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October 23, 2024

**VIA ELECTRONIC CASE FILING**

Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, Michigan 48917

**Re: Case No. U-21534 – 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.**

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Reply Brief** and **Proof of Service** in the above-referenced matter.

Sincerely,

**CLARK HILL PLC**

**Stephen A.**

**Campbell**

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the Application of	)	
<b>DTE ELECTRIC COMPANY</b>	)	Case No. U-21534
for authority to increase its rates, amend	)	
its rate schedules and rules governing the	)	ALJ Sally L. Wallace
distribution and supply of electric energy, and	)	
for miscellaneous accounting authority.	)	
_____	)	

**REPLY BRIEF OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, CLARK HILL PLC, files its Reply Brief in this proceeding initiated by DTE Electric Company (“DTE” or the “Company”) before the Michigan Public Service Commission (“Commission”) in accordance with the schedule established by the presiding Administrative Law Judge (“ALJ”).

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## I. INTRODUCTION

Various parties to this proceeding made proposals which were unreasonable and would not result in rates that are just and reasonable or accurately reflect cost-of-service rates. These proposals include the following: (i) the Company's request to base its revenue requirement on projected future costs; (ii) cost recovery for numerous proposed capital expenditures which was inadequately supported; (iii) an excessive return on equity ("ROE") which is inconsistent with the Company's risk; (iv) cost recovery associated with excessive and unreasonable inflation factors as well as employee incentive compensation unrelated to the service customers receive; (v) distribution system rate design and purchased capacity cost allocation recommendations which do not reflect how the Company actually incurs costs; (vi) an extension of the Company's infrastructure recovery mechanism ("IRM") which is inconsistent with the Commission's most recent decision on this issue and unreasonably inflates an untested cost recovery mechanism; and (vii) the use of nonquantifiable factors when conducting a benefit cost analysis ("BCA") of the Company's transportation electrification plan ("TEP"). These proposals are inconsistent with the Commission's responsible to set just and reasonable rates. As such the Commission should reject the same and instead adopt the recommendations set out below.

## II. ARGUMENT

### A. **Test Year – The Commission is not required to base its analysis on the Company's use of projected costs and should not do so in this case.**

The Company repeatedly twisted MCL 460.6a(1)'s permissive provision that a utility "may use projected costs and revenues for a future consecutive 12-month period in developing its requested rates and charges" into an argument that the Commission is not permitted to analyze a requested revenue increase on any other basis. (DTE Initial Br at 16-19.) The Company's arguments on this point are inconsistent with the language of the statute and years of Commission

precedence, the foundation of which is that utility rates must be just and reasonable. As such DTE's arguments on this point should be rejected.

As the Commission explained in the Company's last rate case when discussing the Proposal for Decision developed by the presiding ALJ, "using a historical test year as a basis for a future test year with adjustments for known and measurable changes is an approach used by the Commission for several years" and "the Commission has made clear that it is not obligated to accept DTE Electric's projections if it finds them to be unsupported or finds that the money is not likely to be spent as projected." *In the Matter of the Application of DTE Electric Co*, order of the Public Service Commission, entered December 1, 2023 (Case No. U-21297), p 9. The Company "bears the burden of proof to show by a preponderance of the evidence that it will spend the funds as it projects, and if it fails to do so, the Commission may ignore the projection or substitute an alternative it finds to be reasonable and appropriate, such as an historical average." *Id.* In other words, the Company's claim that the Commission is apparently not permitted to "limit or eliminate projected test years" without the Legislature re-writing the statute is inconsistent with the use of "may" in MCL 460.6a(1) and the Commission's continued (and in DTE's case, most recent) discussion of this issue.

Further, despite ABATE's argument that basing the Company's revenue requirement on its historic costs is simply more reasonable here, DTE casts ABATE's recommendation as one meant "to effectively preclude the use of projections" and claims that projected future expenses are, in fact, "known and measurable changes" to the historic test year because they are "likely to occur" and "projected with reasonable accuracy." (DTE Initial Br at 17-19.) In addition to the voluminous record evidence demonstrating the lack of sufficient evidentiary support for DTE's projected costs (see e.g., Attorney General Br at 1; Staff Br at 3), as well as its history of requesting

revenue increases that far exceed its actual expenses (see ABATE Initial Br at 3-9), the Company's attempt to turn antonyms ("known" and "likely"; "measurable" and "projected") into synonyms demonstrates its lack of credibility on this issue. As explained in the record, and is evident from a reasonable appreciation for the obvious, "known and measurable" changes are "changes to costs that are inescapable and precisely identifiable in amount and timing," not potential costs the Company posits it may incur a year from now. (Dauphinais 6 Tr 3373-74.) The Company's attempt to bend reality and shroud its consistent historic test year sufficiencies (\$80.5 million in this case) such that its hypothetical future expenses should be considered "inescapable and precisely identifiable in amount and timing" should be rejected.

Indeed, despite this clear evidence of routine historic test year sufficiencies clashing with exorbitant projected test year deficiencies, with no apparent irony the Company claimed that there is "no merit in ABATE's assertions that the use of projected test years 'has caused and continues to cause customers to experience rate increases sooner because rates are being based on future projections,' and 'has resulted in higher rates for customers than if rates were based on the historical test year.'" (DTE Initial Br at 18-19.) In the event DTE apparently overlooked ABATE witness James Dauphinais' Table JRD-1 (6 Tr 3371) the Commission may find it below:

<b>TABLE JRD-1</b>				
<b>Historical Test Year and Projected Test Year</b>				
<b>Rate Sufficiency / (Deficiency)</b>				
<b><u>Case</u></b>	<b><u>Year Filed</u></b>	<b><u>Historical Test Year Sufficiency / (Deficiency)</u></b>	<b><u>Projected Test Year Sufficiency / (Deficiency)</u></b>	<b><u>Difference Between Historical and Projected</u></b>
U-18014	2016	\$33,404,000	(\$343,972,000)	(\$377,376,000)
U-18255	2017	(\$50,009,000)	(\$230,942,000)	(\$180,933,000)
U-20162	2018	(\$18,335,000)	(\$328,440,000)	(\$310,105,000)
U-20561	2019	(\$111,501,000)	(\$350,688,000)	(\$239,187,000)
U-20836	2022	\$111,696,000	(\$388,222,000)	(\$499,918,000)
U-21297	2023	\$93,577,000	(\$618,536,000)	(\$712,113,000)
U-21534	<u>2024</u>	<u>\$80,492,000</u>	<u>(\$456,434,000)</u>	<u>(\$536,926,000)</u>
<b>Total</b>		<b>\$139,324,000</b>	<b>(\$2,717,234,000)</b>	<b>(\$2,856,558,000)</b>
<b>Sources:</b>				
Case No. U-18014, Exhibit A-1 and Exhibit A-8, Schedule A1				
Case No. U-18255, Exhibit A-1 and Exhibit A-8, Schedule A1				
Case No. U-20162, Exhibit A-1 and Exhibit A-11, Schedule A1				
Case No. U-20561, Exhibit A-1 and Exhibit A-11, Schedule A1				
Case No. U-20836, Exhibit A-1 and Exhibit A-11, Schedule A1				
Case No. U-21297, Exhibit A-1 and Exhibit A-11, Schedule A1				
Case No. U-21534, Exhibit A-1 and Exhibit A-11, Schedule A1				

To the extent this information does not speak for itself, it quite clearly sets out how projected test years have caused and continue to cause customers to experience rate increases sooner because rates are being based on future projections and have resulted in higher rates for customers than if rates were based on the historical test year. These figures also demonstrate the degree to which the Company's claims regarding timely recovery of capital investment and operating expenses ring hollow. (DTE Initial Br at 18-19.) Since 2016 DTE has been routinely overcompensated for its expenses by tens of millions of dollars. That is money Michigan ratepayers should never have been charged and can never get back. As such the Commission

should put an end to the Company's continued excessive revenue increases based on projected expenses it never incurs.

The Company's use of a projected test year continues to represent one of the most prominent flaws and significant sources of excessive customer rates in Michigan utility ratemaking. This is plainly evidenced by the record in this case, which demonstrates DTE has again accumulated a significant historic test year revenue sufficiency (\$80.5 million) in one hand while holding out and requesting an additional nearly half a billion dollars with the other. This practice is patently unreasonable and should be rejected here.

**B. Rate Base - Cost recovery for numerous proposed capital expenditures was not adequately supported and should be rejected.**

**1. Cost recovery for numerous proposed capital expenditures are inadequately supported.**

**a. Trenton Channel Sea Wall.**

The Company objected to ABATE's recommendation that the Commission reject cost recovery of \$10.934 million associated with this project. (DTE Initial Br at 33.) The Company pointed to an "appropriations request for \$1.1 million, which supports design and engineering work" and claimed it "has spent over \$500,000 to support design and engineering work so far, and the full project is progressing as planned for a scheduled completion in 2025." (*Id.*) As explained in ABATE's Initial Brief, the Company's appropriations request clearly does not support the level of expenditure for which the Company sought recovery here. (ABATE Initial Br at 9-10.) While the Company asserted that an "appropriations request that includes the full project budget will be executed once the design and engineering is complete," this explanation does not justify recovery for costs that have not, at this time, even been the subject of an actual appropriations request. (Guillaumin 6 Tr 1744.) As such DTE has not met its burden to demonstrate cost recovery is reasonable or prudent at this time and the Commission should reject the same.

**b. River Rouge Decommissioning (Major).**

The Company requested cost recovery for this project as supported by a Capital Appropriation Request Form (“CARF”) which shows expenditures of \$8.4 million in 2024. (DTE Initial Br at 31-32.) In response to ABATE’s objection that 2024 expenditures indicated on Exhibit A-12, Schedule B5.1, page 2, line 25, were only \$4.4 million, DTE claimed a “CARF retiming form (Exhibit AB-2, p 3) shows total authorized funding of \$94.9 million for the project, including \$48.3 million of projected expenditures in 2025.” (*Id.*) The Company’s testimony does not support that the projected 2025 expenditures are accurate or likely to be incurred. As such the Commission should only approve cost recovery of \$8.4 million as the Company has not met its burden to demonstrate the additional requested cost recovery is reasonable or prudent at this time.

**c. Black Start Projects.**

The Company requested cost recovery of 2023-2025 capital expenditures for five North American Reliability Corporation (“NERC”) black start projects. (DTE Initial Br at 29-30.) As the Company has not provided adequate evidentiary support for cost recovery being reasonable or prudent the Commission should deny the Company’s request.

In response to ABATE’s concerns that parties could not independently review the projects, the Company essentially simply pointed to the Commission’s order in DTE’s previous case where it determined the information provided there was sufficient to justify recovery in light of the projects’ purported “importance . . . in maintaining grid security.” (*Id.*) Similarly, ITC claimed that these projects are important, and that the Commission must support the confidentiality of information pertaining to these projects. (ITC Initial Br at 13, 16-18.) The Company and ITC’s assertions regarding project importance cannot override DTE’s burden to support its projected expenditures with adequate evidence.

The Commission’s decisions must be based on competent, material, and substantial evidence and the “Commission’s expectation is that the parties will fully document the basis for their test year projections by offering into evidence detailed supporting explanations and underlying assumptions rooted in expected business, financial, and economic circumstances,” and “[r]ate applications may not rely on undocumented estimates of future ratemaking expenses and revenue criteria.” *In the Matter of the Application of DTE Electric Co*, order of the Public Service Commission, entered May 8, 2020 (Case No. U-20561), p 13; Const 1963, art 6 § 28. The Company’s approach to black start project recovery does not meet these standards. Specifically, while the Company supported this request with several Project Management and Planning (“PMP”) documents, the information describing the scope and timelines for the projects was redacted and the PMPs indicate they have been revised and that project schedules have changed. (See ABATE Initial Br at 10-12.) Due to the redactions it is not possible to determine what revisions have been made, the reason for the revisions, or whether schedule changes affect the likelihood of these projects being completed as planned during the bridge period or projected test year. (*Id.*) The Company’s testimony similarly provides limited information about the status of these projects, execution of project tasks, and timelines in 2023 through 2025. (*Id.*)

Given this lack of supporting detail the Company has failed to meet its burden to demonstrate cost recovery is reasonable or prudent at this time. The Commission should therefore reject cost recovery.

**d. Blue Water Energy Center Conference Room Building.**

The Company requested \$3.3 million related to a Blue Water Energy Center (“BWEC”) Conference Room Building. (DTE Initial Br at 26-27.) As these costs are not reasonable or prudent the Commission should reject cost recovery here.

The Company claimed that “the project is needed for additional workspaces during routine and major maintenance activities because a large number of support personnel are onsite during these times.” (*Id.*) The Company also acknowledged that “[a]ll Company power plants have either constructed or repurposed available space over the years to create large meeting spaces to accommodate workforce surges during routine and major outages or construction activities,” and that the “building was not required during initial construction of the plant because short-term rental trailers were utilized by the project construction firm (Kiewit) for hosting and onboarding the large workforce during project construction.” (*Id.*) In terms of utilizing this same approach going forward, the Company claimed that “the conference room project will save the Company over \$10 million over the life of the plant as compared to purchasing and renting trailers to support plant needs.” (*Id.*) These referenced cost assumptions (e.g., trailer rental price, labor cost, O&M, cost escalation assumptions, etc.) used in the analysis, however, do not reasonably support the Company’s claims. Specifically, these cost assumptions are simply inputs into an Excel model without supporting discussion or documentation. (See ABATE Initial Br at 12-13.) Further, it’s unclear whether the analysis used an apples-to-apples comparison of all the costs associated with a conference room compared with renting trailers or other alternatives.

The Company has therefore not met its burden to demonstrate cost recovery for this project is reasonable or prudent. As such the Commission should reject the same.

**2. Cost recovery for numerous proposed distribution capital expenditures is not adequately supported.**

**a. Emergent replacements.**

The Company objected to excluding 2021 from the average used to project its test year costs for this issue, characterizing this recommendation as a “selective exclusion” which “undermines the intent of using a five-year average to account for variability in weather.” (DTE

Initial Br at 58.) Given the extraordinarily anomalous characteristics of the Company's 2021 expenditures for this cost category, however, the Commission should reject the use of this year in setting future test year costs.

The Company acknowledged that "the storms in the summer of 2021 were historic" but claimed that this "does not mean that severe weather events will not occur again, as reflected for example by the Company experiencing the worst ice storm in its history plus six summer tornados in 2023." (*Id.*; see Staff Initial Br at 144-45) This claim both dramatically understates the events and costs of 2021 and overstates those of 2023. As explained in ABATE's Initial Brief, the storm-related emergent replacements expenditures in 2021 were more than double the Company's expenditures for 2018 through 2021 and nearly double the Company's expenditures in 2022. (ABATE Initial Br at 14-15.) Further, in 2022 the number of storm days was lower than DTE projected, and there was only one catastrophic storm, which was also less than the Company's internal forecast. (*Id.*) Regarding 2023, which the Company characterized as including "the worst ice storm" in DTE history "plus six summer tornados" the Company's emergent replacements capital expenditures were still only \$282 million, compared with \$395.3 million in 2021. (*Id.*) In other words, the Company's only other example of severe weather events still amounted to over a hundred million dollars less than the 2021 outlier.

As such the Commission should reject the use of 2021 data in projecting the Company's test year emergent replacement costs in establishing projected test year amounts. This figure does not provide a reliable cost projection and should be disregarded.

**b. Strategic replacements.**

The Company objected to ABATE's recommendation that the Commission only approve cost recovery for projected capital expenditures associated with projects that are expected to be in-service during the bridge period and projected test year. (DTE Initial Br at 64-65.) As ABATE's

proposal would ensure the Company's cost recovery is aligned with reasonable and prudent projections for projects which will actually provide service to customers within the timeframe relevant to this case the Commission should adopt ABATE's proposal.

The Company asserted that "capital expenditures on projects that will not be in service during the projected test period do not have a current revenue requirement" and "utilities may include construction work in progress (CWIP) in rate base because the revenue requirement is generally offset by an Allowance for Funds Used During Construction (AFUDC)." (*Id.*) The claim that utilities may take this approach does nothing to suggest its reasonableness or prudence, nor does it address ABATE's actual concern with the Company's approach to inflating and overextending cost recovery requests for projects that will not provide service during the test year.<sup>1</sup> As explained in ABATE's Initial Brief, while DTE has increased strategic capital program spending to improve system resiliency and reliability, its system reliability metrics have only minimally improved. (See ABATE Initial Br at 15-16.) In other words, the Company's revenue in this area has continued to rise while customers see no material improvement in service. Even more concerning, DTE historically and routinely spends less than it projects it will on strategic capital programs; instead diverting those funds to emergent replacements. (See *Id.* (internal citations omitted); see also MNSC Initial Br at 8-45 (recommending the Commission maintain historical distribution strategic capital spending levels and reject the Company's proposed spending increases).)

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<sup>1</sup> Staff's recommendation that the Commission "should make no other adjustments to the strategic capital programs" other than those it identified similarly only responded to the issue of "whether a project will be completed within the test year does not determine if it is reasonable and prudent enough to include in rate base," and did not address the underlying point of whether or not this projected cost recovery was, in fact, reasonable or prudent. (Staff Initial Br at 194-95.)

In other words, despite the continued increase in projected strategic replacement costs customers have seen minimal improvement in system reliability metrics, cost recovery has been historically diverted to other cost categories, and many of these expenditures are for projects which may not enter service until well beyond the test year. As such the Commission must limit cost recovery here and only approve recovery for the projected capital expenditures associated with projects that are expected to be in-service during the bridge period and projected test year. Again, as noted in ABATE's Initial Brief, while this would result in a reduction of \$613.586 million relative to the amount requested by the Company, it is still roughly 2.5x the amount reportedly spent in 2022. (*Id.*)

**C. Capital Structure and Rate of Return – The Company's ROE should be no higher than 9.6%.**

The Company recommended a ROE in this proceeding which is drastically higher than its current ROE, the current market, and the recommendation of every other party which analyzed this issue in this case. While the unreasonableness and imprudence of the Company's analyses and recommendation are demonstrated throughout the various parties' testimony and Initial Briefs, certain specific claims by DTE are addressed below.

**1. A reasonable ROE for the Company is lower than its current ROE given its risk relative to comparable companies.**

The Company claimed that the intervenors' ROE recommendations based on their respective analyses, which are all lower than the Company's recommendation and, with the exception of Staff's flawed analysis, all lower than the Company's current ROE of 9.9%, "all essentially acknowledge that the cost of equity has increased since the Commission maintained DTE Electric's ROE at 9.9% in Case No. U-21297." (DTE Initial Br at 197.) This is a clear mischaracterization of the record evidence in this case and demonstrates the Company's complete lack of credibility on this issue. Based on their analyses and a review of DTE's risk the parties to

this case recommended ROEs between 9.18% and 9.9%. (See ABATE Initial Br at 17 n 13.) None of these recommendations suggest DTE requires a ROE at the level it has requested and, with the exception of Staff, every intervening party has recommended a ROE below DTE's current ROE. The Commission should therefore disregard the Company's argument and adopt a ROE no higher than 9.6%.

Further, while the Company claimed that the intervenors "made various modeling choices that downward-biased their results," as explained in ABATE's Initial Brief DTE's credit ratings from both S&P and Moody's are *higher* than those of the Company's own proxy group meaning, if anything, DTE's total risk is demonstrably *less* than that of the proxy group which had an average common equity ratio of 40.9% (including short-term debt) and 44.5% (excluding short-term debt). (DTE Initial Br at 197-98; ABATE Initial Br at 23-24.) These figures are significantly lower than DTE's requested equity ratio in this case and demonstrate that the Company's cost of equity is likely lower than that of the proxy group. Furthermore, it was DTE which increased its market ROE estimate by adjusting its results upward using a methodology the Commission has consistently rejected. (Walters 6 Tr 6480.) As such the Commission should reject the Company's claim along with its requested ROE.

The Company's further generic claims regarding "volatility," "uncertainty," "high inflation," "risk," and the Company's "need for capital spending" also do not demonstrate the Company's current ROE is a reasonable cost of equity. (DTE Initial Br at 202-06.) As explained throughout the record the Company has strong credit ratings resulting from lower risk utility operations and benefitting from constructive credit support mechanisms and Michigan's existing regulatory framework. (See e.g., ABATE Initial Br at 22.) This indicates the Company has minimal risk and does not require a ROE above what the Commission has previously approved. Further,

authorized ROEs for regulated utilities have generally declined over the last ten years and have been reasonably stable below 10.0% for roughly the last nine years (specifically the majority of authorized ROEs since 2016 have been below 9.7%, with many being below 9.5%). (ABATE Initial Br at 18-22.) During that time the utility industry's common equity ratios have also not deviated much from the range of 50.0% to 52.0% and since 2009 industry credit ratings have continued to improve. (*Id.*) In terms of the need for capital spending, concomitant with these trends capital investments for the utility industry continue to stay at elevated levels and are expected to fuel utilities' profit growth into the foreseeable future. (*Id.*) Capital investments are therefore enhancing utility shareholder value and attracting both debt and equity capital to the utility industry. Furthermore, in conjunction with these increased investments regulated utility equity securities continue to receive robust valuations, indicating that utilities can sell securities at high prices, meaning they can access equity capital under reasonable terms and conditions and at relatively low cost. (*Id.*)

Federal reserve actions also support utility financial metrics by implementing procedures to support the economy's efforts to achieve employment and inflation policy objectives. (*Id.*) Indeed, short-term projections suggest that while the market expects current capital costs to increase at mixed rates, they will maintain levels that are still low by historical standards. (*Id.*) Specifically, while the federal funds rate will increase at a much faster rate than long-term interest rates as measured by the 30-year Treasury bond, inflation is expected to lessen in the near to intermediate term. (*Id.*) The outlook for long-term interest rates in the intermediate to longer term has indicated potential increases relative to 2020 and 2021, although they are still relatively modest compared to time periods prior to the beginning of the worldwide pandemic. (*Id.*) Thus, relatively

low capital market costs are expected to prevail at least in the near-term and out over the next five to ten years.

The Company's claims regarding volatility, risk, and uncertainty are therefore inconsistent with the record evidence and DTE's prevailing (and projected) credit metrics. A lower ROE would not diminish the Company's financial standing or prospects. As such the Commission should reject the Company's requested ROE and instead approve a ROE no higher than 9.6%.

**2. ABATE's sustainable growth DCF provides a reasonable data point for estimating an appropriate ROE.**

The Company claimed ABATE's method was flawed in that it relied on only one source for growth rates and, while the expected return on equity input averaged 11.33%, ABATE's analysis calculated a 9.1% ROE. (DTE Initial Br at 201.) As these claimed flaws do not demonstrate ABATE's analysis was deficient the Commission should reject this objection.

Despite the Company's first claim, DTE failed to provide any sources other than *Value Line* which have estimates for each of the components used in the model. (See ABATE Initial Br at 26-27.) Further, the Company overlooked the financial texts in support of the sustainable growth (also known as retention growth) model. (*Id.*) As demonstrated in ABATE's Initial Brief and supporting testimony its sustainable growth DCF method was properly conducted and considered against both a constant growth and multi-stage DCF model, as well as a risk premium model. (See ABATE Initial Br at 25-27.) These represent reasonable methods for estimating a fair ROE. The Company's objection is therefore unreasonable and should be rejected.

**3. The Company's use of inflated betas in its CAPM model does not reflect DTE's risk or a reasonable cost of equity.**

The Company disagreed with ABATE's beta analysis, claiming that "the historic average of betas since 2014 lacks relevance and downward biases [ABATE's] CAPM results by 0.41% to 1.36%." (DTE Initial Br at 200.) As explained in ABATE's Initial Brief, while the beta used in

ABATE's analysis was based on the current proxy group average and median *Value Line* beta estimates, because these beta estimates are abnormally high and are unlikely to be sustained over the long-term the analysis also considered the historical average. (ABATE Initial Br at 30-31.) Historical betas provide context for the significant extent to which current betas are anomalous given their continued reflection of the historic and unprecedented impact of the COVID-19 pandemic. (*Id.*) As such they were required to provide a more normalized estimate of the beta component for the CAPM analysis. (*Id.*) The Company's failure to account for this flaw in current betas therefore prevents its analysis from reflecting the Company's current cost of equity. In other words, the Company's disregard of historic averages skews its ROE analysis in favor of betas influenced by more recent anomalous occurrences unlikely to be repeated in the test year. The beta used by the Company therefore does not reflect current systematic risk and instead operates to inflate DTE's proposed ROE. ABATE's three-year beta analysis confirms the reasonableness of historical betas. A comparison of current *Value Line* five-year betas with both long-term historical averages and three-year betas calculated using *Value Line*'s methodology demonstrates that the current five-year betas are skewed by the volatility caused by the market fallout at the onset of the global pandemic, resulting in distorted and unreasonable estimates. (See *Id.*) As such DTE's objection to ABATE's analysis, along with the Company's own analysis and ROE recommendation based thereon, should be rejected.

**D. Adjusted Operating Income - The Company's proposed O&M expense is unreasonable and should be rejected.**

**1. The Company's projected inflation rate is unreasonable.**

The Company objected to ABATE's recommendation to project inflation rates based on the Real GDP Chained Price Index. (DTE Initial Br at 213-14.) As this method is a better reflection of likely interest rates the Commission should reject the Company's objection.

The Company claimed that “there is no compelling evidence that” the Real GDP Chained Price Index “is superior to the CPI-Urban in projecting utility-specific non-labor costs.” (*Id.*) As explained in ABATE’s Initial Brief, this is not accurate. The Real GDP Chained Price Index better accounts for the products people actual purchase, meaning it is a better indicator of inflation rates than the Company’s proposal only uses a fixed basket of goods for a set period and is heavily weighted by medical expense costs, which have nothing to do with utility expenses. (ABATE Initial Br at 39-44.) In other words, even if the Real GDP Chained Price Index is not a perfect reflection of the Company’s inflation rates it is still far superior to the Company’s proposed use of the CPI-Urban resource and the unreasonable inflation rates determined thereby. (*Id.*; MNSC Initial Br at 144-47 (“If DTE can apply a general upward adjustment to its total O&M expenses to account for inflation rates, it can and should apply a general downward adjustment to the general inflation rates to represent a partial offset for productivity gains”).)

In addition to the flaws in the Company’s methodology, as explained in ABATE’s Initial Brief, actual inflation costs are now available for 2023 and the Commission’s decision should not be based on a composite adjustment which overstates DTE’s actual costs. (ABATE Initial Br at 39-44.; see Attorney General Initial Br at 59-61 (“DTE used a form of blended inflation based partially upon projected CPI rates with a 16% weighting, and a 3% wage inflation rate with an 84% weighting” despite the “use of a ‘blended rate’ inclusive of wage increases” being “rejected in recent general rate cases”).) Further, DTE’s projected inflation adjustments from 2023 through December 2025 result in average annual O&M expense increases significantly greater than the annual O&M expense change DTE has actually experienced over the last five years. (ABATE Initial Br at 39-44.) Despite its elevated inflation projections the Company is also clearly capable of managing its O&M expenses such that they do not change at the same rate as inflation. Indeed,

DTE expects reductions in O&M expenses as a result of proposed distribution system capital investments over the next five to ten years, and the transition of the generation fleet from coal to other alternatives. (*Id.*)

Given the flaws in the Company's proposal the Commission should instead approve projected inflation rates based on the Real GDP Chained Price Index for test year labor and non-labor O&M expense, as set forth above (i.e., 2.3% for 2024 and 1.8% for 2025).

**2. The Company's proposed incentive compensation recovery is unreasonable and should be rejected.**

The Company requested recovery of \$59.504 million for incentive compensation expense in this case, including \$39.232 million associated with DTE's financial performance and \$9.539 million associated with certain operational performance measures which the Company did not satisfy. (DTE Initial Br at 255-62.) Cost recovery of this amount is unreasonable and should be rejected.

Regarding the portion of incentive compensation tied to financial performance, DTE asserted that a "focus on the variable portion of total compensation," such as that tied to financial performance, is "inappropriate because DTE Electric's incentive programs are not additional compensation over and above what other companies pay for similar jobs." (*Id.*) Further, "DTE Electric's compensation philosophy and framework benefit all customers by providing a high level of service at competitive costs." (*Id.*) While the Company's assertions regarding its "high level of service" and "competitive costs" are, at best, debatable,<sup>2</sup> as the Company's financial performance benefits shareholders, not ratepayers, the Company should seek compensation from the former, not the latter. The Commission has been unequivocal on this point and rejected these same claims

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<sup>2</sup> See Case No. U-21305, Filing Nos. 12 and 13 (September 23, 2024).

across numerous rate cases. (See ABATE Initial Br at 44-47.) The Company has not provided any reason for Michigan ratepayers to now begin funding its efforts to bolster investor returns. (*Id.*; see also Staff Initial Br at 97-98; Attorney General Initial Br at 73-76.)

Regarding the Company's requested cost recovery for operational performance measures for which the benefits do not exceed the expense, DTE claimed that "the cost/benefit analysis . . . represents only the reasonably-quantified financial benefits" and "certain measures provide benefits to customers but evade specific quantification." (DTE Initial Br at 261-62.) By way of example the Company pointed to the ambient concept of "avoidance of frustration" on behalf of customers or the unknowable "savings by the Commission resulting from a reduction in complaints." (*Id.*) Again, the "Commission's expectation is that the parties will fully document the basis for their test year projections by offering into evidence detailed supporting explanations and underlying assumptions rooted in expected business, financial, and economic circumstances," and "[r]ate applications may not rely on undocumented estimates of future ratemaking expenses and revenue criteria." *In the Matter of the Application of DTE Electric Co*, order of the Public Service Commission, entered May 8, 2020 (Case No. U-20561), p 13. In other words, the Commission cannot approve cost recovery based on presumed customer vibes and assumptions regarding the enigmatic causal chain between ratepayer temperament and forgone Commission complaints. Where the benefits don't exceed the costs, customers should not be charged the costs.

Pivoting from the revenue the Company thinks it should collect based on vaporous benefits existing (or not) within the realm of the unknown, the Company then claims that customers should compensate DTE for incentive compensation it pays out to employees for not meeting operational targets. (DTE Initial Br at 261-62.) Stated plainly, customers should not compensate the utility for employee incentives related to not meeting operational target performance. Further, while the

Company focused on “incentive compensation expense related to SAIDI,” ABATE identified multiple areas where benefits did not exceed costs. (*Id.*; ABATE Initial Br at 46 (e.g. Customer Satisfaction and Safety & Engagement).) The Company also claimed that disallowing incentive compensation based on the Company’s track record of historic revenue sufficiency amounts “lacks merit because this case uses a projected test year” and “the Company’s historical revenue is irrelevant to the Company’s proposed recovery of incentive compensation.” (DTE Initial Br at 262.) This claim, and its attempt to cast the consideration of overearnings in setting future revenues as “retroactive ratemaking,” ignores the Court of Appeals prior guidance on this issue. Specifically, “the essential principle of the rule against retroactive ratemaking is that when the estimates prove inaccurate and costs are higher or lower than predicted, the previously set rates cannot be changed to correct for the error; ***the only step that the MPSC can take is to prospectively revise rates in an effort to set more appropriate ones.***” *Detroit Edison Co v Mich Pub Serv Comm*, 416 Mich 510, 523 (1982) (emphasis added). There is nothing “illegal” about ABATE’s recommendation to consider repeated errant projections when establishing projected cost recovery, it is instead precisely the approach the Commission is meant to take.

Contrary to the Company’s claims its requested cost recovery for incentive compensation is littered with areas where costs exceed benefits. As such the Company has not demonstrated that certain requested incentive compensation cost recovery is reasonable or prudent and the Commission should disallow recovery of at least \$48.8 million related to incentive compensation.

**E. Cost of Service, Rate Design, and Tariffs – The MNSC distribution rate design and Staff purchased capacity cost allocation proposals are inconsistent with cost causation.**

**1. The MNSC distribution rate design proposal would not more accurately reflect cost causation.**

MNSC requested the Commission direct DTE in its next rate case to evaluate the seasonality of distribution cost causation, arguing that transformer capacity varies seasonally because “the proper basis for both cost of service and rate design of distribution costs is the degree of capacity utilization, not nominal loading” meaning “distribution costs should be allocated seasonally.” (MNSC Initial Br at 187-90.) The Commission should take note that this proposal is flawed and would not reflect cost causation.

As explained in ABATE’s Initial Brief, utilization generally does not align with cost causation unless either the cost in question involves incurring a variable cost based on utilization, or the utilization period is limited to demand in the specific hours that cause the utility to incur infrastructure costs. (ABATE Initial Br at 47-48.) It has not been demonstrated either of those circumstances is present here for DTE’s line transformers. Indeed, as the Company explained, “[t]hermal loading and ambient temperatures is only one of several factors including thru-faults and voltage impulses (switching surges, lightning, etc.) that can lead to transformer aging” and it “uses IEEE standards as the basis for transformer ratings and aging expectations.” (Deol 5 Tr 1268-69.) Further, “if a transformer were to be fully loaded for 1 year in a cold/winter climate, it would have 1 year worth of life of the transformer consumed as well.” (*Id.*) In other words, MNSC’s recommendation to allocate distribution costs seasonally would not more accurately reflect the way the Company incurs these costs.

Just because a distribution transformer’s loss of life may be higher in certain seasons than others does not mean the allocation of all distribution costs should be based on seasonal utilization,

even if distribution equipment ratings are sensitive to ambient temperature. As such the Commission should recognize that MNSC's suggestion that distribution costs be allocated seasonally would not reflect cost-of-service rates and should not be entertained. (See DTE Initial Br at 302-03.)

**2. Staff's purchased capacity cost allocation proposal is directly contrary to the fact that these costs are almost entirely fixed.**

Staff proposed the Company allocate purchased power capacity costs based upon a 4 CP 75/0/25 method, claiming "there should be some recognition of both energy use and capacity use in the allocation factor for purchased power capacity costs." (Staff Initial Br at 117-19.) As this proposal is entirely disconnected from the nature of DTE's purchased power capacity costs the Commission should reject this recommendation.

The crux of Staff's proposal is that it "views production assets, including those that provide purchased power capacity to the Company, as providing both energy and capacity." (*Id.*) This view misses the point that DTE's purchased capacity costs only reflect a portion of its renewable energy costs. (See Andrews 6 Tr 3508-12.) Indeed, DTE's owned facilities represent the majority of the purchased capacity costs and are largely fixed costs assets. (*Id.*) While the 4CP 75-0-25 allocator might be appropriate if these costs were entirely allocated in the same manner, as with DTE's traditional production resources, that simply is not the case with the PA 295 renewable resource costs. If Staff's proposal were to be adopted, then 75% of the costs of the PA 295 renewable resource costs would be allocated on the basis of energy, despite as much as 89% of these costs being fixed costs. (*Id.*) Since DTE's owned facilities represent the majority of the purchased capacity costs, and the overwhelming majority of these costs are fixed, the bulk of the purchased capacity costs remains unchanged (i.e., is fixed), regardless of energy production or customer usage. Thus, despite Staff's view, DTE's purchased power capacity costs have almost no energy

component at all and should not be allocated like they were typical production assets. What Staff describes as “longstanding Commission practice concerning production assets” is entirely irrelevant to purchased power capacity costs which are not at all comparable to DTE’s other production assets. (See ABATE Initial Br at 48-50.)

Unlike DTE’s production assets generally, its purchased capacity costs are instead principally related to renewable energy assets with costs that are largely fixed, meaning they do not entail fuel costs. (See ABATE Initial Br at 48-50.) Specifically, the vast majority (95%) of these costs are related to renewable facilities required under Public Act 295 of 2008 and, according to the Company, 89% of DTE’s costs for its owned renewable facilities are entirely fixed, meaning they have no material fuel (i.e. energy) costs. (*Id.*) Staff’s proposal to allocate 75% of these asset costs on the basis of energy despite 89% of these costs being fixed is therefore incoherent and completely unreasonable. (*Id.*) As the Company explained, “the ongoing use of direct demand and energy allocators for the allocation of these costs within the COSS is an appropriate reflection of cost-causation” as the Commission has determined “in the previous seven DTE electric rate cases.” (Maroun 6 Tr 2796.) Indeed, while these costs have no relation to energy, 66% of these asset costs are *already* allocated on that basis. (*Id.*) The current methodology therefore already over-allocates these costs on the basis of energy because the majority of DTE’s purchased capacity costs are related to DTE’s owned renewable generation facilities with overwhelming fixed costs unrelated to energy. (*Id.*) As such, no additional energy allocation should be approved, and the currently approved methodology should remain in effect.

Despite the detailed testimony provided on this issue explaining the nature of these costs, Staff offered effectively no rebuttal, instead simply reiterating its perspective that “[p]urchased power capacity production assets provide both energy and capacity.” (Staff Initial Br at 118.) As

explained above that baseless assertion does not describe the nature of DTE's purchased power capacity costs which are overwhelmingly fixed, represent a portion of the overall PA 295 assets, and are unrelated to energy. As such the Commission should reject Staff' proposal and DTE's purchased capacity costs should continue to be allocated using the 100% 4CP allocator, specifically, DTE's allocator 251.

**F. Other Issues – The Company's IRM proposals are unreasonable and should be rejected.**

Despite the Company's IRM being barely up and running, DTE requested to both "extend and expand the IRM" which was approved less than a year ago in December 2023. (DTE Initial Br at 265-73.) This request, and the multiple Company proposals related thereto, is neither reasonable nor prudent and should not be approved at this time.

In support of its request the Company argued that "[a]bsent an extension granted in this case, the existing IRM will cease at the end of 2025," meaning "the Company would not submit an IRM Investment Plan for 2026, which would otherwise (if the IRM were extended) be due no later than August 31, 2025" and such "starting and stopping of the IRM and its associated processes could lead to inefficiencies, and reduce the ability to improve upon the process through stakeholder feedback." (*Id.*) This is not a compelling reason to approve the Company's proposal, which DTE effectively acknowledged through its request that if the Commission does not extend the IRM through 2027 it "should at least approve a one-year extension at the investment levels authorized previously for 2025." (*Id.*) For the myriad reasons on the record the Commission should reject the Company's proposals.

As explained in ABATE's Initial Brief, the Commission has already voiced the prudence in limiting the IRM's growth. (See ABATE Initial Br at 50-52.) Further, the parties have yet to glean any further insights from additional proceedings cited by the Commission to better inform

the potential continuation of the IRM, as those proceedings are still ongoing. (*Id.*) Staff also argued that “it is preferable to pause the IRM than for it to continue without a break in a more inefficient manner” and “Staff does not want to have the Company locked into spending specific amounts in those IRM programs for all of 2026 and 2027, and further increase the IRM spending in 2025” when the additional proceedings cited by the Commission are still ongoing. (Staff Initial Br at 161-66.) Thus, it “is better to pause the IRM for part of 2026 to allow for more efficient spending in 2026 and 2027 than to authorize 2026 and 2027 IRM plans that may have already been rendered outdated” by the outcomes of these additional proceedings. (*Id.*)

Further, MNSC explained that “DTE’s internal communications reveal a slapdash proposal the Company threw together hastily . . . in an attempt to establish the IRM as the ‘new normal,’ and eventually ramp up spending so much that the Company can avoid rate cases.” (See MNSC Initial Br at 198-214.) Indeed, as demonstrated throughout MNSC’s Initial Brief the Company’s proposal was “not supported by substantial evidence” and is not “reasonable, prudent, or in the best interest of customers.” (*Id.*) Specifically, “[n]o projects have been identified yet for 2026 and 2027” and the Company’s IRM proposal was effectively an amorphous and vacillating attempt to simply “pass[ the] smell test” while “growing at 20% or whatever.” (*Id.*) This evidences an extraordinary deficit of thoughtful contemplation for a request that Michigan ratepayers provide the Company an additional \$1.7 billion. (See Attorney General Initial Br at 85-87; Walmart Initial Br at 6-9 (expressing concern that “these types of recovery mechanisms can expand beyond their original intent and usefulness through a utility’s efforts to continuously extend and broaden the scope of such mechanisms, as is the case here”).)

While a Year 3 for the distribution IRM without any increased level of cost recovery may not be unreasonable, the remainder of the Company's proposals are neither reasonable nor prudent. As such the Commission should reject the same.

**G. Other Issues – The Commission should reject MEIU's proposal for the Company's TEP to account for societal benefits.**

MEIU requested that the Commission "require DTE's future TEPs to include consideration of additional benefits, including societal benefits such as greenhouse gas and criteria pollutant emission reductions, through the utilization of multiple cost tests." (MEIU Initial Br at 11-19.) For the various reasons set out in multiple parties' briefs and testimony the Commission should not require the Company's TEP BCA to include a societal cost test.

A number of parties objected to MEIU's request, including ABATE, Staff, and DTE. (See ABATE Initial Br at 52-55; Staff Initial Br at 144-47; DTE Initial Br at 290-91.) For instance, DTE explained that "adding additional societal benefits such as greenhouse gas and criteria pollutant emissions reductions would not be appropriate for a number of reasons, including difficulties in calculating the benefits and attributing them to a single company, and uncertainty due to future regulatory changes and other factors that could significantly impact the realization and magnitude of such benefits." (DTE Initial Br at 290.) Similarly, Staff explained that "while an SCT or other manner of incorporating societal benefits and costs can provide information useful in the Commission's decision-making, 'such a cost test is not appropriate to use to determine the amount to which such programs should be funded by utility customers regardless of the societal benefits they may produce.'" (Staff Initial Br at 146 (internal citations omitted).) Further, as explained in ABATE's Initial Brief, the Commission should not direct DTE to pursue or expand its TEP on the basis of societal benefits associated with avoided transportation emissions because

doing so would effectively amount to mandating electric ratepayers subsidize the cost of providing the claimed societal benefits. (ABATE Initial Br at 55.)

Ultimately MEIU recommended “that the Commission leave the issue as to how to use a societal cost test to be decided in the future.” (MEIU Initial Br at 12 n 39.) Given this recommendation and the arguments described above the Commission should therefore dismiss MEIU’s recommendation that the Commission require DTE’s future TEPs to include consideration of additional benefits, including societal benefits such as greenhouse gas and criteria pollutant emission reductions, through the utilization of multiple cost tests. (*Id.* at 19.)

### III. RELIEF REQUESTED

**WHEREFORE**, ABATE requests the Commission issue an Order adopting ABATE’s positions as outlined in its Direct and Rebuttal Testimony, as well as its Initial and Reply Briefs.

Respectfully submitted,

**CLARK HILL PLC**

**Stephen A.**

By: **Campbell**

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Date: October 23, 2024

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

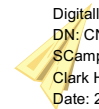
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PROOF OF SERVICE

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF WAYNE )

Stephen A. Campbell, being first duly sworn, deposes and says that on October 23, 2024, he did cause to be served the *Association of Businesses Advocating Tariff Equity's Reply Brief*, and this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service list.

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**SERVICE LIST**  
**MPSC Case No. U-21534**

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