded that in order for a customer to be charged an SRM capacity charge that was consistent with the cost-of-service statute (MCL 460.11(1)), modifications need to be made to how the SRM charge is currently calculated.⁹ Staff’s argument is that because the currently methodology was approved by the Commission, therefore Mr. Zakem’s modified proposal “would incorrectly calculate the charge and would not represent the actual cost of the service provided, in violation of the statute the witness claims to be following.”¹⁰ In short, the Staff’s position is that since the Commission has approved the methodology it must be right, apparently even despite the changing circumstances that Mr. Zakem discusses. Were this in fact to be the basis for the state’s policy, it would lead to the absurd result that nothing the MPSC approved could ever be changed.

Staff ignores the point Mr. Zakem is making, which is that the current method does not follow how actual costs of service flow, and Energy Michigan has submitted evidence to support

⁸ See *id.* at 2–3 (citing Commission orders in U-21297, U-20836 & U-20561).

⁹ Initial Brief of MPSC Staff, Case No. U-21534, Filing No. U-21534-0508 (“Staff Initial Br”), at 140 (citing Mr. Zakem at 6 Tr 4182).

¹⁰ *Id.*

that point. In response, Staff simply asserts its opinions but fails to engage with the arguments and evidence that were presented by Mr. Zakem.

Similarly, Staff several times summarizes Mr. Zakem's points only to conclude "this is incorrect" or "this is also incorrect."¹¹ What Staff does not do, for instance in its objections to Mr. Zakem's explanation of how MISO assesses the costs of capacity, is to provide contradicting evidence from the MISO Tariff. Staff is certainly entitled to its own opinions, but Energy Michigan believes that those opinions should not be given much weight in the absence of supporting facts and evidence on the record.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan respectfully requests that the Commission:

- (a) Eliminate DTE's inclusion of \$260,787 (000) of purchased power costs from the calculation of the SRM Capacity Charge;
- (b) Set the SRM Capacity Charge at the MISO seasonal Auction price;
- (c) Deny the Staff's proposal to add a true-up amount of \$168.1 million into the calculation of the SRM Capacity Charge, and instead incorporate Energy Michigan's proposal for implementing a true-up.
- (d) Deny the Staff's proposal to set the SRM Capacity Charge at the cost of new entry ("CONE").

¹¹ See Staff Initial Brief, at 139–140, where this is repeated seven times.

Respectfully submitted,

Potomac Law Group PLLC
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October 23, 2024

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STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
DTE ELECTRIC COMPANY)
authority to increase its rates, amend its rate)
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Case No. U-21534

PROOF OF SERVICE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

Summer R. Dukes, the undersigned, being first duly sworn, deposes and says that she is a Paralegal at Potomac Law Group PLLC and that on the 23rd day of October, 2024 she served a copy of the Reply Brief of Energy Michigan, via email, upon those individuals listed on the attached Service List via email.

Summer R. Dukes

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