

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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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.

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MPSC Case No. U-21534

**ATTORNEY GENERAL'S REPLY BRIEF**

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Dated: October 23, 2024

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## INTRODUCTION

On October 3, 2024, the Attorney General of Michigan, Dana Nessel (“Attorney General” or “AG”), by and through Joel B. King, Assistant Attorney General, filed her initial brief in this matter before the Michigan Public Service Commission (“MPSC” or “Commission”).<sup>1</sup> Also on October 3, 2024, numerous other parties to this case filed initial briefs.

The Attorney General files this reply brief to respond to or otherwise address arguments made by other parties in their initial briefs. The Attorney General’s decision not to address certain issues in this reply brief is neither a waiver of those issues nor an acceptance of the other parties’ positions. All of the Attorney General’s briefs, testimony, and exhibits should be considered in evaluating her position(s) on the issues appearing in this case.

On March 28, 2024, DTE Electric filed its application seeking \$456.4 million in rate relief for the 12-month period ending December 31, 2025 (“projected test year” or “test year”).<sup>2</sup> In its initial brief, DTE made a slight downward adjustment to its test year revenue request and is now seeking a \$446.1 million increase.<sup>3</sup>

In her initial brief, the Attorney General, with the help of expert witnesses Mr. Sebastian Coppola, Mr. Paul Alvarez, and Mr. Dennis Stephens calculated that DTE Electric has a revenue deficiency of no more than \$139.5 million.<sup>4</sup> The Attorney General continues to support the positions taken in her initial brief and recommends

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<sup>1</sup> U-21534-0515.

<sup>2</sup> See DTE Application pp. 2-5.

<sup>3</sup> DTE Initial Brief p. 2.

<sup>4</sup> Attorney General Initial Brief p. 1.

that the Administrative Law Judge (ALJ) and Commission issue a proposal for decision (PFD) and Order, respectively, consistent with those positions and the positions laid out in this reply brief.

The Attorney General participates in rate cases as an advocate for ratepayers. Her goal is to represent the interests of the people paying the utility bills. The Attorney General strives to make sure that rates are just and reasonable and that ratepayers are not faced with insurmountable and ever-escalating utility bills. It is the Company's burden to prove that its requests are reasonable and prudent and that its assertions are adequately supported.

## **ARGUMENT**

Although discussed in her initial brief, the Attorney General seeks to clarify the standard of review as well as burden of proof, in response to the Company's initial brief.<sup>5</sup> This is a similar clarification that the AG has raised in previous DTE Energy cases.<sup>6</sup> In its initial brief, DTE argues that "the preponderance of evidence standard applies in this proceeding," and that this standard "is the lightest of all evidentiary standards when compared to the heightened "clear and convincing" standard or the "beyond a reasonable doubt" standard that is only applicable to criminal proceedings."<sup>7</sup>

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<sup>5</sup> In the U-20561 PFD, the ALJ addressed and correctly analyzed some of these same issues. See U-20561 PFD, pp. 58-63. That discussion provides the correct standard and framework for analyzing utility rate increase requests and should continue to be relied upon in this case.

<sup>6</sup> See e.g., Attorney General's Reply Briefs in Case No. U-20162, pp. 4-7, Case No. U-20561, pp. 4-6, Case No. U-20836, pp. 3-5, and Case No. U-21297, pp. 2-5.

<sup>7</sup> DTE Initial Brief, p. 10, internal citations omitted.

It bears reiterating here that, regardless of whether Staff or any Intervenor presents any information, evidence, or testimony challenging a specific issue, DTE has the burden of proof with regard to that issue.<sup>8</sup>

Although the standard of review on appeal of a Commission decision is competent, material, and substantial evidence on the whole record,<sup>9</sup> that is not the burden of proof standard for DTE to support its half-billion dollar rate increase request. The Commission should keep in mind that DTE must present thorough, detailed, and meaningful evidence to support its burden of proof for a project or projected costs.<sup>10</sup> It is entirely appropriate for an intervenor to argue, and for the Commission to find, that DTE has not presented sufficient evidence to support its burden of proof for a specific project or proposal.

After stating that a utility “has the initial burden to prove its case by a preponderance of the evidence,” DTE makes some statements about the burden shifting to other parties – the insinuation being that at some point during the proceeding there is a burden on Staff and intervenors to *disprove* elements of a utility’s filing.<sup>11</sup> The AG pushes back on this intimation, replying here to clarify the record.

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<sup>8</sup> *In the matter of the application of DTE Gas Company for a gas cost recovery Reconciliation proceeding for the 12 months Ending March 31, 2014*, Proposal for Decision, December 14, 2015, MPSC Case No. U-17131-R, pp. 39-42.

<sup>9</sup> DTE notes this standard on page 9 of its initial brief.

<sup>10</sup> See *In the matter of the application of Consumers Energy Company for authority to increase its rates for the generation and distribution of electricity and for other relief*, June 7, 2012 MPSC Order, U-16794 p. 13 (stating that if a “utility realistically expects inclusion of the total projected costs, it must supply the Commission with enough evidence to support a finding that the costs are just and reasonable – in the absence of thorough, detailed, and meaningful evidence, the Commission’s hands are tied.”).

<sup>11</sup> DTE Initial Brief, p. 10.

The burden to support its position and present sufficient evidence of reasonableness and prudence is always on the utility that seeks approval of a given request. Due to the information asymmetry that exists between a utility and its captive customer base, the regulator must necessarily hold the requesting utility accountable for supporting its requests. As noted in the AG's earlier pleadings, the MPSC may disbelieve even uncontradicted evidence.<sup>12</sup> Not only that, but when the burden of proving a fact falls on one party, then the other party does not have the burden of proving the opposite fact.<sup>13</sup> Thus, the burden to support all of its requests as reasonable and prudent remains on the utility during the entirety of each case.

DTE makes one other statement in the "Rate Setting Legal Requirements" section of its initial brief that the AG replies to, specifically that "[t]he Commission has an obligation to facilitate DTE Electric's financial health for the benefit of its electric customers and shareholders."<sup>14</sup> DTE has written this before in electric rate cases,<sup>15</sup> and the AG reiterates that it is a presumptuous statement and not reflective of the appropriate relationship between the regulator and regulated entity. While it is well-established that a public utility is entitled to a reasonable return of and on its investments, the Commission's obligation is to facilitate an environment where that

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<sup>12</sup> *Woodin v Durfee*, 46 Mich 424, 427; 9 NW 457 (1881). *Accord*, *Yonkus v McKay*, 186 Mich 203, 211; 152 NW 1031 (1915), and *Cuttle v Concordia Mut Fire Ins Co*, 295 Mich 514, 519; 295 NW 246 (1940).

<sup>13</sup> *S C Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

<sup>14</sup> DTE Initial Brief, p. 14.

<sup>15</sup> See U-20561 DTE Initial Brief, p. 11, U-20836 DTE Initial Brief, p. 13, and U-21297 DTE Initial Brief, p. 15.

can happen.<sup>16</sup> It is up to the Company to make sure that its business decisions are reasonable, prudent, and inure to the benefit of its customers and shareholders.

With that in mind, the Attorney General presents the following replies.

### **REPLY TO DTE ELECTRIC**

Much of the AG's argument was discussed at length in her testimony and initial brief, as well as in MNSC's initial brief.<sup>17</sup> While there are many areas in DTE's initial brief that the AG disagrees with, she will not reply to those where she feels a reply brief would not add anything to the full discussion that was provided in her testimony and initial brief. Accordingly, the AG's lack of reply to a position espoused by DTE, or any party for that matter, should not be construed as agreement with that position, but merely that the AG is relying on argument and evidence presented elsewhere and attempting to avoid unnecessary repetition.

The Attorney General replies here to issues in the order they are raised in DTE Electric's Initial Brief.

#### **I. INTRODUCTION AND SUMMARY OF MAJOR ISSUES**

In its introduction section, DTE makes several statements to “frame” or “contextualize” its case, which merit a brief reply. First, it states that the “Company’s requested rate increase is necessary to pay for a modern, reliable, and cleaner electrical system.”<sup>18</sup> This is a subjective statement that the Commission should

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<sup>16</sup> *Board of Public Utility Commissioners v New York Telephone Co*, 271 US 23; 46 S Ct 363; 70 L Ed 808 (1926).

<sup>17</sup> The Attorney General and MNSC share witnesses Alvarez and Stephens, and the AG fully adopts MNSC's briefing on the issues covered in their testimony.

<sup>18</sup> DTE Initial Brief, p. 1.

reject. DTE's requested rate increase is based wholly on a *projected* test year, which interjects myriad complexities and uncertainties into the process. Additionally, DTE has made many decisions, historically, which have inured directly to the benefits of its shareholders and neglected its grid and the customers that have paid for and rely upon it. Accordingly, if DTE now finds itself in a place where portions of its grid are out of date or otherwise need improvements, then the utility must bear the responsibility and cost for letting it get to this point. While unraveling some of that history may be difficult, and while DTE has every incentive to obfuscate and muddy the waters on past decision-making, the Commission should not now give DTE endless blank checks to improve problems of the utility's own making. To do so will only continue a self-perpetuating cycle of DTE Electric coming in for annual, eye-popping rate increases.

Second, DTE states that “[f]ully realizing these benefits [of a more modern, reliable, and cleaner electrical system] will require significant investment. Various proposed disallowances of capital investments and operating expenses would challenge the Company’s ability to invest at planned levels and meet its reliability and clean energy goals.”<sup>19</sup> The threat there is clear; ‘give us this money or the reliability and relative cleanness of the grid will suffer.’ The Attorney General pushes back on this notion of holding customers’ reliability hostage until rate increases are granted. It is DTE’s responsibility to better its reliability metrics *without* huge rate increases every year. DTE’s customers have been through this for at least a decade

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<sup>19</sup> DTE Initial Brief, p. 1.

now, getting hit with annual rate hikes and shelling out for exorbitant ROE levels, with nothing to show for it in the way of increased reliability. It is time the Commission said ‘enough’ and tried a different tactic.

Finally, DTE’s first footnote discusses the Company’s “focus[ ]” on reducing power outages and cutting outage times, by certain numerical amounts.<sup>20</sup> Conspicuously absent from that discussion is any commitment to actually achieving those reductions or other mechanism that would hold DTE accountable for failing to meet those levels. Accordingly, its simply another empty promise from DTE; the Company is more than happy to raise customers’ rates, but any attempts to hold DTE accountable for empirical improvement are met with resistance. DTE’s continued, unsupported statements that higher costs are “justified, because the investments will generate significant benefits and value to customers, as well as the State of Michigan,”<sup>21</sup> must be rejected as self-serving rhetoric, as they are never accompanied by robust, supported benefit-cost analyses.

The Commission should keep those issues in mind as it evaluates yet another behemoth ask from DTE, based on slipshod and altogether missing evidence.

## **II. TEST YEAR**

In its test year section, DTE notes that the “Company normalized and adjusted actual results from the historical test year ended December 31, 2022 to arrive at its filed projected revenue deficiency” for a calendar year 2025 projected test year.<sup>22</sup> The

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<sup>20</sup> DTE Initial Brief, p. 1.

<sup>21</sup> DTE Initial Brief, p. 2.

<sup>22</sup> DTE Initial Brief, p. 16.

Attorney General replies briefly here to point out how DTE continues to abuse projected test years to its advantage. Despite filing this case in late March of 2024, DTE used a historical test year of 2022, meaning that its numbers were already more than a year stale when it filed this case. While the AG has, where applicable, recommended some commonsense adjustments based on updated information in this case, overall, the process makes more work for Staff, Intervenors, and the Commission, and it continues to inject more uncertainty into review, which allows DTE to make more and more tenuous “projections.”

### **III. RATE BASE**

#### **A. Working Capital**

In its initial brief, DTE notes its projected working capital amount, along with three recommended removals from the AG.<sup>23</sup>

First, DTE addresses the AG’s proposed removal of \$9.933 million from working capital related to the Ludington Pumped Storage Plant.<sup>24</sup> This was addressed in Ms. Uzenski’s rebuttal testimony and that discussion is what DTE relies upon in its initial brief.<sup>25</sup> Pertinently, DTE’s initial brief recommends rejection of the AG’s position “because it would unreasonably take away the Company’s ability to recover, in a timely manner, the financing costs related to costs incurred by the Company and recorded to a regulatory asset that the Commission approved in the May 18, 2023 Order in Case No. U-21310.”<sup>26</sup>

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<sup>23</sup> DTE Initial Brief, pp. 19-22.

<sup>24</sup> DTE Initial Brief, p. 20.

<sup>25</sup> 6 Tr 1568-70.

<sup>26</sup> DTE Initial Brief, p. 20.

DTE's rebuttal and briefing on this issue misstates the AG's position and fails to rebut Mr. Coppola's testimony. The real issue is that there is still a dispute between DTE and other parties, playing out in several PSCR cases, as to whether *and* how much of the cost of replacement power the Company will eventually be allowed to recover. That makes it imperative that DTE not earn a return on the deferred amount until the Commission rules on the appropriate amount to be recovered in rates.

Thus, this is a timing issue, not an issue with recovery of the "financing costs related to costs incurred by [DTE]." <sup>27</sup> As the AG posed in discovery and laid out in her initial brief, DTE is unwilling to commit to refunding the return it earns on Ludington deferred costs that are later disallowed by the Commission, despite the clear windfall that would represent to DTE. The Commission should be proactive and not let DTE play games with this regulatory asset, with so many questions outstanding.

Accordingly, the Commission should reject DTE's briefing and position on this issue and fully adopt the AG's analysis and recommendation.

Second, DTE notes the AG's proposed removal of \$5,784,000 from working capital and \$1,693,000 of amortization expense related to the Company's proposals for its Time of Day (TOD) program. <sup>28</sup> This was addressed in Mr. Hatsios's rebuttal testimony and that discussion is what DTE relies upon in its initial brief. <sup>29</sup>

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<sup>27</sup> DTE Initial Brief, p. 20.

<sup>28</sup> DTE Initial Brief, pp. 20-21.

<sup>29</sup> 6 Tr 2312-13.

Pertinently, DTE's initial brief relies solely on Mr. Hatsios's comparison of the costs in this case to those in U-21297, which as pointed out in the AG's initial brief is completely irrelevant.<sup>30</sup> The Attorney General sought corroborating evidence in discovery but was rebuffed by DTE. An almost threefold increase from 2022 incurred costs to 2023 forecasted costs, for the addition of customer service representatives, needs to be supported by more than vague references to major cost categories.<sup>31</sup> Accordingly, the Commission should remove the \$5,784,000 of working capital for the TOD program and the \$1,693,000 of amortization expense from the Company's forecasted amounts for the projected test year.

Third, DTE notes the AG's proposal to remove \$9,967,000 from the Company's forecasted working capital balance amount for the projected test year and include \$1,358,000 of negative amortization as a reduction to the Company's forecasted O&M expenses for the projected test year, related to deferred incentive compensation.<sup>32</sup> DTE disagrees with the AG's proposals, generally repeating Ms. Uzenski's rebuttal on the topic."<sup>33</sup> The Commission has dealt with this issue in previous cases and rejected similar DTE arguments.

As laid out in the AG's brief and generally agreed to by Ms. Uzenski, Mr. Coppola's methodology conforms to that approved by the Commission in U-20836.<sup>34</sup> The actual results calculated by DTE use the results of certain performance measures

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<sup>30</sup> Attorney General Initial Brief, pp. 79-80.

<sup>31</sup> Ex. AG-22 includes DR AGDE-4.156a with attachment.

<sup>32</sup> DTE Initial Brief, pp. 21-22.

<sup>33</sup> 6 Tr 1570-74.

<sup>34</sup> Attorney General Initial Brief, pp. 78-79.

over 100% to compensate for underperformance in other measures. This is *not* the methodology accepted by the Commission in prior rate cases and should be rejected. At this point it is clear that DTE is attempting more and more mathematical gymnastics to try to justify this spending. The Commission should reject these forced attempts and take the more straightforward approach that it has recently adopted.

The Company's calculation of the regulatory asset for the incentive compensation deferral is inappropriate and the Commission should reject it. As laid out in Exhibit AG-20, the Commission should remove the \$9,967,000 from the Company's forecasted working capital balance amount for the projected test year and include the \$1,358,000 of negative amortization as a reduction to the Company's forecasted O&M expenses.

Accordingly, the AG continues to recommend that the Commission adopt the AG's three adjustments to the forecasted Working Capital amount, which total to \$25.7 million. The Commission should reduce DTE's forecasted Working Capital amount for the projected test year by this amount.

**B. Capital Expenditures**

**1. Energy Supply**

**a. Belle River and Greenwood Maintenance Projects**

Beginning on page 24 of its brief, DTE discusses its Belle River and Greenwood power plant maintenance projects and the disallowance recommendations of the AG. The AG addressed this fully in her initial brief.<sup>35</sup>

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<sup>35</sup> Attorney General Initial Brief, pp. 29-31.

For the reasons laid out by the AG, the Commission should disallow these costs. DTE’s brief adds nothing to the discussion and instead tries to distract the Commission by making the discussion about something that it is not. DTE’s arguments that the AG did not provide an engineering analysis, and that she did not dispute the Company’s planned projects, are irrelevant. The AG is not disputing *whether* this work should be done in some capacity, but rather disputing DTE’s projections. DTE’s forecasts inexplicably have routine capital expenditures doubling between 2023 and 2024. That is what DTE has failed to support and the AG’s forecasts, which are based on the objective, three-year average of historical spending, should be adopted.

Therefore, the Commission should remove \$8,585,000 in 2024 and \$8,223,000 for 2025 from the Company’s forecasted capital expenditures for the Greenwood Plant and \$13,270,000 for 2024 related to the Belle River plant.

## **2. Nuclear – Fermi 2**

Beginning on page 39 of its brief, DTE discusses its Fermi 2 Nuclear Power Plant capital expenditure projections and the disallowance recommendations of the AG and Staff. The AG addressed this fully in her initial brief.<sup>36</sup> DTE’s brief reiterates its rebuttal testimony and does not add anything to the discussion. From pages 39-51 of its brief, DTE notes the various reductions identified by Staff and the AG, arguing that the proposals are based on “unsound reasoning.”<sup>37</sup> DTE’s discussion of the AG’s specific proposed disallowances begins on page 44 of its brief.

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<sup>36</sup> Attorney General Initial Brief, pp. 31-35.

<sup>37</sup> DTE Initial Brief, p. 40.

As to the nuclear capital projects that will be put into service beyond the projected test year, DTE argues that the AG misunderstands either DTE's accounting or its exhibits, arguing that those projects do not have an impact on DTE's revenue requirement or deficiency. The AG addressed this directly in her initial brief,<sup>38</sup> and continues to recommend that the \$83.9 million (\$58,039,000, and \$25,874,000 for 2025) should be removed from DTE's rate base, at a minimum for clarity-sake. As noted in the AG's brief, in reply to DTE's footnote 35 in its brief, the AG would agree that a reduction to AFUDC of \$12,392,000 should also be made if those projects are removed from rate base, as recommended by the AG.<sup>39</sup>

With regard to the Company's projections for Security System Computer, Plant Radio System, and Nuclear Fuel costs, DTE's briefing is unconvincing and simply lays out the unreasonable and imprudent cost overruns DTE is attempting to capture in this case. DTE attempts to frame the amounts as "contingency amounts" that were not previously addressed.<sup>40</sup> That is a misnomer. Contingency amounts are those amounts that are added to a project budget *before* the project is undertaken. Once the project has begun, actual amounts spent beyond the budget are no longer "contingency," but instead are cost overruns. The AG fully reviewed the cost overruns and it is clear that the practices and decisions that led DTE to these millions of dollars in cost overruns and projected higher costs are neither reasonable nor prudent.<sup>41</sup>

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<sup>38</sup> Attorney General Initial Brief, pp. 34-35.

<sup>39</sup> Ex. AG-50, pp. 1-2.

<sup>40</sup> DTE Initial Brief, p. 40.

<sup>41</sup> Attorney General Initial Brief, pp. 31-34. See also 6 Tr 3621-29.

DTE's attempts to confuse the issue here are unconvincing and the Commission should not stick customers with higher, unsupported costs.

Accordingly, based on all of the information in this case the AG recommends that for the five areas as identified by DTE, the Commission remove the approximately \$175.4 million in capital expenditures.

### **3. Distribution Operations (DO)**

Beginning on page 51 of its initial brief, DTE provides an overview of its requested cost recovery for distribution operations (DO) capital expenditures. This section covers several items and spans the next 109 pages of DTE's brief. The AG provides replies in the order presented by DTE.

Before getting into specific items, DTE provides background and broad numbers for this category, as laid out in its testimony. Its brief states that the Company's DO organization focuses on the "design, maintenance and operation of the Company's electrical distribution and subtransmission systems."<sup>42</sup> The brief goes on to portray the system as aging and, in some areas, operating at or near its life expectancy. DTE finishes this train of thought by arguing that these capital investments are necessary to provide "safe, reliable, and clean electricity to customers at reasonable rates," and that they are going to help move the utility toward grid modernization, which is needed for greater resiliency to deal with storms, EVs, and increased DER.<sup>43</sup>

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<sup>42</sup> DTE Initial Brief, p. 52.

<sup>43</sup> DTE Initial Brief, p. 52.

While all of this sounds good, the AG pushes back on the framing and the narrative of increased DO costs. DTE has been making these same arguments for years, and by this point customers have pumped in billions of dollars, with no clear improvements. DTE's reliability metrics continue to be some of the poorest in the nation and DTE continues to fight against any attempt to tie increased funding to quantifiable improvements. The AG replies that with so much money in play there should be heightened scrutiny of these projects, and she advocates for increased accountability metrics that tie revenue increase requests to actual, quantifiable improvements.

DTE's briefing goes on to argue against the testimony of several witnesses who analyzed DTE's filing and history and pointed out that DTE's system-wide reliability is *not* improving, despite all of the recent increases in investment. DTE broadly and vaguely argues that this is because of "volatile weather conditions."<sup>44</sup> DTE's arguments are unconvincing. General, uncited, and unsupported assertions that volatile weather is to blame for empirical system-wide trends of no reliability improvements must be rejected. The Commission must hold DTE to a higher standard for cost recovery approval.

**a. Emergent Replacement – Storm and Non-Storm**

On pages 53-59 of its brief, DTE discusses its requested recovery of capital expenditures related to what it terms "Storm and Non-Storm Emergent" Replacement costs. After a recap of testimony, the Company notes its disagreement

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<sup>44</sup> DTE Initial Brief, p. 52.

with the AG's recommended disallowances related to emergent replacements.<sup>45</sup> The AG addressed this fully and at length in her initial brief.<sup>46</sup>

DTE's brief reiterates its rebuttal testimony and does not add anything to the discussion. The AG's initial brief discusses DTE's self-serving attempts to inflate the numbers presented in this case, at the expense of its ratepayers. In essence, DTE is attempting to triple the inflation on historical costs. First, by using a five-year normalization approach, the arrived at final number includes the historical inflation that is already baked in over that time period. Second, DTE then proposes its "constant-dollar" method that further inflates that number – to no end other than leading to greater recovery for DTE. Third, DTE adds inflation to that constant-dollar-adjusted number, under its preferred method of using projected test years. Thus, a scheme of treble-inflation.

The Commission should reject this brazen attempt to inflate requested recovery in the midst of a half-billion dollar rate case. While the AG agrees with the five-year normalization approach to forecast capital expenditures for future years, it should be done using actual capital expenditures from prior years. The AG's initial brief addressed how DTE failed to address the Commission's U-20836, U-20561, and U-21297 directive to quantify certain productivity improvements related to these historical inflationary increases.<sup>47</sup>

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<sup>45</sup> DTE Initial Brief, p. 56.

<sup>46</sup> Attorney General Initial Brief, pp. 14-20.

<sup>47</sup> Attorney General Initial Brief, pp. 18-20.

Accordingly, The AG recommends that the Commission remove \$24,526,000 for 2024 and \$28,557,000 for 2025 from the Company's forecasted capital expenditures.

**b. Customer Connections, Relocations & Other Capital Investments**

On pages 60-63 of its brief, DTE discusses requested recovery of capital expenditures related to several proposed investments under what it terms "Customer Connections, Relocations, and Other Capital Investments." Much of the discussion in DTE's brief revolves around the AG's testimony. The AG addressed this section fully in her initial brief.<sup>48</sup>

*Electrical System Equipment and General Plant, Tools & Equipment, and Miscellaneous*

On page 61 of its brief, DTE notes Mr. Coppola's proposed disallowances related to Electrical System Equipment and General Plant, Tools & Equipment, and Miscellaneous. It disagrees with Mr. Coppola's methodology (addressed above) and argues that Mr. Coppola performed his calculations improperly because he did not use a normalization adjustment.<sup>49</sup> As discussed above and as the Commission is well aware, DTE's preferred "normalization" procedure is no more than a ploy to inflate costs at the expense of customers.

Accordingly, Mr. Coppola's calculations are correct, and the AG recommends that the Commission remove \$3,153,000 for 2024 and \$3,456,000 for 2025 from the Company's forecasted capital expenditures related to Electrical System Equipment,

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<sup>48</sup> Attorney General Initial Brief, pp. 20-26.

<sup>49</sup> DTE Initial Brief, p. 61.

as well as \$1,758,000 for 2024 and \$1,862,000 for 2025 from the Company's forecasted capital expenditures related to General Plant, Tools & Equipment, and Miscellaneous.

### *Customer Connections and New Growth*

On page 62 of its brief, DTE notes Mr. Coppola's proposed disallowance for Customer Connections and New Growth projects, based on several factors. It disagrees with Mr. Coppola's methodology (addressed above) and argues that Mr. Coppola's use of housing starts forecasts is inappropriate and that its projections related to Utility Make Ready (UMR) projects to support EV adoption are reasonable.<sup>50</sup> Mr. Coppola explained this extensively in his direct testimony<sup>51</sup> and it is directly addressed in the AG's brief.<sup>52</sup> Pertinently, as to the use of housing starts, a review of DTE's responses in discovery shows that Mr. Hill's projections do not take into consideration any future economic activities that affect customer connections.<sup>53</sup> Mr. Coppola's use of future housing starts is a superior approach because it creates a link to a factor that drives customer connections, and is the best available, objective proxy for customer connections at this time. DTE's protestations that this Customer Connections projects category includes many types of customer needs aside from connections, without any explanation or citation to what else is included, is unsupported.

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<sup>50</sup> DTE Initial Brief, p. 62.

<sup>51</sup> 6 Tr 3603-09.

<sup>52</sup> Attorney General Initial Brief, pp. 20-24.

<sup>53</sup> Ex. AG-56, p. 13.

Accordingly, Mr. Coppola's calculations are correct, and the AG recommends that the Commission remove the difference of \$14,453,000 from the Company's forecasted 2024 capital expenditures and increase the 2025 forecasted capital expenditures by \$3,405,000.

With regard to the UMR projects, DTE's brief argues that these expenditures will be helpful to ensure that the distribution grid is ready for EV adoption.<sup>54</sup> Again, the big problem here is DTE's use of a fully projected test year and the Company putting forward unreasonable projections, which it has every incentive to inflate. DTE has not put forth the rigorous, supported data to show that EV sales are likely to experience such large increases as to justify an increase of close to 200% in net capital expenditures over 2022 actual net Utility Make Ready capital expenditures, especially given that recent trends show EV adoption going much more slowly than prior projections. Accordingly, the AG recommends that the Commission remove the difference of \$3,734,000 for 2024 and \$10,173,000 for 2025 from the Company's forecasted capital expenditures.

#### *Relocation Projects*

On page 63 of its brief, DTE notes Mr. Coppola's proposed disallowance for the I-375 Relocation project. DTE disagrees with Mr. Coppola's contention that, based on the information DTE has presented in this filing, inclusion of these large amounts in rate base is premature. Once again, this is an issue with the use of a fully projected test year and it highlights DTE's incentive and penchant for attempting to include

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<sup>54</sup> DTE Initial Brief, p. 62.

expenses that are too uncertain and premature to inappropriately increase cost recovery and inflate rate base.

In its own brief, DTE highlights the uncertain nature of these costs at this time, stating that “it would be reasonable and prudent to approve recovery based on the Company’s latest forecast (a reduction of \$16,157,175 for 2024, and an increase of \$5,802,315 for 2025).”<sup>55</sup> Given this shifting picture that transpired during the short pendency of this rate case, it is clear DTE is uncertain of its needs at this point and unclear on MDOT’s plans and timeframes. Again, if the Company incurs any capital expenditures in 2024 or 2025, it can recover them in the next rate case if found to be reasonable and prudently incurred. Without definitive plans or timeframes for this project, customers should not be saddled with additional costs and a larger rate base.

Accordingly, the AG recommends that the Commission remove the \$25 million for 2024 and the \$8 million for 2025 from the Company’s forecasted capital expenditures.

### **c. Strategic Capital**

On page 63 of its initial brief, DTE begins a section on Strategic Capital capital expenditures, listing three investment areas including Infrastructure Resilience and Hardening, Infrastructure Redesign and Modernization, and Technology and Automation.<sup>56</sup> Those subcategories are discussed throughout the proceeding sections and the AG recommends certain disallowances related to those categories. Briefly,

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<sup>55</sup> DTE Initial Brief, p. 63.

<sup>56</sup> DTE Initial Brief, p. 64.

as laid out by AG-MN witnesses Alvarez and Stephens, it is clear that DTE is not making its investment requests/decisions based on informed, objective benefit-cost analyses that elucidate what is best for customers. Instead, it is identifying desired outcomes and using its “Global Prioritization Model” (GPM) and other internal Company “calculations” to work backwards to justify its chosen conclusions.

**d. 2022 Actual Expenditures versus U-21297 Forecast**

In a brief section beginning on page 67 of its brief, DTE opines that there “is no basis to use hindsight to reconcile the difference between projected expenditures from a prior rate case against actual expenditures that are incurred.” This is provided to set up its disagreement with numerous parties’ discussion of why DTE’s requests for distributions capital spending increases are tremendously inflated and inappropriate. While DTE’s statement may be accurate if used for “retroactive ratemaking” purposes, that is not what witnesses in this case are proposing with DTE’s distributions operations spending. It is certainly proper to use such benchmarks to inform decisions about the reasonableness and prudence of certain actual DTE expenditures that are not currently in rates, as well as DTE’s future projections.

**e. DTE’s Projected DO Capital Expenditures**

Beginning on page 68 of its initial brief, DTE discusses its projected DO capital expenditures related to near-term and longer-term investments, specifically as related to DTE’s distribution grid plan (DGP) and recent cases. AG-MN witnesses Alvarez and Stephens provided expert witness testimony on this section. The AG continues to rely upon that testimony here, along with her initial brief and the

analysis and recommendation as laid out in MNSC’s initial brief<sup>57</sup> to support rejection of DTE’s filed positions and adoption of more reasonable numbers.

Here, the AG provides some additional, high-level responses to DTE’s initial brief. Specifically, holding DTE accountable for producing and supporting robust benefit-cost analyses as contemplated in Mr. Alvarez’s and Mr. Stephens’ testimony will make this a more transparent process and create a world in which DTE is responsible for producing quantifiable metrics. The Company’s “risk-informed analysis” that it performs as part of its global prioritization model (GPM) does not qualify as an objective benefit-cost analysis. As laid out by the AG-MN witnesses, the GPM can be easily manipulated to reach desired outcomes, and a careful, objective look at the spending proposed by DTE shows that much of it is discretionary. Although DTE does not agree with the recommendations proffered by Mr. Alvarez and Mr. Stephens, it presents no evidence that they are *not* generally accepted best practices or better than DTE’s in-house GPM construct.

Accordingly, the AG continues to recommend that the Commission fully adopt Mr. Alvarez’s and Mr. Stephens’ recommendations as laid out in their testimony and as comprehensively laid out in MNSC’s initial brief.

#### **f. Specific Strategic Capital Investment Programs**

After the general discussion above, DTE’s initial brief goes into the three specific investment areas its filing lays out for “Strategic Capital.”

##### *Infrastructure Resilience and Hardening*

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<sup>57</sup> MNSC Initial Brief, pp. 8-115.

Beginning on page 84 of its initial brief, DTE discusses its requested strategic capital expenditures related to Infrastructure Resilience and Hardening. After a brief recap of testimony, DTE discusses AG-MNSC witness Stephens' testimony on this section and his proposed disallowances. The AG continues to rely upon that testimony here, along with her initial brief and the analysis and recommendations as laid out in MNSC's initial brief<sup>58</sup> to support rejection of DTE's filed position and adoption of more reasonable numbers.

As noted above, DTE is seeking incredible cost recovery for this area, which encompasses *strategic*, or proactive, spending. This is not reactive spending or even tree trimming dollars, but instead massive expenditures on grid hardening that DTE has failed to support with trustworthy cost benefit analyses. DTE's brief in this section spends 20 pages walking through some of the specific programs under Infrastructure Resilience and Hardening.<sup>59</sup>

At base, DTE falls back on its argument that if the Company does not get all of the money it asks for, its system will be unsafe and unreliable. The AG replies here and pushes back, pointing out that DTE has been granted incredible amounts of money and inflated ROEs for years, with only worsening reliability to show for it. It is time to try a different approach – one that does not involve pouring more money into the system. AG-MN witnesses Alvarez and Stephens offer commonsense alternatives to help improve reliability, all while maintaining safety, in lieu of simply throwing more money at a problem and hoping it resolves itself.

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<sup>58</sup> MNSC Initial Brief, pp. 45-66.

<sup>59</sup> DTE Initial Brief, pp. 84-104.

All of the discussion in DTE's initial brief was addressed and refuted fully in MNSC's briefing, and the AG adopts and relies upon that argument here.

### *Other Programs*

One final note, in the "Other Programs" section of this part of DTE's brief, beginning on page 104, DTE notes AG witness Coppola's proposed disallowance of DTE's request for \$4.5 million for portable generators to "provide temporary electricity" to customers during storms. The AG fully addressed this in her brief<sup>60</sup> and continues to argue that DTE's customers should not pay for a program to provide backup power, so that their lights will be on when DTE fails to deliver the power the customers already paid for.

Accordingly, the Commission should remove the \$4.5 million from the Company's forecasted capital expenditures for 2024.

### *Infrastructure Redesign and Modernization*

Beginning on page 105 of its initial brief, DTE discusses its requested strategic capital expenditures related to Infrastructure Redesign and Modernization. This section is broken into six subsections, much of which is addressed in Mr. Stephens' testimony and some of which is addressed by Mr. Alvarez. The AG continues to rely upon that testimony here, along with her initial brief and the analysis and recommendation as laid out in MNSC's initial brief<sup>61</sup> to support rejection of DTE's filed position and adoption of more reasonable numbers.

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<sup>60</sup> Attorney General Initial Brief, pp. 26-27.

<sup>61</sup> MNSC Initial Brief, pp. 67-90.

Much of the discussion in the Infrastructure Resilience and Hardening section is also applicable here, as DTE's disagreements in this section mirror its general disagreements with Mr. Stephens' testimony. There is nothing new in this section that was not fully explored and comprehensively rebutted by AG-MN witnesses and during MNSC's cross examination of DTE, and accordingly the Commission should adopt witness Alvarez's and witness Stephens' findings and recommendations in full.

### *Technology and Automation*

Beginning on page 126 of its initial brief, DTE discusses its requested strategic capital expenditures related to Technology and Automation. This section is broken into eleven subsections, much of which is addressed in Mr. Stephens' and Mr. Alvarez's testimony. The AG continues to rely upon that testimony here, along with her initial brief and the analysis and recommendation as laid out in MNSC's initial brief<sup>62</sup> to support rejection of DTE's filed positions and adoption of more reasonable numbers.

### *Conclusion*

The high level, relevant issues to be aware of throughout DTE's distributions operations capital spending discussion are 1) DTE's unwillingness to attempt to quantify its stated benefits 2) DTE's unwillingness to agree to any kind of quantifiable metrics that would tie increased spending to actual results and 3) that DTE's criteria for making decisions in this area are all based on internal

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<sup>62</sup> MNSC Initial Brief, pp. 90-106.

determinations. Each of these issues raise clear problems with DTE's approach to these projects and undercut DTE's requested spending.

#### **4. Information Technology**

Beginning on page 175 of its initial brief, DTE discusses its projected capital expenditures related to Information Technology spending. After five-plus pages of recapping its testimony, it discusses numerous disallowances proposed by the Staff, and then on page 184 begins a four page section discussing the AG's proposed disallowances for the areas of 1) Customer IT Projects, 2) Enhanced Document Management Capability Projects, and 3) 2023 Capital Expenditures.<sup>63</sup>

With regard to the Customer IT Projects, DTE agrees with the disallowance of \$3.9 million in 2025 IT capital associated with the MIGP Scope 3 Billing and Enrollment project.<sup>64</sup> With regard to the other disallowances recommended by the AG for this section, DTE argues that they are partially "overstated," and that the remainder is not premature.

The AG dealt with this in her initial brief,<sup>65</sup> and DTE's discussion adds nothing new that is not fully rebutted therein.

First, the AG's proposed disallowance is not overstated, as confirmed by Mr. Hatsios in a discovery response.<sup>66</sup> The Attorney General's recommended disallowance in testimony included these projects, as they were part of the information provided by DTE. DTE's discussion in briefing amounts to no more than

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<sup>63</sup> DTE Initial Brief, pp. 184-88.

<sup>64</sup> DTE Initial Brief, p. 185.

<sup>65</sup> Attorney General Initial Brief, pp. 35-38.

<sup>66</sup> Ex. AG-55, p. 4.

an attempt to play semantics with the AG’s testimony, arguing that the dollars linked to Advanced Analytics Use Cases are for separate “projects” and that the AG only recommended disallowance for “four projects.”<sup>67</sup> This transparent attempt to twist the AG’s words should be rejected, as should the funding for these projects as it is premature.

That leads into the second argument DTE puts forward in its brief, which was directly addressed by the AG.<sup>68</sup> This is another example of DTE attempting to game the projected test year, by sticking costs into rate base before it is reasonable and prudent to do so. Accordingly, the Commission should remove the \$5,750,000 and the \$15,393,000 from the Company’s forecasted capital expenditures for 2024 and 2025, respectively.

With regard to the Enhanced Document Management Capability Projects, DTE disagrees with the AG’s proposed disallowance, arguing that the Company’s failure to provide full and adequate response to discovery was due to

a misalignment between the AG’s discovery request and the Company’s response because the AG’s discovery request referenced “Customer Services IT projects,” but the Cloud Health and Safety, and Enhanced Document Management Capabilities projects are “Corporate Applications IT projects” (as reflected, for example, by their positions in witness Sharma’s direct testimony).<sup>69</sup>

This is an example of DTE ignoring a clear discovery request from the AG, failing to provide the requested information, and then attempting to find a way out

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<sup>67</sup> DTE Initial Brief, pp. 184-85.

<sup>68</sup> Attorney General Initial Brief, pp. 36-37; Ex. AG-55, pp. 1-2.

<sup>69</sup> DTE Initial Brief, p. 187.

of its failure during the briefing stage of the case. As laid out in the AG's testimony<sup>70</sup> and as shown in her exhibits,<sup>71</sup> the request to provide the project phases with related timeline and the current phase of the project was completely clear, as it referenced a specific Exhibit and Schedule.<sup>72</sup> DTE should not be able to hide behind its failure to provide *all* necessary supporting documentation to support its case when filed, whether or not it was requested in discovery (and in this case the AG continues to contend that it was explicitly requested in discovery).

The AG also dealt with this in her initial brief,<sup>73</sup> and DTE's discussion adds nothing new that is not fully rebutted. DTE's reference to Ex. A-46, Sched. KK2 is similarly unconvincing that the projects should be included in rate base at this point. While there is a bit more information provided in that exhibit (which could have and should have been provided when the case was filed), it is clear that either no work has started on the projects or they are in early phases of design and development.<sup>74</sup> Accordingly, even if the Commission finds that DTE provided information on this topic in a reasonable manner in this case, recovery of the costs is premature.

Therefore, the AG recommends that the Commission remove the \$1,218,000 for 2024 and \$2,958,000 for 2025 from the Company's forecasted capital expenditures.

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<sup>70</sup> 6 Tr 3631-32.

<sup>71</sup> Ex. AG-14, p. 2.

<sup>72</sup> This is also supported by the fact that the rebuttal exhibit DTE lists as further "evidence" that it supported its claims, lists the very same exhibit and schedule as referenced by Mr. Coppola. By DTE's own logic then, it should have been abundantly clear to the Company what the AG was requesting.

<sup>73</sup> Attorney General Initial Brief, pp. 37-38.

<sup>74</sup> Ex. AG-59, p. 2.

With regard to the 2023 capital expenditure underspend, DTE's brief disagrees with the AG's proposed disallowance, arguing that "the AG improperly compared 2023 total projected capital expenditures to 2023 Shared Assets actuals."<sup>75</sup>

In the AG's initial brief, she inadvertently conflated the above argument regarding Enhanced Document Management Capability Projects (which she still holds to her position on), with the discussion on 2023 capital expenditure underspend.<sup>76</sup> The reference to Ex. AG-59 should have solely been related to the discussion on Enhanced Document Management Capability Projects, as it is laid out in this brief. After further review, the Attorney General agrees with DTE that she made the incorrect comparison between 2023 Shared Asset actuals and 2023 total projected capital expenditures. She agrees that the proper comparison was between 2023 total projected IT capital expenditures and 2023 total actual costs, and based on the correct amounts as identified in DTE's brief,<sup>77</sup> withdraws her proposed disallowance of \$34,854,000 from rate base.

## **5. Corporate Staff Group**

Beginning on page 191 of its initial brief, DTE discusses its projected Corporate Staff Group (CSG) spending. This includes vehicle fleet capital expenditures and money for office updates.<sup>78</sup> In its brief, DTE disagrees with the AG's proposed disallowances but adds nothing new to the discussion. The AG discussed this

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<sup>75</sup> DTE Initial Brief, pp. 187-88.

<sup>76</sup> Attorney General Initial Brief, p. 38.

<sup>77</sup> DTE Initial Brief, p. 188.

<sup>78</sup> DTE Initial Brief, pp. 191-93.

extensively in her initial brief,<sup>79</sup> identifying the shortcomings in Ms. Uzenski's rebuttal and confirming that these costs are premature to include in rate base in this case. With regard to the vehicle fleet, this is again DTE attempting to improperly use a fully projected test year to its advantage, with costs increasing well beyond what might be considered reasonable. With the office renovations and facelift, DTE has failed to provide sufficient evidence that the updates are warranted at this time or that their existing facilities are insufficient.

Accordingly, the Attorney General continues to recommend 1) that the Commission remove \$6,265,000 for 2023 and \$8,000,000 for 2024 from the capital expenditures forecasted by the Company for renovations at DTE's headquarters, 2) remove \$24,600,000 from the Company's forecasted capital expenditures for 2025 related to the 9 projects in early stages of development, and 3) remove \$4,564,000 for 2024 and \$8,187,000 for 2025 related to DTE's transportation fleet.

#### **IV. RATE OF RETURN**

In its initial brief, DTE discusses its positions regarding its rate of return.<sup>80</sup> The AG continues to support the positions taken in the Cost of Capital section in her initial brief,<sup>81</sup> but does provide a few replies.

##### Return on Common Equity

With regard to the Return on Common Equity (ROE), the ALJ and Commission are well-versed in the positions of the parties. In its initial brief, the Company lays

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<sup>79</sup> Attorney General Initial Brief, pp. 39-40.

<sup>80</sup> DTE Initial Brief, pp. 193-208.

<sup>81</sup> Attorney General Initial Brief, pp. 43-58.

out the arguments and methods of its witness, Dr. Villadsen, and continues to recommend an ROE of 10.50%.<sup>82</sup> Dr. Villadsen's methods, analysis, and eventual conclusion were disputed by multiple parties in their briefs, including extensively by the AG.<sup>83</sup> The AG continues to rely on the analysis and argument contained in her initial brief, which supports an upper limit on an ROE of no more than 9.85%. However, based on the discussion of other parties in this case, as well as the extensive and well-reasoned PFD in DTE Gas's recent rate case,<sup>84</sup> an ROE of well below 9.85% is likely a more appropriate representation of DTE's cost of equity and relevant risk.

In each successive rate case, DTE makes arguments for inflated ROEs based on what it believes to be most advantageous at that given time. In U-20836, DTE's brief provided a section on "ROE in Relation to Risk," that picked out select language from past Commission decisions and provided some additional factors that DTE felt merited an ROE that was higher than the national average and higher than the Company's then current ROE.<sup>85</sup> In U-20561, DTE argued that the Company faced "greater-than-average risk" and an ongoing financial crisis.<sup>86</sup> In U-21297, DTE presented a "times have changed" argument,<sup>87</sup> arguing essentially that recent increases in interest rates mean that there was no sound basis to decrease DTE's ROE and that, in fact, it should be increased. In this case, DTE continues its argument from U-21297, arguing that because of "persistent high inflation" and the

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<sup>82</sup> DTE Initial Brief, p. 196.

<sup>83</sup> See Attorney General Initial Brief, pp. 45-58.

<sup>84</sup> U-21291 PFD, pp. 197-227.

<sup>85</sup> U-20836 DTE Electric Initial Brief, pp. 155-69.

<sup>86</sup> U-20561 DTE Electric Initial Brief, p. 96.

<sup>87</sup> U-21297 DTE Electric Initial Brief, p. 158.

fact that the Federal Reserve increased rates numerous times between March 2022 and July 2023, that DTE's ROE should be increased.<sup>88</sup>

The AG vehemently disagrees. The rationale for decreasing DTE's ROE is that the Company has enjoyed vastly inflated ROEs, at the expense of its customer base, for decades now. Pertinently and tellingly, during years of falling inflation and low interest rates DTE did not make arguments that its ROE should be decreased. DTE's brief in this case points to a period well before its case was filed, arguing that interest rate increases by the Federal Reserve during that time merit an increase in its estimated cost of equity. DTE's initial brief in this case was filed on October 3, 2024. Conspicuously absent from its discussion is any mention of the Federal Reserve *cutting* interest rates by a full half a percentage point at its last meeting on September 18, 2024. Thus, by its own logic DTE now merits a decrease in ROE.

In recent years, which have seen falling ROEs in both Michigan and around the country, the AG has continually advocated for lower ROEs that are in line with the rest of the nation and commensurate with the risks facing DTE Electric. DTE, on the other hand, has continually cited a need for an increased ROE, despite an improving economy and nationwide movement toward lower ROEs. DTE's argument that "[t]his is also a particularly inopportune time to weaken the Company's credit metrics due to the Company's need for capital spending" should be ignored.<sup>89</sup> In U-21297 and U-20836 it used the same exact language.<sup>90</sup> In U-20561, DTE argued that

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<sup>88</sup> DTE Initial Brief, p. 204.

<sup>89</sup> DTE Initial Brief, p. 204.

<sup>90</sup> U-21297 DTE Electric Initial Brief, p. 167; U-20836 DTE Electric Initial Brief, p. 167.

“[t]his is also a particularly inopportune time to weaken the Company’s credit metrics due to the TCJA and the Company’s need for capital spending.”<sup>91</sup> In U-20162, DTE argued that “[t]his is also a particularly inopportune time to weaken the Company’s credit metrics due to the TCJA and the Company’s need for capital spending.”<sup>92</sup> In U-18999, DTE stated “[m]aintaining a strong credit rating is particularly critical during a period forecast to have substantial capital investment for infrastructure. In addition, one can expect that the cost of capital will increase as the Federal Reserve continues to adjust its monetary policy.”<sup>93</sup>

There is no need to belabor the point by continuing to walk back through DTE Electric’s past rate cases. It is clear that, for DTE, it will always be a “particularly inopportune,” time to reduce its ROE. Continued use of such verbiage over the years undercuts its force and relevance.

The Commission should not allow DTE to distract from the fact that the Company has too long had an inflated ROE and should move the Company’s ROE down to a more reasonable level that better balances shareholder interests with customer affordability.

Accordingly, DTE’s ROE recommendation is out of line with the rest of the U.S., recent Michigan rate cases, has been inflated for too long, and should be rejected. The AG recommends that the Commission adopt an ROE of no more than 9.85%, and in fact, give more serious consideration to the arguments as laid out in

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<sup>91</sup> U-20561 DTE Electric Initial Brief, p. 104.

<sup>92</sup> U-20162 DTE Electric Initial Brief, p. 59.

<sup>93</sup> U-18999 DTE Electric Initial Brief, p. 32.

the U-21291 PFD and other parties' testimony in this case and adopt an ROE of closer to 9.50% or below.

### Overall Rate of Return

In its brief, DTE advocates for an after-tax 5.92% overall rate of return with a corresponding weighted pre-tax overall rate of return of 7.37%.<sup>94</sup> As shown in Exhibit AG-26 and based on the work of Mr. Coppola, the Attorney General continues to recommend an overall return on capital of 5.67%, which would be lower if the Commission adopts a lower ROE.

## **V. ADJUSTED NET OPERATING INCOME AND REVENUE DEFICIENCY**

### **A. Operating and Maintenance (O&M) Expenses**

The Attorney General raised several Operating and Maintenance (O&M) Expense recommendations in the direct testimony of Sebastian Coppola and discussed them further in her initial brief.<sup>95</sup> DTE's projected O&M expenses in this case represent a substantial increase that warrants significant scrutiny.

For the most part, the AG continues to rely on her arguments and recommendations made in her initial brief. However, there are several places she would like to reply specifically to the Company's initial brief.

#### **1. Inflation on O&M Expense**

In its initial brief, DTE discusses its proposed inflation rates for the test year, noting that they "are composite rates using a 3.0% inflation rate for labor, and the

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<sup>94</sup> DTE Initial Brief, p. 207.

<sup>95</sup> Attorney General's Initial Brief, pp. 58-76.

consumer price index (CPI)-Urban for non-labor costs.”<sup>96</sup> As noted in her initial brief,<sup>97</sup> the AG recommends adjustments to the inflation and merit increases to O&M expenses that the Company proposes in this case.

DTE’s initial brief presents no new issues. The Commission has dealt with these issues in the past and the AG fully rebutted DTE’s positions in her initial brief. Accepting DTE’s position on blended inflation would serve only to needlessly drive up customer costs. DTE’s misleading discussion in brief does not accurately represent what the Commission has done in the past or how the Commission treated DTE’s requests in U-21297.<sup>98</sup> The Commission should reject DTE’s arguments and hold DTE’s attempts to deceive readers against the Company.

Accordingly, the Commission should continue to reject DTE’s use of composite inflation rates in this case.

## **2. Distribution – Tree Trimming**

In its initial brief, DTE discusses tree trimming O&M expenses under Distribution costs.<sup>99</sup> After an overview of its testimony and the program, DTE notes

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<sup>96</sup> DTE Initial Brief, p. 211.

<sup>97</sup> Attorney General Initial Brief, pp. 59-61.

<sup>98</sup> On page 212 of its initial brief in this case, DTE avers that the “Commission previously adopted the Company’s proposed composite inflation rates.” This is not true. In U-20836, the Commission adopted the “ALJ’s decision as it relates to labor and non-labor inflation rates.” (U-20836 Order, p. 258) Pertinently, the ALJ found that “as a general matter” it was acceptable to use DTE’s inflation rates in the case, but that “[t]he Commission has rejected composite inflation rates in prior cases,” “the parties who are not objecting to the inflation rates ... in this case are not waiving their objections to the composite approach,” and that there should be “an evaluation of the company’s capitalization policies.” (U-20836 PFD pp. 469-70.) Thus, while the Commission adopted DTE’s inflation rates in U-20836 “as a general matter,” it did not make a determination on DTE’s preferred method of composite inflation rates. The same was true in U-21297 (See, e.g., Ex. AG-53, p. 1) where the Commission “decline[d] to approve an overall inflation adjustment....” U-21297 Commission Order, December 1, 2023, p. 193).

<sup>99</sup> DTE Initial Brief, pp. 216-33.

the AG's proposal to remove \$87 million from DTE's calculated regulatory asset for a number of reasons.<sup>100</sup> The AG dealt with this fully in her initial brief,<sup>101</sup> and DTE's brief adds nothing to the discussion, merely repeating portions of its testimony.

The Company has not made a compelling and convincing case that increasing the amount to be spent on the surge program by \$87 million in 2025 and an additional \$23 million in 2026 to be charged to O&M expense is advantageous to customers. The evidence points to no significant reductions in power outages caused by trees and vegetation, and instead to significant cost overruns with contractors and other ineffective support programs. Therefore, the AG recommends that the Commission reject the Company's proposed increase of \$87.0 million in deferred costs in 2025 for the surge program. Additionally, the Commission should remind the Company once more that the appropriate interest rate to be applied to the deferred costs under the Tree Trimming Surge program is the short-term debt interest rate, which in this rate case is 5.76%, according to page 1 of Exhibit A-14, Schedule D1.

The Commission should also accept the AG's calculated savings from tree trimming that are supported by Mr. Coppola and as discussed in the AG's briefing.<sup>102</sup> For reasons that were eminently foreseeable, DTE objects to including the savings at this point. While the Company is all too happy to spend customer dollars on tree trimming, undertake "surge" spending, and request more dollars in each successive rate case, when it comes to the proper inclusion of and accounting for the related

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<sup>100</sup> DTE Initial Brief, pp. 221-26.

<sup>101</sup> Attorney General Initial Brief, pp. 80-82.

<sup>102</sup> Attorney General Initial Brief, pp. 63-65.

savings (which are the entire premise of DTE's request for increased spending), the Company is loathe to incorporate them. The Commission should reject DTE's one-sided approach to tree trim spend and fully adopt the AG's recommendations.

### **3. Customer Service – Credit/Debit Card Merchant Fees**

In its initial brief, DTE discusses merchant fee O&M expenses related to credit/debit card usage and associated fees.<sup>103</sup> After an overview of its testimony and the program, DTE notes the AG's proposed disallowance of certain non-residential merchant fees. The AG dealt with this fully in her initial brief,<sup>104</sup> and DTE's brief adds nothing to the discussion, merely repeating portions of its testimony.

As noted in her brief, Consumers Energy has already taken steps to address the issue that the AG is raising, and DTE should follow suit. Giving non-residential customers the option of paying a fee associated with a credit card payment or using a fee-free method such as EFT is a small nudge DTE should utilize to reduce costs, specifically reducing the socialization of these costs across all customers. For this case, the Attorney General continues to recommend that the Commission disallow recovery of the \$3,474,000 of merchant fees pertaining to non-residential customers so that the Company can take appropriate actions to avoid those costs beginning with the projected test year in this rate case.

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<sup>103</sup> DTE Initial Brief, pp. 234-36.

<sup>104</sup> Attorney General Initial Brief, pp. 65-67.

#### **4. Uncollectible Accounts Expense**

In its initial brief, DTE discusses uncollectible accounts expense and the reductions proposed by both Staff and the AG.<sup>105</sup> DTE notes (and as noted in the AG's initial brief) that it "now supports \$47.0 million consistent with the AG's proposal," agreeing with Mr. Coppola's methodology and result.<sup>106</sup> Accordingly, the AG and DTE are in agreement and the Commission should reduce the Company's forecasted O&M expense by \$3.9 million and set the expense level for uncollectible accounts expense at \$47.0 million.

#### **5. Pension and Benefits – Active Healthcare Benefits**

In its initial brief, DTE also discusses its requests regarding increases to active healthcare benefits costs.<sup>107</sup> After walking through its testimony, DTE notes the AG's proposal to reject the Company's normalization adjustments related to constant dollar and her overall \$3.136 million reduction, to arrive at total projected costs of \$52.947 million.<sup>108</sup>

The AG fully addressed this in her briefing.<sup>109</sup> The main takeaway is that DTE continues to try to find creative ways to increase projections to get to desired, inflated numbers. "Constant dollar" adjustments fall into that category, and DTE's argument in brief that it somehow demonstrated in this case that its "proposed constant dollar normalization will not result in compounded inflationary increases" is unsupported by the record and should be rejected. As the Commission recognized in U-21297, the

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<sup>105</sup> DTE Initial Brief, p. 236.

<sup>106</sup> Id.

<sup>107</sup> DTE Initial Brief, pp. 247-52.

<sup>108</sup> DTE Initial Brief, p. 251.

<sup>109</sup> Attorney General Initial Brief, pp. 69-70.

“constant dollar averaging” DTE likes is simply a process that increases actual historical costs in a way that is divorced from reality. It adds inflationary costs to historical costs, which already include inflationary pressure, thereby doubling down in a blatant attempt to abuse the projected test year method.

On the top of page 249 of its brief, DTE argues that the Company’s “constant dollar normalization adjustment is needed to establish an accurate starting point because year-to-year volatility of actual Active Healthcare costs ... **makes any historical period expense potentially unreliable as a starting point to project costs.**” (emphasis added) This is a very convenient position for DTE to espouse, as the Company’s “constant dollar normalization” adjustment ratchets up DTE’s projected costs whenever it is used. As discussed above, this tripling of inflation on certain costs should be rejected. DTE’s historical experience with its own healthcare costs is the best, most logical basis for forecasting DTE’s projected healthcare costs.

DTE’s contentions that Mr. Coppola inappropriately excluded 2023 in this case and that if accepted the AG’s calculation needs to be “corrected”<sup>110</sup> are directly addressed in the AG’s initial brief.<sup>111</sup>

The lower rate of increase of 3.33% proposed by Mr. Coppola provides a more reasonable forecast of healthcare expense for 2025 than the amount proposed by DTE in its testimony or brief. Therefore, no adjustments to the expense disallowance of

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<sup>110</sup> DTE Initial Brief, pp. 251-52.

<sup>111</sup> Attorney General Initial Brief, p. 70.

\$3.136 million recommended by Mr. Coppola are necessary and the AG recommends that the Commission adopt that disallowance.<sup>112</sup>

**a. Other Employee Benefit Costs**

In its initial brief, DTE also discusses its projected test year requests regarding its “Supplemental Savings Plan” (SSP) request and the AG’s proposed complete disallowance.<sup>113</sup> After walking through its testimony, DTE argues that Mr. Coppola’s “characterization of the SSP is inaccurate and neglects that the Commission has previously authorized the recovery of SSP costs.”

The AG fully addressed this in her briefing. The main takeaway is that any past “approval” by the Commission should not be afforded any weight in this instance, where the specifics of the requested recovery are inconsistent and the acronyms for these costs have changed over the years, making them impossible to track with any certainty. The Commission should look at this issue from a blank slate, recognizing that these costs are clearly for DTE employees at the “Director” level and above, meaning they are for a select subset of very highly paid employees and thus should not be borne by all ratepayers.

The AG recommends that the Commission remove the \$3.2 million for the Supplemental Savings Plan from the Company’s forecasted O&M expense.

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<sup>112</sup> See also Ex. AG-43.

<sup>113</sup> DTE Initial Brief, pp. 252-53.

## 6. Employee Compensation

In its initial brief, DTE discusses its requested employee compensation recovery.<sup>114</sup> After recounting its testimony, its brief discusses Staff's proposed disallowances and mentions the AG's proposal for the complete elimination of incentive compensation expense related to financial measures, plus 52.6% of incentive compensation expense related to operating measures, which equates to a total proposed disallowance of \$49.895 million.<sup>115</sup>

The rest of this section of DTE's brief repeats its rebuttal testimony, which is rebutted in the AG's brief.<sup>116</sup> DTE makes arguments similar to those that it has made in the past, that it will not be competitive in attracting talent if its ratepayers do not pay this incentive compensation, etc.<sup>117</sup> DTE's argument that it is "not reasonable to assume that only 47.4% of operating performance measures will be achieved..."<sup>118</sup> should be rejected, as that is literally what happened in the historical period, making the AG's forecast reasonable. Further, DTE's statement that the "Company's goal is to establish costs at levels that are likely to be achieved, so it is reasonable to assume that the Company will, on an overall basis, achieve Target performance levels" is a sentiment that the Commission should take note of. The AG argues that it is not reasonable for ratepayers to be expected to shell out millions of additional dollars essentially for DTE to do the job that customers pay for in regular rates – i.e. the

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<sup>114</sup> DTE Initial Brief, pp. 255-62.

<sup>115</sup> DTE Initial Brief, p. 259.

<sup>116</sup> Attorney General Initial Brief, pp. 73-76.

<sup>117</sup> DTE Initial Brief, p. 258.

<sup>118</sup> DTE Initial Brief, p. 259.

Company should not need “incentive” compensation to provide customers with the safe, reliable energy they pay for. As laid out, the Commission should continue to deny recovery of incentive compensation expense related to financial measures and should deny recovery of 52.6% of the incentive compensation DTE seeks to recover related to operating measures.

DTE’s request that if the Commission continues the deferral process for incentive compensation expense that began in U-20836, it modify the deferral in two ways, should also be rejected.<sup>119</sup> DTE’s customers already carry the cost risks in the vast majority of the Company’s regulated business and the Commission should not okay DTE to move more risk onto customers.

Based on the above, Mr. Coppola’s testimony, and her brief, the AG recommends that the Commission allow recovery of 47.4% of the \$20,271,000, or \$9,608,000, and disallow recovery of the remaining \$10,663,000 for the operational metrics. This amount, plus the \$39,232,000 disallowance related to financial metrics, results in a total disallowance of \$49,895,000 of the \$59.5 million of incentive compensation expense proposed by the Company in this case.

In addition, as discussed in the Working Capital section of Mr. Coppola’s testimony and shown in Exhibits AG-20 and AG-44, the Commission needs to remove \$1,358,000 of negative amortization expense from excess compensation expense paid in the 2023 projected test year in Case No. U-20836. Therefore, the total reduction in incentive compensation expense is \$51,253,000.

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<sup>119</sup> DTE Initial Brief, pp. 260-61.

## **B. Property Tax Expense**

In its initial brief, DTE discusses its requested level of property tax expense recovery for the 2025 projected test year.<sup>120</sup> DTE's brief does not add anything new to the discussion and the AG continues to support her proposed property tax adjustments, which correspond to her proposed capital expense disallowances.<sup>121</sup>

Accordingly, the AG continues to recommend that the Commission reduce the Company's property tax expense by \$12,261,000 for the projected test year.

## **VI. OTHER REVENUE RELATED ISSUES**

### **A. Infrastructure Recovery Mechanism (IRM)**

In its initial brief, DTE discusses its proposal to "extend and expand the IRM that the Commission authorized in Case No. U-21297."<sup>122</sup> MNSC discussed this in its initial brief,<sup>123</sup> which the AG fully adopts and continues to argue that the Commission should reject any extension or expansion of the IRM. The Commission and other interested stakeholders need to take stock of where things are at with DTE's IRM before continuing the exponential expansion of this program.

This section of the Company's brief is primarily a repeat of DTE's testimony, before it spends a couple of pages disagreeing with Mr. Alvarez's, Mr. Stephens', and other parties' positions that additional IRM spending should be rejected at this time.

As a general principle, the Attorney General objects to the use of IRMs and the expansion and extension requested by DTE in this case is a big reason why. The

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<sup>120</sup> DTE Initial Brief, pp. 263-64.

<sup>121</sup> Attorney General Initial Brief, pp. 83-84.

<sup>122</sup> DTE Initial Brief, p. 265.

<sup>123</sup> MNSC Initial Brief, pp. 198-214.

premise of giving a utility guaranteed money, because it cannot be counted on to invest approved amounts into the reliability-based strategic capital investments that those amounts were approved for in the first place, is flawed and thwarts the regulatory balance.

Regulatory lag is one of the last remaining brakes on utility spending and removing it would definitively *not* be an effective cost-control measure. By their very nature IRMs give DTE the incentive to spend every dollar earmarked for that purpose in between rate cases, so as not to leave money on the table. Using IRMs shifts even more of the risk, which is already mostly borne by ratepayers, onto ratepayers and away from the utility. Use of IRMs for capital costs that are largely within a utility's control, not extremely volatile, and not necessarily recurring, such as investment into its distribution grid, is wholly inappropriate and not akin to something like fuel costs, which are more volatile and therefore, arguably a better candidate for cost-tracking.

If DTE gets these monies approved, the Company will come back year after year, in each successive rate case, and attempt to put more and more money into this "Distribution IRM." The Commission should reject DTE's proposal.

### **1. Electric Vehicle Pilots – Charging Forward**

Within the "Electric Vehicle Pilots – Charging Forward," portion of its Other Revenue Related Issues section,<sup>124</sup> DTE mentions several of the AG's concerns with slow EV adoption and what that means for the broader market and DTE's plans to

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<sup>124</sup> DTE Initial Brief, pp. 279-91.

invest heavily in this area.<sup>125</sup> The AG addressed this in her initial brief<sup>126</sup> and continues to argue that DTE has not met its burden to support its claims of a thriving pace of EV adoption.

This is another example of DTE wanting to ‘spend, spend, spend,’ even when the objective data is indicating that an extensive buildout at this time is premature. The only party that stands to lose in that situation is ratepayers. Accordingly, the AG continues to recommend that the Commission reduce the forecasted capital expenditures in Schedule B5.9 by 45% for 2024 and 2025.<sup>127</sup> This means a reduction in capital expenditures of \$6,979,000 for 2024 and \$2,295,000 for 2025. The lower amounts included in rate base will protect customers from the Company’s potential underspending on the program. However, if the Company were to exceed those amounts, it can request recovery for the additional amount in the next rate case.

## **2. Accounting Issues – Tree Trimming Capitalization**

Within the Accounting Issues – Tree Trimming Capitalization portion of its Other Revenue Related Issues section,<sup>128</sup> DTE mentions AG-MN’s concerns with how DTE is capitalizing its tree trimming expenses.<sup>129</sup> DTE’s brief merely repeats its testimony, which was discussed and fully rebutted in MNSC’s initial brief.<sup>130</sup>

Accordingly, the AG recommends that the Commission reject DTE’s position and adopt Mr. Alvarez’s analysis and recommendations in full.

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<sup>125</sup> DTE Initial Brief, pp. 282-83.

<sup>126</sup> Attorney General Initial Brief, pp. 22-24, 41-42.

<sup>127</sup> Attorney General Initial Brief, pp. 41-42.

<sup>128</sup> DTE Initial Brief, pp. 279-91.

<sup>129</sup> DTE Initial Brief, pp. 296-98.

<sup>130</sup> MNSC Initial Brief, pp. 106-15.

## VII. SUMMARY OF REVENUE DEFICIENCY AND REQUESTED RATE RELIEF

DTE's brief eventually requests approximately \$446.1 million in rate relief, based on the changes it made since originally filing.<sup>131</sup> The AG continues to argue that the Commission should accept her positions and reductions and find that DTE has a revenue deficiency of no more than \$139.5 million.<sup>132</sup>

## VIII. OTHER PROPOSALS

### A. Voluntary Separation Incentive Program (VSIP)

In its initial brief, DTE discusses AG witness Coppola's proposed O&M reduction related to savings from DTE's Voluntary Separation Incentive Program (VSIP).<sup>133</sup> The Company argues that "it would be premature to include any savings from the VSIP in the Company's revenue requirement" and that the AG's proposal is "unreasonably and illegally one-sided in seeking a cost reduction for potential savings in 2025, where the Company has not sought to recover the \$30.6 million in costs related to the separation payments in 2024."<sup>134</sup>

The AG discussed this in her initial brief and continues to rely on that argument.<sup>135</sup> DTE *not* seeking to recover certain costs in this rate case is *not* a one-to-one comparison with whether or not savings derived from those costs will be experienced in DTE's projected test year. Again, this is part of the issue that DTE

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<sup>131</sup> DTE Initial Brief, p. 299.

<sup>132</sup> This number does not include the slight adjustment related to the AG's withdrawal of her proposed rate base disallowance of \$34,854,000, related to 2023 total projected IT capital expenditure underspend.

<sup>133</sup> DTE Initial Brief, pp. 335-36.

<sup>134</sup> DTE Initial Brief, p. 335.

<sup>135</sup> Attorney General Initial Brief, pp. 62-63.

creates by using a fully projected test year. The savings noted by Mr. Coppola will unequivocally be realized during the projected test year, and so allowing DTE to simply “keep” those, without factoring them into the revenue requirement in this rate case would be a windfall for DTE.

DTE’s argument attempts to confuse the timing of this issue, but the AG’s expert is correct in his assessment and calculation. Accordingly, DTE’s arguments should be rejected and a minimum of half of the \$20.3 million in cost savings, or \$10.1 million, should be removed from DTE’s forecasted O&M expense for the projected test year.

### **CONCLUSION AND RELIEF SOUGHT**

For the reasons stated above and those in her testimony, exhibits, and initial brief, the Attorney General recommends that the Commission adopt her adjustments and recommendations.

Respectfully submitted,

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Dated: October 23, 2024

**PROOF OF SERVICE - U-21534**

The undersigned certifies that a copy of the *Attorney General's Reply Brief* was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 23<sup>rd</sup> day of October 2024.

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