



October 23, 2024

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

Via E-File

RE: MPSC Case No. U-21534

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

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

Thank you for your assistance in this matter.

Sincerely,

Tracy Jane Andrews
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CC: Parties to Case No. U-21534

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
MICHIGAN ENVIRONMENTAL COUNCIL,
NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB,
AND CITIZENS UTILITY BOARD OF MICHIGAN**

October 23, 2024

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I. INTRODUCTION

The Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and the Citizens Utility Board of Michigan (MNSC) submit this brief primarily to reply to DTE Electric Company (DTE), Staff, and intervenors – including, in some instances, to support parties on specific issues. The issues are listed in the Table of Contents. To the extent DTE and other parties opposed MNSC positions in their witnesses’ rebuttal testimony, MNSC anticipated and fully addressed those arguments in MNSC’s initial brief. MNSC failure to address in its initial or this reply brief a particular issue raised by the Company, Staff, or other Intervenors should not be interpreted as acquiescence.

II. SUMMARY OF MAJOR ISSUES – AFFORDABILITY

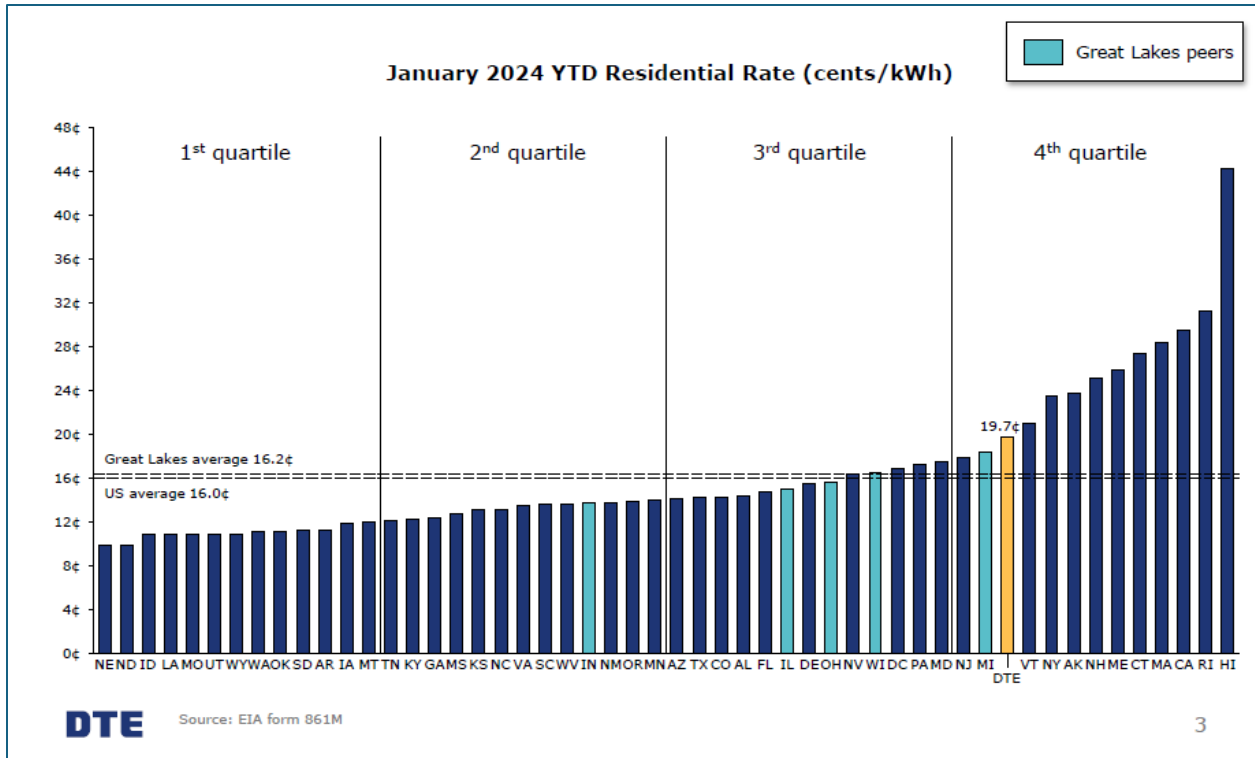
In its initial brief, DTE asserts that improving distribution reliability will require significant investment while acknowledging this request “is asking its customers to pay higher electric bills.”¹ It claims the increasing cost burden on customers is justified because the investments will generate significant benefits and value to them and Michigan, noting “[o]ngoing grid investments have already produced significant benefits.” According to DTE, this rate increase comes at a reasonable cost to customers, citing comparisons to inflation and regional and national electric bills.²

MNSC replies briefly to clarify that DTE residential *rates* are among the highest nationally – in the fourth quartile and higher than Michigan generally and Great Lakes peers:³

¹ DTE Initial Brief, p. 2.

² *Id.*, n. 2.

³ Ex MEC-2, p. 4.



Multiple intervenor witnesses addressed the growing affordability challenges facing DTE residential customers and made recommendations accordingly, as discussed in the MNSC initial brief and below.⁴ This context should inform the Commission’s consideration of DTE’s requests to increase rates and shareholder returns.

III. RATE SETTING LAW

DTE asserts in its Initial Brief that it would be unconstitutional for the Commission “to use hindsight or otherwise base DTE Electric’s rates on past events,” suggesting it would be confiscatory to use past revenue earnings in the past “to sustain confiscatory rates in the future.”⁵ This discussion of legal precedent lacks context but appears misleading to the extent it suggests

⁴ MNSC Initial Brief, pp. 1-5, 160-78; see also Section VII Subsection B, below.

⁵ DTE Initial Brief, p. 15 (citing *Board of Public Utility Comm’rs v New York Telephone Co*, 271 US 23, 31-32 (1926)).

the Commission should not consider the Company's history of past revenue earnings. DTE "has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures."⁶ To the extent record evidence demonstrates DTE rates and bills are unaffordable or historic returns are excessive, the Commission may properly consider that evidence. The Michigan Supreme Court has upheld the Commission's right to use past experience to determine appropriate rates going forward.⁷

DTE's reliance on *Bd of Pub Util Comm'rs v New York Tel Co* to support the proposition that it would be unconstitutional for the Commission to base rates on past events is misplaced.⁸ In that case, the New York Board of Public Utilities determined that New York Telephone Company should use their reserve depreciation account to make up for confiscatory rates.⁹ The Board subsequently set a rate of return for the Company under 5%.¹⁰ The rate was confiscatory in spite of the Board using past profits as a factor in setting rates— not because the Board used past profits as a factor in setting rates. The case does not stand for the proposition that the regulator may not consider evidence of historic earnings or affordability in determining just and reasonable rates. The Commission may not justify a confiscatory rate of return by requiring DTE to cover the deficiency with past profits, but that is not an issue in this case.

⁶ " *Los Angeles Gas & Elec Corp v RR Comm'n of Cal*, 289 US 287; 319, 53 S Ct 637, 649 (1933) (quoting *Bluefield Water Works Co v Public Service Comm'n*, 262 US 692, 693; 43 S Ct 675, 679 (1923)) (holding a rate of return of 7% is not confiscatory)).

⁷ *Detroit Edison Co v Michigan Pub Serv Comm'n*, 416 Mich 510, 514; 331 NW2d 159, 160 (1982).

⁸ DTE Initial Brief, p. 15.

⁹ *Bd of Pub Util Comm'rs*, 271 US at 27 ("[The board] directed that \$4,750,000 of that amount be used by the company to make up deficits in any year when earnings are less than a reasonable return as found by the board.").

¹⁰ *Id.* at 30 ("On the basis of the company's estimate of depreciation expense, the return is 4.12 per cent.; on the board's estimate it is 4.93 per cent.").

IV. TEST YEAR

MNSC replies in support of ABATE's position that the use of projected test years has resulted in excessive over-recovery for DTE, and that the Commission should respond by ensuring test year projections are accurate and will be incurred as approved.¹¹ ABATE notes the Commission has rejected test year projections that rely on undocumented estimates of future expenses and revenues and leaning on historical data when it is more fair and reasonable and projected data. ABATE addresses the harms to ratepayers resulting from reliance on projected rather than historic costs, including excessive earnings and lost incentive to contain costs as a result of regulatory lag. To address these harms to ratepayers, ABATE requests the Commission rely on historical test year or, alternatively, be more diligent in holding DTE to its burden of proving the reasonableness and prudence of cost recovery with precise quantification as to the amount and timing of investments. ABATE further recommends additional measures the Commission may examine to address the issues associated with DTE's continued use of a projected test year.

MNSC replies in support of ABATE's positions – that the projected test year is resulting in excessive costs without correlative benefits to ratepayers, and that the Commission is not powerless to do something about it. AG-MN witness Alvarez testified in the context of distribution strategic capital spending that DTE sets spending priorities through the GPM (addressed at length in MNSC's initial brief) but sets spending levels (budget size) in costly "strategic capital" programs (PTMM, 4.8kV Hardening, Distribution Automation) based on how fast DTE can spend capital and how much capital DTE can raise.¹² These distribution strategic capital programs in particular would benefit from application of ABATE's recommendations – that the Commission

¹¹ ABATE Initial Brief, pp. 3-9.

¹² Alvarez Direct, 6 TR 3940-3942.

be more diligent in holding DTE to meet its burden of proving the reasonableness of spending levels and more precise in the quantification of the amount, timing, and purpose of proposed spending.

Similar to ABATE's position on the harmful impacts to ratepayers resulting from the projected test year, AG-MN witness Alvarez testified about the harms to ratepayers from the IRM.¹³ The projected test year and the IRM share the same negative characteristics that result in the risk to ratepayers of excessive rates. Both ratemaking mechanisms reduce the Commission's practical ability to disallow unreasonable spending once spending levels are approved – even if the spending fails to produce promised benefits. Both forward test years and IRMs shift the burden from the utility to customers to prove that approved projected spending was imprudent, which increases the incentive for the utility to pursue riskier projects and programs, which also increases the number and scope of capital investments. All of these factors contribute to increasing and increasingly complex rate cases, which further burdens ratepayers more than shareholders.

MNSC joins ABATE in requesting the Commission hold DTE to its proper burden, require DTE to prove the benefits of projected spending before approving requested spending, and require DTE to support its spending projections in the projected test year with specificity and detail on spending. Finally, for these reasons and those outlined in the initial brief, MNSC opposes DTE's request to extend and expand the IRM.

DTE opposed ABATE's position on the basis the projected test year is statutorily authorized and the record in this case is massive.¹⁴ MNSC does not dispute that the Michigan Legislature has authorized the use of projected test years. And the voluminousness of the record

¹³ Alvarez Direct, 6 TR 3943-3947.

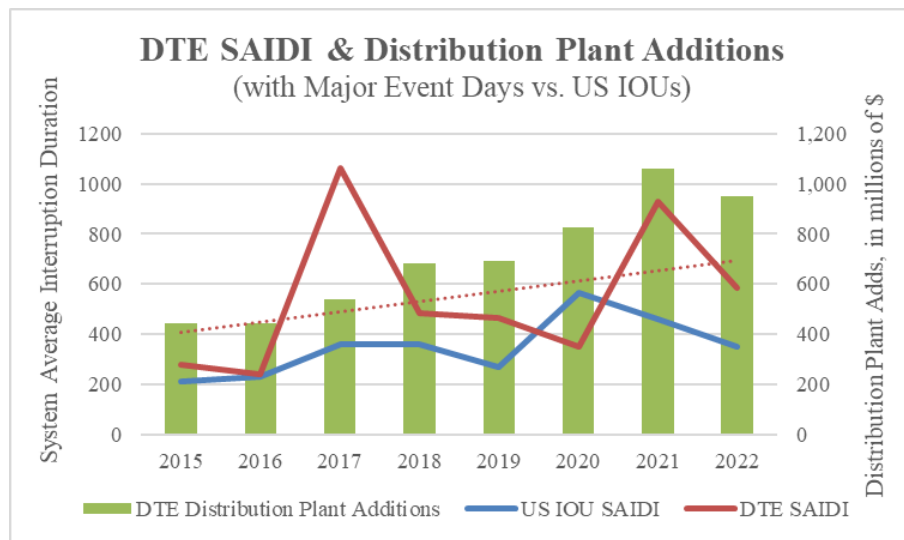
¹⁴ DTE Initial Brief, pp. 16-19.

says nothing about the quality of evidence supporting DTE spending projections. DTE failed to address ABATE’s recommendations to increase scrutiny and examine opportunities to counter the harms associated with the projected test year.

V. RATE BASE – DISTRIBUTION OPERATIONS

A. The Commission Should Not Accept DTE’s Excuses for its Poor Reliability.

Before supporting particular distributions operations spending plans, DTE acknowledges its poor reliability trend during all weather conditions.¹⁵ DTE blames volatile weather conditions, especially high wind days, system age, and that DTE is “early in its journey to stabilize and rebuild the grid” and needs increased and sustained spending to improve reliability.¹⁶ DTE has not provided evidence correlating outages with wind speeds. DTE has not provided evidence correlating outages with old equipment. DTE has been increasing its investments in distribution plant for years without while reliability worsens:¹⁷



¹⁵ DTE Initial Brief, pp. 52-53.

¹⁶ *Id.* at 52.

¹⁷ Alvarez Direct, 6 TR 3931.

DTE has invested in multiple models to support its requested spending levels but has not shown the benefits of its investments. Each of the GPM, Reliability Model, Distribution Prioritization Model, and 1898 Company BCA models are forward *projections* of future benefits without evidence supporting the assumed improvements of the evaluated programs.¹⁸ DTE's unsupported explanations for worsening reliability in the face of increased distribution capital spending are insufficient given its burden of demonstrating that its proposed capital investments are reasonable and cost effective for ratepayers. DTE has not satisfied its burden.

B. MNSC Supports ABATE's Concerns Regarding Strategic Capital Projects Going into Service Beyond the Test Year.

ABATE takes the position that it is imprudent and unreasonable to approve strategic capital projects that will go in service and become used and useful beyond the 2026 test year.¹⁹ ABATE notes the Company's historic investments have not resulted in improved reliability and it has a history of underspending on strategic capital programs. MNSC shares ABATE's concerns that projects not in service until beyond the test year are not providing benefits to ratepayers, DTE's reliability is unacceptable, and historic capital spending has not been shown to be effective at improving reliability.

MNSC further references its discussion in its initial brief regarding the lack of transparency and clarity around DTE's spending projections for large distribution projects, particularly 4.8kV conversions and CODI projects.²⁰ The Commission should disallow cost recovery for projects not in service during the bridge and test years for the reasons ABATE proposes and also because DTE's

¹⁸ MNSC Initial Brief, pp. 11-39, 60-64, 94-96.

¹⁹ ABATE Initial Brief, pp. 15-16.

²⁰ MNSC Initial Brief, pp. 87-90.

presentation prevents the Commission from finding these large long-term projects are reasonable and prudent.

In its initial brief, DTE argues the Commission has approved DTE's accounting practice of including CWIP in rate base.²¹ Staff takes the position that in-service date is not determinative of whether a project is reasonable and prudent to include in rate base.²² MNSC responds to note that CWIP recoverability is insufficient support for the reasonableness of DTE's investments in projections years away from completion. DTE has not demonstrated the ratepayer benefits of projects years away from completion, so they should be excluded from rate base in this case and considered in a future case. Moreover, the Commission should provide guidance about the point at which DTE is required to prove long-term costly projects are reasonable and prudent.

C. MNSC Disagrees with Staff's Position on the Role of the DGP in Rate Cases.

Staff notes discrepancies between spending in the DGP and in this case and takes the position that the Company should communicate decisions to increase or decrease spending in the DGP after it is filed, and for the Company to provide an annual update to communicate projected spend changes.²³ DTE is generally agreeable to minimizing changes between the DGP and rate case and to working with Staff to coordinate changes with increasing transparency and updates.²⁴

MNSC is not opposed to updates but replies to clarify that U-20147 DPG is an informational docket and the grid plan filed in that docket is not a substitute for proving the reasonableness and prudence of spending strategies and plans. Whether proposed rate case

²¹ DTE Initial Brief, p. 65.

²² Staff Initial Brief, pp. 193-94.

²³ Staff Initial Brief, pp. 172-74.

²⁴ DTE Initial Brief, p. 69.

spending aligns with DGP proposed spending is – at most – a point to consider. Staff’s position appears to reflect a perspective that spending levels in the rate case should align with those in the DGP. MNSC strongly disagrees. DGP spending appears to reflect the Company’s aspirational spending goals and insufficiently addresses cost-effective reliability benefits and affordability impacts.²⁵ Unless and until the grid plans are subject to a contested docket and regulatory approval, the Commission should treat them as merely informational. If Staff has concerns about spending deviations between the DGP and rate case, it may explore them through discovery in the rate case as it did in this proceeding. Requiring annual updates to the DGP complicates that docket and has the effect to impose more weight on grid plans in the rate case than they are rightly due. The Commission should reject Staff’s request, irrespective of the Company’s willingness to comply. Instead, the Commission adopt MNSC’s suggestions to improve the robustness and credibility of grid planning.²⁶

D. AG-MN Witness Alvarez’ Recommendation to Integrate Risk-Informed Decision Making (RIDS) Into Grid Planning is Sound.

DTE’s initial brief summarized Company Witness Kryscynski’s testimony supporting its Grid Prioritization Model (GPM) and responding to AG-MN witness Alvarez’ concerns about the GPM.²⁷ MNSC addressed in its initial brief many of the shortcomings in the Company’s including those identified by AG-MN witness Alvarez and others evidence from the model itself.²⁸ MNSC

²⁵ Case No. U-20147, March 15, 2024, MNSC Comments on DTE 2023 DGP.

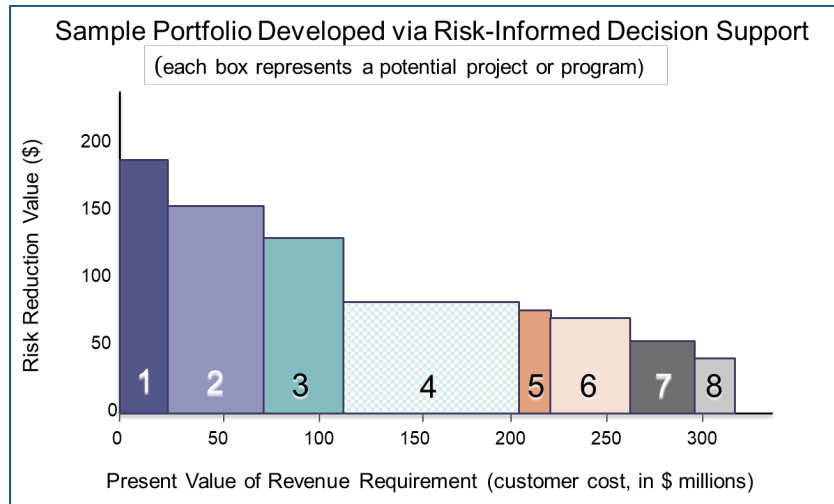
²⁶ *Id.*, pp. 30-32.

²⁷ DTE Initial Brief, pp. 75-84.

²⁸ MSNC Initial Brief, pp. 11-21.

already addressed many of Mr. Kryscynski's points made in rebuttal, but one bears additional response.

Mr. Alvarez supported the use of risk-informed decision support (RIDS) to optimize capital budgets and select projects when affordability and other restraints constrain capital spending.²⁹ To conceptualize RIDS, Mr. Alvarez presented this chart:³⁰



And he provided this explanation:³¹

The chart indicates that project 4 should be eliminated from further consideration, as costs exceed benefits. For the remaining projects, the size of the total capital budget informs the projects that should be deferred to a future period in an order that keeps the most beneficial projects and defers the least beneficial (as measured by benefits relative to costs). A total capital budget of \$115 million looks like a good breakpoint, as it would retain projects 1, 2, and 3 in the budget. An extra \$100 million would permit inclusion of projects 5 and 6. An additional \$100 million beyond that would include projects 7 and 8, and so on.

DTE takes the position that it would not be appropriate to use RIDS, which is a complex framework developed a decade ago through multiple iterations and working sessions and applied

²⁹ Alvarez Direct, 6 TR 3963-3965.

³⁰ *Id.* at 3964.

³¹ *Id.*

to IOUs in California, without due diligence to tailor it in Michigan.³² MNSC concurs with DTE that RIDS is well-vetted and well-used and may be tailored to apply to Michigan IOUs, and would support a regulatory effort towards that end.

DTE then mischaracterizes Mr. Alvarez’ testimony and then argues using the chart above leads to a “mathematically incorrect” outcome.³³ Here is what DTE says in briefing:

Witness Alvarez also provided an example of how his proposed alternative methodology would select investments, and concluded that the optimal solution “would retain [invest in] projects 1, 2, and 3 in the budget” (6T 3964). That is mathematically incorrect, so the alternative method failed to achieve its intended result. The Company conducted its own analysis using Mr. Alvarez’s numbers to optimize the hypothetical portfolio. When ranked on benefit (Risk Reduction) vs cost (PVRR), the optimal portfolio would select Projects 1, 5, 3 and 2, in that order, and project 5 should certainly be prioritized before projects 2 and 3, as shown in Table 5 (Kryscynski, 3T 432-33).

Project	PVRR (\$M)	Risk Reduction	Risk Reduction per \$M PVRR
1	\$ 24	180	7.6
2	\$ 49	147	3.0
3	\$ 39	125	3.2
4	\$ 88	79	0.9
5	\$ 15	74	4.9
6	\$ 40	68	1.7
7	\$ 34	53	1.6
8	\$ 19	41	2.1

(Kryscynski, 3T 433)

DTE first mischaracterizes Mr. Alvarez’ testimony – he did not say the optimal solution would retain Projects 1-3. He said \$115 million “looks like a good breakpoint” for the total capital budget, which would retain Projects 1-3. DTE’s assertion that the optimal portfolio would select Project 5 before Projects 2 and 3 does not render Mr. Alvarez’ chart mathematically incorrect. Under DTE’s “optimal portfolio” that includes Projects 1, 5, 3 and 2, the budget is \$127 million –

³² DTE Initial Brief, p. 78.

³³ DTE Initial Brief, p. 79.

i.e., over budget. Assuming the budget is constrained to \$115 million, DTE’s “optimal portfolio” retains only Projects 1, 5 and 3 for a capital budget of \$78 million – *i.e.*, under budget. If the budget is increased to \$127 million instead of \$115 million, then Mr. Alvarez’ chart accurately retains Projects 1, 2, 3, and 5, the same projects as DTE. DTE’s chart prioritizes Project 5 over Project 3, but for the available \$115 million budget, ratepayers would achieve more benefits if the utility pursued Project 3 ahead of Project 5. Mr. Alvarez’ chart is not “mathematically incorrect” and did not retain the wrong projects in the wrong order – it accurately prioritizes projects according to the budget. DTE’s position is mathematically incorrect because it picks too many projects resulting in overspending, or too few projects resulting in underspending and fewer benefits.

For the reasons discussed by Mr. Alvarez and in MNSC’s briefing, the Commission should begin the process to tailor a RIDS-type methodology to Michigan utilities.

E. MNSC Supports Improvements to the 1898 Company Benefit Cost Analysis (BCA) and the Reliability and Distribution Automation Prioritization Models.

MNSC addressed limitations in the Company’s BCA in its initial brief addressing the PTMM program.³⁴ Staff expressed concerns that the BCA is incomplete and fails to consider true alternatives, which DTE did not rebut.³⁵ CEO also addressed concerns with the 1898 Company BCA, recommending that the Commission require modifications to increase its accuracy and expand its application to other programs.³⁶ In particular, CEO recommends adding the full extent of costs and benefits, as well as actual DTE performance data into the model. To do so, DTE must first improve its outage management system (OMS) to collect actual failure rate data.

³⁴ MNSC Initial Brief, pp. 60-64.

³⁵ Staff Initial Brief, pp. 171-74.

³⁶ CEO Initial Brief, pp. 13-15.

MNSC supports Staff's and CEO's recommendations to improve the accuracy of the BCA, including in particular improvements in OMS data collection. MNSC does not support expanding BCA application before DTE collects necessary outage data to collect failure rates and identify the causes of failures and demonstrates the model produces accurate and verifiable results. DTE has shown it is more willing to project future program benefits than to evaluate actual historic program performance. The Commission should not condone that approach by expanding application of the BCA model in its current form to additional programs before the accuracy of its benefits projection has been adequately demonstrated.

MNSC also addressed limitations in the Company's Reliability and Distribution Automation (DA) Prioritization Models in its initial brief.³⁷ CEO similarly addressed those models, recommending the Company expand the scope of the model and increase their accuracy by replacing assumptions with actual DTE data.³⁸ MNSC supports the latter but opposes the former as presently premature. Conceptually, applying an accurate and reliable model to identify priority circuits for program treatment in terms of cost-benefits makes sense, but the model must first be demonstrably accurate. CEO notes, as MNSC did in its initial brief, that the Reliability Model relies on subject matter expert assumptions and estimates to project performance improvements, but these projections must be replaced with actual performance results. CEO is right – "DTE must get this right prior to spending billions of dollars in the distribution grid."³⁹ CEO notes the DA model is a prioritization model, not a cost-effectiveness model, but DA investments must be subjected to cost-effectiveness evaluation, not just prioritization. And CEO concurs that the DA

³⁷ MNSC Initial Brief, pp. 21-39, 95-96.

³⁸ CEO Initial Brief, pp. 10-13.

³⁹ *Id.* at 11.

model must replace assumptions and estimates with actual DTE data about the performance of DA equipment in the field. These updates must take place *before* any expansion of model application or increases in spending on these distribution strategic programs.

F. MNSC Opposes DTE’s Increase in Capital Spending for Conversions

MNSC’s initial brief explained that conversions consist of converting 4.8kV circuits to 13.2kV and converting 8.3kV circuits in Pontiac to 13.2kV.⁴⁰ DTE plans to spend \$78.8 million on conversions in the 2025 projected test year; another \$185.8 million on conversions in 2025 under the IRM; plus \$190 million under the IRM in 2026 and \$240 million in 2027.⁴¹ MNSC’s initial brief explained that a *moderate* level of conversions spending that targets overloaded circuits could be warranted – but DTE has not justified the rapid pace and exorbitant cost of the Company’s conversions spending beyond the test year.⁴²

In its initial brief, DTE asserts that its conversion spend levels are supported by capacity needs, reliability, and addressing end-of-life infrastructure.⁴³ MNSC’s initial brief demonstrated that the evidence does not support DTE’s claims.⁴⁴ This brief will also reply to certain specific arguments in DTE’s initial brief.

First, DTE claims that AG-MN witness Stephens’ testimony on claimed reliability improvements is inaccurate.⁴⁵ DTE asserts that “average projected reliability improvement is

⁴⁰ Deol Direct, 5 TR 1139.

⁴¹ Ex A-12, Schedule B5.4, p. 16, line 115 (rate base); Foley Revised Direct, 2 TR 119, Table 1; Ex A-33 Schedule X1 (IRM).

⁴² MNSC Initial Brief, pp. 78-90; Stephens Direct, 6 TR 4000, 4006-4007.

⁴³ DTE Initial Brief, pp. 111-12.

⁴⁴ MNSC Initial Brief, pp. 81-87.

⁴⁵ DTE Initial Brief, p. 112.

estimated to be up to 90% for the conversions in this case.”⁴⁶ However, as MNSC’s initial brief explained, DTE’s claim of a 90% improvement is not supported by any analysis. Its only basis is an analogy to a 65% reliability improvement that DTE estimated for the hardening program.⁴⁷

Next, DTE asserts that while 13.2kV circuits have worse SAIDI than 4.8kV circuits when MEDs are excluded, the 13.2kV circuits have better all-weather SAIDI.⁴⁸ However, MNSC’s initial brief explained that all-weather SAIFI is worse on 13.2kV circuits than 4.8kV circuits.⁴⁹ The point is that there is no *universal* reliability improvement from converting – and so DTE needs to show reliability benefit on a project-level basis, which the Company has not done.⁵⁰

Next, DTE asserts that its own reliability data should not be considered conclusive on the issue of reliability because the Company plans to construct the new 13.2kV circuits to a higher standard than the older 13.2kV circuits represented in the reliability data.⁵¹ But that is just speculation, which does not meet the Company’s burden of proof.⁵²

Next, DTE asserts that safety risk “should be a major focus and justification for converting the 4.8kV circuits.”⁵³ MNSC’s initial brief acknowledged that there is some level of safety risk, but only questioned why the risk – which has existed for 100 years – suddenly requires conversion

⁴⁶ *Id.*

⁴⁷ MNSC Initial Brief, pp. 81-82; Ex MEC-78, p. 2, discovery response MNSCDE-13.11.

⁴⁸ DTE Initial Brief, p. 112.

⁴⁹ MNSC Initial Brief, p. 82.

⁵⁰ *Id.*; see also Stephens Direct, 6 TR 4001.

⁵¹ DTE Initial Brief, p. 112.

⁵² *Dillon v Lapeer State Home & Training School*, 364 Mich 1, 8; 110 NW2d 588 (1961), and *BCBSM v Governor*, 422 Mich 1, 88-89; 367 NW2d 1 (1985); Case No. U-7484, August 30, 1983, Order, p. 10; Case No. U-8030-R, July 9, 1987, Order, pp. 16-17; *S C Gary, Inc v Ford Motor Co*, 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

⁵³ DTE Initial Brief, p. 112.

of all 4.8kV circuits in the next 15 years.⁵⁴ DTE has provided no safety analysis or even any safety data to justify this \$25 billion program.⁵⁵

Next, DTE argues that AG-MN witness Stephens relied on only one year of data to determine that less than 6% of the Company's 4.8kV circuits had peak loads that exceeded their day-to-day equipment ratings in 2022.⁵⁶ However, that is because DTE only provided one year of data. The Company offers only generalities – mostly without citation – to support its claimed capacity justification for the conversions spending.⁵⁷ MNSC addressed the capacity issues in detail in its initial brief.⁵⁸

Next DTE claims that its conversions evidence is transparent, and AG-MN witness Stephens simply misunderstood it.⁵⁹ To the contrary, MNSC addressed the lack of transparency for this massive spending program in initial brief.⁶⁰

Finally, in a revealing turn, DTE argues against being required to establish *any* performance metrics for its conversions spending.⁶¹ The Company argues that each project is unique – which is exactly Mr. Stephens' point. Projects need to be evaluated and justified individually. Trying to rush through \$25 billion of conversions in 15 years based on broad and unsupported claims about safety, reliability, and capacity is the opposite.

⁵⁴ MNSC Initial Brief, pp. 82-83.

⁵⁵ *Id.*

⁵⁶ DTE Initial Brief, p. 113; see Stephens Direct, 6 TR 4002.

⁵⁷ DTE Initial Brief, p. 113.

⁵⁸ See MNSC Initial Brief, pp. 84-87.

⁵⁹ DTE Initial Brief, pp. 113-14.

⁶⁰ See MNSC Initial Brief, pp. 87-90.

⁶¹ DTE Initial Brief, p. 114.

G. MNSC Continues to Recommend Disallowances of Test Year Subtransmission Redesign & Rebuild Expenditures as well as Inclusion of 2026 and 2027 Subtransmission Expenditures in the IRM

MNSC’s initial brief explained that DTE seeks to include in rate base \$112.5 million of capital expenditures on Subtransmission Redesign & Rebuild in 2024 and \$43.6 million in 2025.⁶² The Company also projects \$53.8 million in subtransmission spending in 2025 under the IRM, which the Commission approved in Case No. U-21297.⁶³ DTE also requests pre-approval under the IRM of \$55 million for subtransmission in 2026 and \$65 million in 2027.⁶⁴ MNSC’s initial brief explained that subtransmission projects are quite costly, and that DTE has not demonstrated the reasonableness, prudence, or necessity of the amount of subtransmission spending included in this case.⁶⁵ In its initial brief, DTE makes a number of claims about the subtransmission spending that this brief will reply to briefly here.

First, DTE claims that in Case No. U-21297, the Commission “essentially agreed with the PFD’s conclusion of no disallowance” for subtransmission projects.⁶⁶ That assertion is inaccurate. As explained in MNSC’s initial brief, the PFD in U-21297 recommended approval of only \$24.6 million in bridge period subtransmission expenditures out of \$87.5 million DTE requested; and only \$7.3 million in test year subtransmission expenditures out of \$102 million DTE requested.⁶⁷ The Commission Order adopted the PFD.⁶⁸

⁶² Ex A-12 Sch B5.4, p. 16, line 114.

⁶³ Foley Direct, 2 TR 119, Table 1; Case No. U-21297, December 1, 2023, Order, p. 291.

⁶⁴ Foley Direct, 2 TR 119, Table 1.

⁶⁵ MNSC Initial Brief, pp. 67-78.

⁶⁶ DTE Initial Brief, p. 115.

⁶⁷ MNSC Initial Brief, pp. 75-78, citing Order in U-21297, pp. 104-06 and PFD, p. 274.

⁶⁸ *Id.*

Second, DTE argues that even though outages on the subtransmission system are rare, and even though the subtransmission system is already designed with redundancy, the large expenditures are nonetheless required because when a subtransmission outage does occur it can affect a large number of customers.⁶⁹ But the evidence shows that this theoretical concern does not translate into significant customer impacts in reality. Only 3.9% of DTE’s customer minutes interrupted (CMI) from 2019-2023 were due to outages on the subtransmission system.⁷⁰

Third, DTE argues that even though the subtransmission system has been in its current condition for a long time, and has not been a significant cause of CMI during that time, unless subtransmission spending is ramped up now “the system will continue to lose its ability to maintain the required redundancy to ensure grid reliability.”⁷¹ In support of that claim, DTE asserts that it “performed an analysis that revealed that approximately one third of the circuit miles on the subtransmission system violated the Company’s planning criteria.”⁷² DTE describes thermal and voltage violations that it claims were determined as a result of that analysis.⁷³

MNSC addressed DTE’s subtransmission analysis in detail in MNSC’s initial brief.⁷⁴ To summarize:

- DTE argues that greater design margins and redundancy are necessary, but never explains how much design margin and redundancy is enough – or what is an acceptable tradeoff between ever-higher costs and shrinking benefits on the far margins.⁷⁵

⁶⁹ DTE Initial Brief, p. 116.

⁷⁰ Stephens Direct, 6 TR 4016.

⁷¹ DTE Initial Brief, p. 116.

⁷² *Id.* at 117.

⁷³ *Id.*

⁷⁴ MNSC Initial Brief, pp. 69-74.

⁷⁵ *Id.* at 70-71.

- The planning criteria DTE cites are from a USDA bulletin for rural electric cooperatives, and DTE does not actually use them in distribution system planning. The PFD in U-21297 found that DTE failed to justify these planning criteria.⁷⁶
- The loading data provided by DTE in discovery does not support the Company's claims of rampant planning criteria violations, and in some cases the data contradicts those claims.⁷⁷

Fourth, DTE argues that the subtransmission spending improves resilience to severe weather events.⁷⁸ While that may be true in theory, the actual impact of such large spending on storm resilience is minimal and indirect. AG-MN witness Stephens explained that while larger conductor and steel poles are less susceptible to storm damage, that is not a justification for such expensive projects – because wind and ice comprised just 1.3% of subtransmission equipment outages from 2019 to 2023.⁷⁹ DTE argues that 30% of subtransmission outages are weather-related, but the only way to get to that number is to add all tree events and one-quarter of equipment failures to storm damage.⁸⁰ But doing that begs the question of why tree trimming is not a more cost-effective strategy for tree-related subtransmission outages than replacing and upgrading entire subtransmission circuits. And DTE provides no support for the assumption that one-quarter of equipment failures are storm-caused.

⁷⁶ *Id.* at 71-72.

⁷⁷ *Id.* at 72-74.

⁷⁸ DTE Initial Brief, pp. 117-18.

⁷⁹ Stephens Direct, 6 TR 4017; Ex MEC-16.

⁸⁰ See DTE Initial Brief, p. 118; Deol Rebuttal, 5 TR 1251-1252.

Finally, DTE argues that it considers project alternatives during technical reviews during the engineering scope development phase of project planning.⁸¹ However, AG-MN witness Stephens explained that a cost-benefit evaluation should be done to determine whether an expensive upgrade is really necessary when back-up capacity is adequate for almost all hours in a year – and DTE does no benefit-cost analysis on subtransmission projects.⁸²

In sum, DTE did not support its large subtransmission expenditures with substantial evidence demonstrating they are reasonable, prudent, or cost-effective. Nothing in the Company's initial brief changes that conclusion.

H. MNSC Supports CEO's Proposal to Develop a Framework for Deployment of Non-Conventional Solutions.

CEO makes several recommendations to improve how DTE deploys non-traditional distribution solutions to address capacity and reliability challenges.⁸³ While DTE has several pilots and demonstration projects, it lacks a holistic framework to convert these into programs. MNSC supports CEO's recommendation that the Commission direct DTE to complete a framework for non-conventional solutions and discuss specific locational applications in the next grid plan.

⁸¹ DTE Initial Brief, p. 118.

⁸² Stephens Direct, 6 TR 4019; Ex MEC-18 (discovery responses MNSCDE 5.4a-c).

⁸³ CEO Initial Brief, pp. 19-21.

I. MNSC Supports Disallowances for the C&I Battery Storage Pilot.

DTE requests approval for the third time for its C&I Battery Storage Pilot.⁸⁴ Staff recommends the Commission disallow a combined \$2.6 million in the bridge and test years because the Company has been unsuccessful in finding a second participant.⁸⁵ MEIU further recommended disallowance for this spending.⁸⁶ MNSC supports these parties' positions and joins their requested disallowances. DTE has been attempting for years to identify a second participant for this pilot, to no avail. Ratepayers have no identifiable benefit resulting from the Company's investment. Nothing has changed since U-20836 and U-21297 that warrants a different conclusion in this case than in those. The pilot has no future and should be terminated without cost recovery from ratepayers.

J. MNSC Opposes Staff's Position on the Strategic Undergrounding Pilot.

MNSC addressed its opposition to the Company's proposed Strategic Undergrounding Pilot in its initial brief.⁸⁷ Staff filed no testimony on this issue but asserted in its initial brief that it supports these pilots.⁸⁸ Staff offers three reasons for its support:

1. Other utilities are successfully using undergrounding to improve their system resiliency.
2. There are customers and communities that are reaching out and asking the Company to underground utilities.

⁸⁴ DTE Initial Brief, pp. 171-73.

⁸⁵ Staff Initial Brief, pp. 47-51.

⁸⁶ MEIU Initial Brief, pp. 41-45.

⁸⁷ MNSC Initial Brief, pp. 183-85.

⁸⁸ Staff Initial Brief, pp. 194-95.

3. Staff believes that the knowledge that can come from the undergrounding pilots will be very valuable in making decisions regarding the reliability and safety of the electric distribution system in the future.

On the first point (other utilities are undergrounding), the only supporting evidence in the record is the bare assertion by Company witness Deol that “other utilities are using undergrounding to harden their system to be more resilient.”⁸⁹ Notably, Mr. Deol did not characterize other utilities’ success, nor the cost effectiveness of their efforts. The testimony provides no details at all – which utilities, where, at what cost and cost per mile, are there additional benefits or co-payers, or anything else. There is no evidence that undergrounding is cost-effective, and DTE’s own analysis confirmed its not.

On the second point, that customers and communities would like DTE ratepayers to fund a very expensive service does not make a highly un-economic activity reasonable and prudent. If customers and communities are willing to contribute resources to undergrounding, that may change the cost-effectiveness of a particular pilot. That is not the case here.

Finally, that learnings will be valuable in the future does not make the investment cost-effective. DTE already has many underground lines that can teach lessons more economically than the underground pilot proposes. Any pilot can be justified on the basis it will teach lessons. That is insufficient basis to prove the reasonableness and prudence of \$30 million for undergrounding in the bridge and test years.

⁸⁹ *Id.* at p. 194, citing Deol Rebuttal, 5 TR 1264.

VI. RETURN ON EQUITY - MNSC Opposes Staff's Proposal to Set ROE at 9.9%.

MNSC addressed the appropriate level for the Commission to approve ROE in its initial brief.⁹⁰ MNSC responds here in opposition to Staff's recommendation that the Commission approve ROE at 9.9%.⁹¹

Staff witness Ufolla began his ROE testimony with this summary explanation:⁹²

Staff recommends a return on equity of 9.90%, which is above the midpoint of Staff's 9.30% - 10.30% reasonable ROE range. To determine the fair return on equity, since DTE Electric is not a publicly traded company, a group of eighteen publicly traded electric utility companies forms a comparable proxy group for Staff's analysis. The proxy group's data is used in both Discounted Cash Flow (DCF) and Capital Asset Pricing Model (CAPM) analyses to determine a reasonable cost of equity. Additionally, a Risk Premium model and a review of electric ROE authorizations from other state jurisdictions from 2023-2024 are also utilized in this case. Staff's 9.90% recommendation considers the Company's currently authorized 9.90% and requested 10.50% ROE in the instant case.

Then Mr. Ufolla's testimony presents the results of the various methodological approaches to determining utility ROE, which identified a range of ROEs from 9.30% to 10.30%.⁹³ In his ROE Recommendation Summary, Mr. Ufolla notes other state commissions set ROEs at an average of 9.6% in 2023 and 9.66% in 2024.⁹⁴ The testimony presents this summary:⁹⁵

⁹⁰ MNSC Initial Brief, pp. 129-43.

⁹¹ Staff Initial Brief, pp. 67-71.

⁹² Ufolla Direct, 6 TR 5013.

⁹³ Ufolla Direct, 6 TR 5016-5025.

⁹⁴ Ufolla Direct, 6 TR 5024-5025.

⁹⁵ Ufolla Direct, 6 TR 5026.

Cost of Equity Model	ROE
Discounted Cash Flows	9.71% - 9.78%
CAPM	10.23% - 10.31%
Risk Premium A-Rated Bond	10.05%
Risk Premium Treasury Bonds	8.63%
Average Electric ROE Authorized 2023	9.60%
Average Electric ROE Authorized 2024	9.66%
Recommend Cost of Equity Range	9.30% - 10.30%
ROE used in Overall Cost of Capital	9.90%

The testimony concludes with this explanation:

Based on the results of the multiple analyses done, along with other factors such as credit metrics, Company requested 10.50% ROE, and currently approved 9.90% ROE, it is Staff's judgement that a reasonable range for DTE Electric's cost of equity to fall within is 9.30% - 10.30%. Within that range, Staff recommends a value of 9.90%, which is the midpoint of Staff's range, is a reasonable ROE for DTE Electric and is appropriate for this rate case.⁹⁶

MNSC recites this testimony to make the point that Staff presents no cogent explanation supporting its recommendation to set ROE at 9.90%. The testimony is contradictory – 9.90% is *not* midway, it is above the midway point in the range. If Staff supports the mid-way approach, then its recommended ROE is 9.80%, as it was in U-21291. If Staff supports a point above mid-way, then it should explain why, but did not.

Staff's analysis is further flawed by the fact that neither the top nor bottom end of Staff's ROE range are accurately identified or supported in the testimony. The top end of the resulting ROEs was 10.31% (the median CAPM result) and the low end was 8.63% (Risk Premium Treasury Bonds).⁹⁷ Using Staff's actual range of ROEs, the midpoint is 9.47%. ABATE explained that

⁹⁶ Ufolla Direct, 6 TR 5026.

⁹⁷ See Ex S-4 Sch D-5.

Staff's CAPM – the high-end of its range – is inflated as a result of using five years of historic prices and volatility from the pandemic.⁹⁸ Measuring betas more reasonably – without pandemic results – produced a CAPM midpoint of 9.47%. The range thus shifts to 8.63% to 10.05%, with a midpoint of 9.34%.

MNSC maintains that it would be unreasonable for the Commission to approve ROE at 9.90%, as Staff requests, because Staff's recommendation is unsupported and unexplained. Walmart notes that the average of 123 reported ROEs for IOUs since 2021 is 9.51% and the median is 9.50%.⁹⁹ Staff noted recent average ROEs at 9.6% and 9.66%.¹⁰⁰ in 2022 and 2023. Instead, the Commission should reduce the ROE below 9.90%, as recommended by the Attorney General, ABATE, and MNSC.

MNSC notes for completeness that FERC has re-affirmed that the Risk Premium model is not included in its ROE methodology for determining the justness and reasonableness of existing and proposed base ROEs.¹⁰¹ FERC initially eliminated the Risk Premium method in Opinion 569 because the model “defies general financial logic,” suffers circularity problems, and suffers other flaws, then reversed course in Opinion 569-A to include the Risk Premium model.¹⁰² The District of Columbia reversed Opinion 569-A and remanded for further explanation why FERC included Risk Premium after initially rejecting it.¹⁰³ On remand, FERC again rejected its use, noting there was no record evidence suggesting that investors use the Risk Premium model adopted in Opinion

⁹⁸ ABATE Initial Brief, pp. 38-39.

⁹⁹ Walmart Initial Brief, pp. 4-5.

¹⁰⁰ Staff Initial Brief, p. 71.

¹⁰¹ FERC Docket EL14-12-016, EL15-45-015, 189 FERC ¶ 61,036 (Oct. 17, 2024), at ¶ 23.

¹⁰² *Id.*; see also Opinion No. 569, 169 FERC ¶ 61,129 (Nov. 21, 2019); *MISO Transmission Owners v FERC*, 45 F4th 248 (D.C.Cir.2022).

¹⁰³ *MISO Transmission Owners*, 45 F4th at 264.

No. 569-A nor record evidence resolving the circularity concerns inherent in the Risk Premium model.¹⁰⁴

VII. OTHER REVENUE RELATED ITEMS

A. MNSC Supports the Attorney General Recommendation to Reduce Incentive Compensation.

Staff, the Attorney General, and ABATE all recommend reducing Incentive Compensation O&M expense.¹⁰⁵ The Commission has consistently found incentive compensation plans tied to company financial considerations should not be recovered from ratepayers.¹⁰⁶ The Attorney General in this case recommends disallowing \$49.895 million of the incentive compensation expense proposed by the Company.¹⁰⁷ The Attorney General's rationale is well-explained and supported by the record and consistent with the Commission orders in U-21297 and U-20836.¹⁰⁸ The Commission should adopt the Attorney General's position on this issue.

B. MNSC Replies to Staff's Opposition to Increasing the Low-Income Assistance (LIA) Credit and Other Energy Assistance Program Issues.

MNSC addressed concerns related to the unaffordability of DTE bills for a substantial portion of its customer base in its initial brief.¹⁰⁹ DAAO and CEO similarly urge the Commission to consider ways to address the well-documented affordability gap for DTE customers.¹¹⁰ MNSC

¹⁰⁴ 189 FERC ¶ 61,036 at ¶ 23.

¹⁰⁵ Staff Initial Brief, pp. 97-99; Attorney General Initial Brief, pp. 73-76; ABATE Initial Brief, pp. 44-47.

¹⁰⁶ Case No. U-21297, Dec. 1, 2023, Order, p. 238 (collecting cases).

¹⁰⁷ Attorney General Initial Brief, p. 74.

¹⁰⁸ Ex AG-51, pp. 1-2.

¹⁰⁹ MNSC Initial Brief, pp. 160-78.

¹¹⁰ DAAO Initial Brief, pp. 10-49; CEO Initial Brief, pp. 29-30.

generally concurs with their growing frustrations with the lack of perceptible progress to address this significant concern and supports all reasonable options to improve outcomes for DTE's vulnerable low-income customers. MNSC replies to Staff's arguments opposing changes to DTE's Low-Income Assistance (LIA) credit and other energy assistance programs.

1. *Reply to Staff's arguments opposing DTE's proposal to increase the LIA credit from \$40 to \$50.*

In response to DTE witness Jason Sparks's testimony that DTE's proposed increase to the LIA credit amount would not impact LIA program structure or the outcomes of the Energy Affordability and Accessibility Collaborative and its Affordability, Alignment, and Assistance (AAA) subcommittee, Staff says in its initial brief that Mr. Sparks "ignores the nuance that contributing more money to a program that partially subsidizes the Michigan Energy Assistance Program could cause issues in disentangling the programs if the EAAC or the Commission so recommend and could change outcomes or timelines for implementing changes to such programs."¹¹¹ This assertion is grounded in two unfounded assumptions: that the LIA program subsidizes the Michigan Energy Assistance Program (MEAP) and that a change in the LIA credit amount would complicate the implementation of EAAC/AAA recommendations. There is no evidence in the record to support either proposition.

First, nothing in the record supports the proposition that the LIA program subsidizes the MEAP. The only evidence indicating any relationship between the LIA program and the MEAP is Mr. Sparks's testimony that customers enrolled in DTE's MEAP-funded Low-Income Self-Sufficiency Program (LSP) may also receive the LIA credit and that allowing customers to

¹¹¹ Staff Initial Brief, pp. 180-181.

participate in both the LIA and LSP programs improves outcomes.¹¹² A customer's receipt of assistance through two distinct programs with different funding sources does not mean one program subsidizes the funding source of the other.

Second, even if the LIA credit did somehow subsidize the MEAP, Staff does not explain how a \$10 increase in the amount of the LIA credit could cause issues that would not already exist at the current LIA credit amount, and no evidence in the record supports the conclusion that it would. Mr. Sparks's testimony that it will take time for the Commission to review and act on any forthcoming EAAC/AAA recommendations and even more time for utilities to implement any resulting Commission-directed changes does not, as Staff asserts, demonstrate that Mr. Sparks "recognizes the potential" disentangling problem.¹¹³ By noting that Mr. Sparks did not "stat[e] *explicitly* that retiring LIA credit funding could take longer if more funding is contributed to it," Staff suggests that Mr. Sparks *implicitly* said so.¹¹⁴ MNSC cannot speak for Mr. Sparks, but it is hard to see how one could interpret his testimony that way.

The testimony Staff cites was rebuttal testimony in which Mr. Sparks was explaining why DTE disagrees with Staff's position that the Commission should maintain the status quo while it waits for the workgroup process to play out.¹¹⁵ After explaining how it will take considerable time for the workgroup process to result in actual change, Mr. Sparks stated: "In the meantime, there are low-income households struggling with bill affordability and would greatly benefit from the proposed increase in the immediate future."¹¹⁶ Far from corroborating speculation that an LIA

¹¹² Sparks Direct, 6 TR 2362-2363 (MEAP funds support LSP), 2372-2373 (DTE prioritizes LSP participants for receipt of LIA credit).

¹¹³ Staff Initial Brief, p. 181.

¹¹⁴ Staff Initial Brief, p. 181 (emphasis added).

¹¹⁵ Sparks Rebuttal, 6 TR 2386.

¹¹⁶ Sparks Rebuttal, 6 TR 2386.

credit increase could complicate the implementation of workgroup recommendations, Mr. Sparks's testimony supports the conclusion that the Commission should approve DTE's proposed LIA credit increase without further delay.

Staff's opposition to DTE's proposed LIA credit increase also appears inconsistent with its support for other changes to the LIA program. Staff criticizes DTE for distinguishing between an increase to the LIA credit amount and a change to the LIA program structure, arguing that it is better to take a "consistent" approach by changing neither of those things.¹¹⁷ But Staff does not apply its stated preference for consistency consistently. Staff endorses a significant change to the LIA program by recommending that the Commission approve DTE's proposal to make the LIA credit available for all residential rate schedules, transition current LIA participants to time of use rates under default residential rate schedule D1.11, and retire rate schedule D1.6.¹¹⁸ Staff's support for some changes to the LIA program but not others shows there is no compelling reason to delay all changes to low-income programs until the EAAC and its AAA subcommittee complete their work.

For the reasons discussed above and in MNSC's Initial Brief, the Commission should approve DTE's proposed LIA credit increase even if it adopts no other proposed changes to the LIA program.

2. *Reply to Staff's arguments against Mr. Colton's proposal to implement tiered LIA credits and uncap LIA program enrollment.*

Staff opposes Michigan Environmental Council (MEC) / Natural Resources Defense Council (NRDC) witness Roger Colton's recommended changes to DTE's energy assistance

¹¹⁷ Staff Initial Brief, pp. 186-187.

¹¹⁸ Staff Initial Brief, pp. 120-124.

programs primarily for reasons relating to Staff’s belief that no changes should be made until the EAAC and its AAA subcommittee have completed their work. MNSC has already addressed Staff’s arguments about the workgroup process in MNSC’s Initial Brief and in the preceding section of this Reply Brief. Staff, however, also argued in its Initial Brief that it is “imprudent to not estimate costs beforehand of proposals such as witness Colton’s new, tiered, LIA credit, even if costs would be reconciled” and that “[a]pproval of such unvetted proposals would be an imprudent use of ratepayer funds.”¹¹⁹ MNSC makes the following two points in reply.

First, Mr. Colton’s proposals are not unvetted. They are evidence-based methods for improving affordability, grounded in Mr. Colton’s decades of experience working on low-income utility issues, including helping design and evaluate energy assistance programs for other jurisdictions; and supported by data.¹²⁰ Second, Mr. Colton testified regarding the cost-effectiveness of his proposals, which will reduce arrears, collection costs, uncollectibles, and working capital expenses.¹²¹ In light of such evidence, it would not be imprudent to approve Mr. Colton’s proposals.

VIII. RATE DESIGN ISSUES

- A. **The Commission should approve Staff’s proposal to change the methods for allocating purchased power capacity costs from 4 CP 100-0-0 to 4 CP 75-0-25 and purchased power energy costs from 12 CP 10-0-90 to 12 CP 0-0-100.**

¹¹⁹ Staff Initial Brief, p. 186.

¹²⁰ Colton Direct, 6 TR 3890-3894 (discussing how states have moved away from flat discounts, the outcomes from the New Hampshire Electricity Assistance Program (EAP) he helped design and evaluate, and data showing how his proposed tiers will improve affordability for DTE customers); see also Ex NRD-1.

¹²¹ Colton Direct, 6 TR 3898-3900.

In its initial brief, Staff argues for changing the method of allocating DTE's purchased power capacity costs from 4 CP 100-0-0 less R10 to 4 CP 75-0-25.¹²² Citing the testimony of its witness Mark Pung, Staff correctly notes that production assets, including those that provide purchased power capacity, provide both energy and capacity.¹²³

In its initial brief, ABATE cites the rebuttal testimony of its witness Brian Andrews and argues that most of DTE's purchased power capacity costs are for renewable facilities.¹²⁴ ABATE asserts that Staff's recommendation would shift additional costs onto primary customers and is unreasonable.¹²⁵

In its initial brief, DTE states that it proposes to continue using the current allocator, but makes no substantive argument against Staff's proposed change.¹²⁶ DTE does note that if the method of allocating purchased power capacity costs is changed to align with the allocation of capacity costs for Company-owned generation, then the method of allocating purchased power energy costs should also be changed to align with the allocation of energy costs for owned generation.¹²⁷ Currently, purchased power energy is allocated 12 CP 0-0-100 less R10, while fuel costs for owned generation are allocated 12 CP 10-0-90.¹²⁸

Staff agrees with DTE that the methods for allocating purchased power energy costs and fuel costs for Company-owned generation should be aligned.¹²⁹ However, Staff recommends that

¹²² Staff Initial Brief, pp. 117-19.

¹²³ *Id.* at 117.

¹²⁴ ABATE Initial Brief, pp. 48-50.

¹²⁵ *Id.*

¹²⁶ DTE Initial Brief, pp. 303-04.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Staff Initial Brief, p. 119.

allocation of fuel costs for owned generation should be changed to 12 CP 0-0-100 – rather than changing the allocation of purchased power energy to 12 CP 10-0-90.¹³⁰

MNSC supports Staff’s position on both points. First, as to purchased power capacity costs, the governing statute provides in relevant part:

The commission shall ensure that the cost of providing service to each customer class is based on the allocation of production-related costs based on using the 75-0-25 method of cost allocation and transmission costs based on using the 100% demand method of cost allocation. The commission may modify this method if it determines that this method of cost allocation does not ensure that rates are equal to the cost of service.¹³¹

Purchased power capacity costs are plainly “production-related costs.” Therefore, they are to be allocated using the 75-0-25 method, unless the Commission determines that method does not ensure that rates are equal to the cost of service.

Further, in Consumers Energy’s last concluded electric rate case, U-21389, ABATE proposed that Consumers’ purchased capacity costs should be allocated 4 CP 100-0-0, rather than 4 CP 75-0-25. The Commission disagreed with ABATE and held that purchased capacity costs should be allocated using 4 CP 75-0-25:

The Commission has long recognized the “dual nature” of production assets: 75% demand and 25% total energy usage. The Commission agrees with MNSC that “[t]here is no reasonable dispute that purchased capacity costs are ‘production-related costs’” for the purposes of MCL 460.11(1). Further, as noted by the Staff, “ABATE fails to account for all causative elements associated with non-variable production costs.” The Staff argues that these costs should not be allocated the same as demand costs. The Commission agrees. In addition, the Staff aptly points out that “[t]he principle that a portion of non-variable power supply costs should be allocated

¹³⁰ *Id.*

¹³¹ MCL 460.11(1).

based on total energy usage . . . does not change whether the Company is generating the capacity itself or purchasing the capacity through a [PPA].”¹³²

MNSC also agrees with Staff that energy costs and fuel costs should both be allocated on energy. As Staff notes, both energy and fuel costs are directly energy-related; and Consumers allocates both purchased power energy and fuel costs using 100% energy allocators.¹³³

B. The Commission should approve DTE’s proposed investments in the Charging Forward Program and Transportation Electrification Plan, while rejecting the disallowances proposed by Staff and the Attorney General’s office and denying DTE’s proposal to end its Contribution In Aid of Construction waiver.

For the reasons discussed in testimony of witness Douglas Jester and our Initial Brief, MNSC requests the Commission approve DTE’s proposed investments in charging infrastructure through its Charging Forward Program and Transportation Electrification Plan, with minor modifications.¹³⁴ MNSC addresses here two issues raised in the parties’ Initial Briefs, and respectfully asks the Commission to: (1) reject the disallowances sought by staff and the Attorney General’s office, which are based on limited, anecdotal evidence of a supposed decline in the electric vehicle (“EV”) market, and are countered by DTE’s robust EV forecast that is specific to its service territory; and (2) deny DTE’s proposal to end its current practice of waiving Contribution In Aid of Construction (“CIAC”) costs for necessary grid upgrades for residential and commercial customers. Ending the CIAC waiver would unnecessarily undermine DTE’s aim

¹³² Case No. U-21389, March 1, 2024, Order, pp. 235-36 (citations omitted).

¹³³ Staff Initial Brief, p. 119.

¹³⁴ MNSC Initial Brief, pp. 80-94; Jester Rebuttal and Direct, 6 TR-922, 1930-1988, 2000-2003, 2012, 2024. MNSC also urged the Commission to not endorse DTE’s unduly restricted benefit-cost analysis methodology, to impose specific data reporting obligations that will allow DTE to better integrate renewables and EV charging in future proposals, and to instruct DTE to prioritize NEVI grant recipients in the on-route DCFC charging portion of its Transportation Electrification Plan. All arguments against these additional points were previously addressed in MNSC’s Initial Brief and thus will not be repeated here.

of “enhac[ing] the state’s charging network and provid[ing] customers beneficial pricing options.”¹³⁵ Both the investments proposed by DTE and MNSC’s proposal that the Commission direct DTE to retain the existing CIAC waiver support DTE’s goals of “support[ing] and accelerat[ing] EV adoption by facilitating charger deployment while ensuring that the portfolio maintains affordability benefits” and “promot[ing] equity by focusing on low-income customers and disadvantaged communities.”¹³⁶

1. The Commission should reject the disallowances sought by Staff and the Attorney General.

In its Initial Brief, based on the testimony of Staff Witness Alan Freeman and a purported slow-down in EV demand, Staff request the Commission disallow \$8 million in investments for DTE’s business and efleet charger rebates and \$1 million in charger rebates for low-income single-family homes.¹³⁷ Based on similar theories in the testimony of its Witness Sebastian Coppola, the Attorney General asks the Commission to disallow roughly \$13 million in the EV Charging Forward program, reducing utility make-ready investments by approximately 45% of the proposed \$30.68 million investment in 2024 and 2025.¹³⁸ The Commission should reject each of the proposed disallowances because DTE’s proposal are based on concrete data, detailed forecasts of EV growth in DTE’s service territory, the costs of the necessary EV charging infrastructure needed to adequately support that growth, and the overall ratepayer benefits of DTE’s Transportation Electrification Plan investments.¹³⁹

¹³⁵ DTE Witness Bennett Direct, 6 TR 1931.

¹³⁶ Bennett Direct, 6 TR 1918-2018, 1932.

¹³⁷ Staff Initial Brief, pp. 12-13, Freeman 6 TR 5087.

¹³⁸ Attorney General Initial Brief, pp. 41, 42, n.105.

¹³⁹ DTE Initial Brief, pp. 282-83, Bennett Direct and Rebuttal, 6 TR 1922-2024. Accord, MNSC Initial Brief, pp. 80-87.

Neither Staff nor the Attorney General offer any evidence that DTE’s forecast of EV growth in its service territory through 2028 is incorrect. In its Initial Brief, Staff cites Witness Freeman’s testimony (at 6 TR 5087), notes “evidence of slowed approval and installation of chargers” in the commercial segment, and states that Staff would prefer to see “proof of program effectiveness” prior to Commission approval of DTE’s investments in chargers for low-income single-family residences.¹⁴⁰ But neither Staff’s Initial Brief nor Witness Freeman offer any specific evidence to rebut DTE’s detailed EV adoption forecasts, and scaling back utility incentives for low-income communities runs the risk of becoming a self-fulfilling prophecy, resulting in a slower pace of EV adoption in communities that need utility support the most.

And while the Attorney General calls DTE’s forecasts “unreliable and unverified,” it offers zero specifics as to what “rigorous, supported data” it would like to see that DTE has not presented.¹⁴¹ As an initial matter, since forecasts are forward-looking projections, those will always be “unverified” in that they predict future markets that have not yet occurred. Second, there is ample evidence presented in this matter by DTE to support its EV adoption forecast, including recent data demonstrating that its near-term forecast is matching EV adoption to date. Through the first five months of 2024, statewide “year-to-date EV sales experienced their highest level in Michigan,” and EV adoption in DTE’s service territory is “on track with the Company’s projection that over 22,000” new EVs will be registered in its service territory in 2024.¹⁴² Far

¹⁴⁰ Staff Initial Brief, pp. 12-13.

¹⁴¹ Attorney General Initial Brief, pp. 23, 41.

¹⁴² DTE Initial Brief, p. 283.

from being “unreliable,” as the Attorney General asserts,¹⁴³ DTE’s forecasts to date “reflect the realized pace of EV adoption.”¹⁴⁴

Unlike the disallowances proposed by Staff and the Attorney General, which are untethered to any specific EV forecast they think will better predict EV adoption in DTE’s service territory, DTE’s proposed investments are based on a detailed analysis that accounts for the pace of current EV registrations, a survey of national forecasts, and a reasonable methodology scaling those forecasts to statewide and utility service territory levels. The fact that DTE’s 2024 EV adoption forecast matches 2024 EV registration data so far makes sense – these are detailed forecasts, not speculative guesses. DTE developed its short-term EV adoption forecasts for 2024 and 2025 “based on EV registrations in DTE Electric service territory from 2018 through 2023.”¹⁴⁵ The Attorney General, by contrast, offers no explanation as to how it arrived at its proposal to reduce make-ready investments by 45% in 2024 and 2025.¹⁴⁶ And while the Attorney General references the Energy Information Administration’s national EV sales forecast through 2030,¹⁴⁷ DTE’s long-term forecasts are not “unsupported” – in fact, DTE relied on six national forecasts, including the Energy Information Administration forecast cited by the Attorney General.¹⁴⁸ DTE used those national forecasts to predict EV growth in Michigan, factoring in “a marginally lower forecast” based on Michigan’s anticipated sales rate being below the national rate for the years covered, and then converted that statewide forecast to DTE’s service territory based on the percentage of new

¹⁴³ Attorney General Initial Brief, p. 23.

¹⁴⁴ DTE Initial Brief, p. 283

¹⁴⁵ Bennett Direct, 6 TR 1941.

¹⁴⁶ Attorney General Initial Brief, p. 42 n.105.

¹⁴⁷ Attorney General Initial Brief, p. 23.

¹⁴⁸ Bennett Direct, 6 TR 1941, n. 1 (citing forecasts from Energy Information Administration, Bloomberg New Energy Finance, Goldman Sachs, Electric Power Research Institute, International Council on Clean Transportation, and Boston Consulting).

EVs registered in DTE's service territory compared to the total number of EVs registered in the state.¹⁴⁹ DTE then combined that service-territory specific EV adoption forecast with an analysis of the number and type of chargers needed to support that growth, the cost of each type of charger, and the percentage of the need the utility would meet, based on the market segment served (such as low-income single family home, low-income multi-unit dwelling, on route DCFC, etc.).¹⁵⁰

To the extent there is more data that Staff or the Attorney General would like to see before the Commission approves DTE's proposed investments, they have identified none in either testimony or Initial Briefs. Even if the Commission were to accept those positions, which it should not, it would have to guess at what specific information it should instruct DTE to return with in order to justify proposed investments in a later case. The investments DTE proposes to make here are well supported by evidence in the record, promote the goals of DTE's Charging Forward Program and its Transportation Electrification Plan, and are widely supported by other stakeholders.¹⁵¹ For these reasons, the Commission should reject the disallowances for EV infrastructure investments sought by Staff and the Attorney General.

2. *The Commission should reject DTE's proposal to eliminate the Contribution in Aid of Construction ("CIAC") costs waiver.*

In testimony and in its Initial Brief, MNSC explained why eliminating DTE's current policy of waiving CIAC costs for EV charging would lead to inequitable treatment of similarly situated customers and present an unwarranted barrier to EV adoption.¹⁵² In its Initial Brief, DTE discussed the CIAC waiver for EV charging in a single paragraph and did not address Sierra Club's

¹⁴⁹ Bennett Direct, 6 TR 1941-1942.

¹⁵⁰ Bennett Direct, 6 TR 1937-1947, 1955.

¹⁵¹ MEIU Initial Brief, pp. 29-31; EVGo Initial Brief, pp. 21-25; Electrify America Initial Brief, p. 1; CEO, Initial Brief, pp. 31-33.

¹⁵² MNSC Initial Brief, pp. 88-89; Jester Direct, 6 TR 3804.

testimony or briefing.¹⁵³ As it did in the testimony of Witness Bennett that MNSC addressed in its initial brief, DTE maintains that the waiver “was initially designed to stimulate interest and growth in EV adoption,” and that eliminating the CIAC waiver “promotes fairness and equity, ensuring all customers contribute to the infrastructure they use, while keeping rates affordable for all customers.”¹⁵⁴ But DTE never addresses the inequity presented in MNSC Witness Jester’s testimony or our Initial Brief, which explain why forcing some utility customers to pay CIAC costs when installing EV charging equipment but not others, based on grid conditions wholly outside of their control, is inequitable.¹⁵⁵

That potential inequity is particularly true where EV adoption is expected to be widespread, making residential EV charging an everyday part of many customers’ electricity usage. It makes little policy sense to impose CIAC costs on some residential customers but not others based only on where they happen to live and when they decide to purchase an EV. As MEIU explained in its Initial Brief, in a scenario with robust EV adoption, it is a reasonable policy choice to recognize that costs of grid upgrades incurred by EV charging needs are “ordinary costs of service rather than unique costs driven by unique customer loads.”¹⁵⁶ MEIU ultimately asks the Commission to waive CIAC costs for residential and public L2 chargers, and for public DCFC charging, allowing that private DCFC loads, particularly for private fleets, may be so large that they should be treated as distinct from the comparatively minor needs of L2 charges.¹⁵⁷ Staff makes a similar distinction, asking the Commission to adopt “limits for CIAC waiver of residential charging” and calling for

¹⁵³ DTE Initial Brief, p. 289. DTE instead addressed arguments raised by Electrify America and MEIU.

¹⁵⁴ DTE Initial Brief, p. 289.

¹⁵⁵ MNSC Initial Brief, p. 88.

¹⁵⁶ MEIU Initial Brief, p. 33.

¹⁵⁷ MEIU Initial Brief, pp. 33-34.

“further investigat[ion]” of limits on commercial charging CIAC waivers.¹⁵⁸ DTE does not address Staff’s arguments or testimony on this point and does not address the distinction between CIAC waivers for residential (and other L2) charging and the comparatively larger upgrades necessary for certain DCFC loads. Based on equitable principles and the discussion above, the Commission should reject DTE’s broad-brush proposal to eliminate its existing CIAC waiver policy for all EV customers.

IX. OTHER ISSUES

A. MNSC Supports CEO and DAAO Positions Regarding Improvements to Address Equity and Energy Justice.

CEO urges the Commission to reinforce past rate case orders from this Commission and others recognizing the importance of equity and environmental justice considerations in utility planning.¹⁵⁹ DAAO also urges action to improve infrastructure equity analysis to support more equitable investment planning.¹⁶⁰ CEO presents recommendations to improve mapping to identify geographic areas with high concentrations of vulnerable populations, which should inform investment and program planning. CEO also urged DTE and the Commission to find the proper forum to integrate regression analyses into Company planning. DAAO identifies shortcomings in the Company’s reliance on the MI EJScreen tool and recommends refinement to ensure grid investments accurately align with targeted vulnerable communities. DAAO recommends a regression analysis and consider demographic changes over time to improve the Company’s approach to environmental justice. DAAO also specifically requests the Commission reduce

¹⁵⁸ Staff Initial Brief, p. 134.

¹⁵⁹ CEO Initial Brief, pp. 22-29.

¹⁶⁰ DAAO Initial Brief, pp. 49-56.

DTE's CODI investment plan until DTE supports the investment and its equity claims with a proper equity analysis. MNSC supports these recommendations.

B. MNSC Supports the Attorney General's Unrebutted Recommendation to Disallow Corporate Jet Travel Costs for the reasons stated in its Initial Brief.¹⁶¹

C. MNSC Disagrees with ABATE on the Reasonableness of a One-Year IRM Extension.

MNSC explained in initial brief that DTE's proposed expansion and extension of the Infrastructure Recovery Mechanism (IRM) is overreaching, was hastily thrown together, and is not supported by substantial evidence.¹⁶² MNSC's initial brief anticipated DTE's arguments regarding the IRM;¹⁶³ and MNSC stands on its initial brief in reply to DTE.

ABATE's initial brief criticizes the IRM as well, but offers tentative support for a possible 1-year extension.¹⁶⁴ MNSC agrees with ABATE's criticisms, but MNSC disagrees that the record supports a 1-year extension. ABATE correctly notes that it has not even been a year since the Commission approved the IRM – with that approval “hedged by the Commission's prudence in awaiting further insights from additional proceedings to better inform the potential continuation of the IRM, and yet DTE has requested approval to dramatically expand this mechanism.”¹⁶⁵ MNSC also agrees with ABATE that “the Company's distribution IRM term should continue to be limited to no longer than truly necessary, as the Commission just concluded in December, until potential

¹⁶¹ Attorney General Initial Brief, pp. 72-73.

¹⁶² MNSC Initial Brief, pp. 198-214.

¹⁶³ DTE Initial Brief, pp. 265-73.

¹⁶⁴ ABATE Initial Brief, pp. 50-52.

¹⁶⁵ *Id.* at 51.

insights from Case Nos. U-21400 and U-21305 can inform potential continuation of the mechanism.”¹⁶⁶

MNSC’s sole points of departure with ABATE are whether “DTE’s concern with respect to a temporary stopping and starting of its distribution IRM, and to potentially reduce the likelihood DTE will file a rate case in 2025 for the sole purpose of adding a Year 3 to its distribution IRM,”¹⁶⁷ justify granting the 1-year extension. They do not justify an extension, for a few reasons.

First, DTE’s concern with stopping and starting the IRM is not so important that it overrides the Commission’s expressed wish in U-21297 to have conclusions from the distribution audit and PBR docket to inform future decisions on the IRM.¹⁶⁸ As Staff witness Nicholas Evans noted, “it is far better to have DTE Electric review the audit report later this year and next year and then make adjustments, where appropriate, to potential 2026 IRM spending and programs, rather than risk being locked into inefficient spending for 2026.”¹⁶⁹ Mr. Evans also explained that stopping and re-starting the IRM could be accomplished, and that “from a process standpoint, a gap could be accommodated.”¹⁷⁰ Finally, MNSC’s initial brief explained that DTE’s expressed concerns about “inefficiencies” from stopping and re-starting the IRM were a pretext for the Company’s true goal of establishing the IRM as “business as usual” and the “new normal.”¹⁷¹

Second, while MNSC shares ABATE’s hope to potentially reduce the likelihood DTE will file a rate case in 2025, there is no reason to believe such an outcome would come to pass if the

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 52.

¹⁶⁸ See MNSC Initial Brief, p. 202.

¹⁶⁹ Evans Direct, 6 TR 5235-5236.

¹⁷⁰ *Id.* at 5236-5237.

¹⁷¹ See MNSC Initial Brief, pp. 203 and 211; Ex MEC-25, discovery response MNSCDE-18.2a, p. 13.

Commission did grant a 1-year extension of the IRM. DTE has not committed to any rate case stay-out if the Commission approves its requested IRM extension. Not only that, DTE witness Neal Foley said there is *no* level of IRM extension and expansion that would ensure a stay-out:

Q. ... Is there a set of total IRM spends that would enable the Company to stay out of rate cases?

A. Not that I know of.¹⁷²

Third, the fact that a recommendation is less costly or expansive than the utility's proposal is not sufficient – the lesser recommendation must also be supported by substantial evidence. In the Cook nuclear plant life extension CON case, *In re Application of Indiana Michigan Power Co.*, the Court of Appeals reversed the Commission's inclusion of a 10% management reserve in I&M's approved costs.¹⁷³ Before doing that, the Court rejected I&M's proposed reserve of 20%, finding that the company "did not establish that management reserve was a reasonable cost by substantial evidence on the whole record."¹⁷⁴ Then the Court held that "[c]oextensively, there was no factual basis for the PSC's determination that 10% of estimated costs represented a reasonable management reserve."¹⁷⁵ The Court explained that "the PSC expressly found that the reasonableness of a 20% management reserve was not supported by the record;" and so "[i]t remains unclear why the PSC chose 10% as opposed to 1% or 15%."¹⁷⁶ Since there was not substantial evidence to support the figure the Commission chose, the Court reversed the approval of the 10% reserve.

¹⁷² Foley Cross, 2 TR 252.

¹⁷³ *In re Application of Indiana Michigan Power Co.*, 307 Mich. App. 272; 859 N.W.2d 253 (2014), vacated in part on other grounds and appeal denied, 498 Mich. 881; 869 N.W.2d 277 (2015).

¹⁷⁴ 307 Mich. App. 272 at 296.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 297.

Likewise here, the fact that a 1-year extension is less than what DTE requested does not demonstrate that it is reasonable without substantial evidence to support the 1-year extension on its own. DTE did not introduce any such evidence. Further, ABATE witness James Dauphinais did not *support* the 1-year extension in his testimony – he only stated that he did not *oppose* such an extension.¹⁷⁷ As noted in MNSC’s initial brief, MNSC and many other parties do oppose it – including Staff and the Attorney General.

For these reasons, MNSC reiterate that the Commission should disapprove DTE’s proposed extension and expansion of the IRM, and should not approve ABATE’s suggestion of a 1-year extension, either.

X. CONCLUSION

For the reasons discussed above, MNSC respectfully reiterate the requests for relief in our initial brief, as well as addressed above.

¹⁷⁷ Dauphinais Direct, 6 TR 3382.

Respectfully Submitted,

Dated: 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** 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

Proof of Service

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

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

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