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February 14, 2025

Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

RE: 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
MPSC Case No. U-21534

Dear Ms. Felice:

Attached for electronic filing in the above captioned matter is DTE Electric Company's Answer Opposing the Michigan Municipal Association for Utility Issues Petition for Rehearing. Also attached is the Proof of Service.

Very truly yours,

Andrea E. Hayden

Digitally signed by Andrea E. Hayden
Date: 2025.02.14 12:54:04 -05'00'

Andrea E. Hayden

AEH/erb
Attachments

cc: Service List

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

DTE ELECTRIC COMPANY'S

ANSWER OPPOSING PETITION FOR REHEARING

Dated: February 14, 2025

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I. INTRODUCTION AND LEGAL STANDARD

On January 23, 2025, the Michigan Public Service Commission ("MPSC" or the "Commission") issued a final order in Case No. U-21534 ("January 23 Order"). On January 24, 2025, the Michigan Municipal Association for Utility Issues ("MI-MAUI") filed a document titled "Motion for Consideration of Cash-Only Payment Issue." The document's first sentence, however, reflects that it is really a Petition for Rehearing filed pursuant to Rule 437 of the Commission's Rules of Practice and Procedure, R 792.10437. Therefore, MI-MAUI's filing will be referenced as the "Petition," and it is governed by Rule 437, which provides:

> (1) A petition for rehearing after a decision or order of the commission shall be filed with the commission within 30 days after service of the decision or order of the commission unless otherwise specified by statute. A petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error. A petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon. The petition shall be accompanied by proof of service on all other parties to the proceeding.

Rule 437 is the same as former Rule 403 of the Commission's Rules of Practice and Procedure, R 460.17403, and rehearing practice is well established. The Commission stated at page 2 of its December 18, 2003 Order Denying Rehearing in Case No. U-13350:

> Rule 403 of the Commission's Rules of Practice and Procedure, 1999 AC, R 460.17403, provides that a petition for rehearing may be based on claims of error, newly discovered evidence, facts or circumstances arising after the hearing, or unintended consequences resulting from compliance with the order. A petition for rehearing is not merely another opportunity for a party to argue a position or to express disagreement with the Commission's decision. Unless a party can show the decision to be incorrect or improper because of errors, newly discovered evidence, or unintended consequences of the decision, the Commission will not grant rehearing.
>
> Further guidance is provided by MCR 2.119(F)(3), which states:
>
> Generally, and without restricting the discretion of the court, **a motion for rehearing or reconsideration which merely presents the same issues ruled on**

> **by the court, either expressly or by reasonable implication, will not be granted**. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error. (Emphasis added).

See also, Cason v Auto Owners Ins Co, 181 Mich App 600, 609-10; 450 NW2d 6 (1989) **("A motion which merely presents the same issues as ruled on by the Court, either expressly or by reasonable implication, will not be granted"**); *Sargent v AM Eckhouse, DO, PC*, 171 Mich App 703, 706; 430 NW2d 763 (1988).

DTE Electric Company ("DTE Electric" or the "Company") now files this Answer opposing MI-MAUI's Petition. DTE Electric incorporates and relies on its testimony, exhibits, and briefs.[1] The Company's Answer to MI-MAUI's Petition is being timely filed pursuant to Rule 437(2) of the Commission's Rules of Practice and Procedure, R 792.10437(2).

II. DISCUSSION

A. The Commission's Resolution of the Issues Implicitly, and Properly, Rejected MI-MAUI's Meritless Cash-Only Payments Proposals.

MI-MAUI's Petition should be denied because it fails to state a valid basis to grant rehearing and seeks improper requests for relief. MI-MAUI's Petition vaguely asserts that the Commission committed an "error of omission" by not explicitly addressing MI-MAUI's "cash-only payment issues." MI-MAUI does not specifically identify those issues, nor provide any reason for the Commission to reach a different decision. Thus, the Commission would be justified in simply denying the Petition under the applicable standard of review outlined above.[2] DTE

[1] DTE Electric maintains all of its appellate and other rights.

[2] It is similarly well-established in case law that: "It is not sufficient for a party 'simply to announce a position or assert a claim of error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). *See also, Gross v General Motors Corp*, 448 Mich App 147,

Electric also objects because the Company necessarily cannot articulate a specific response where MI-MAUI does not articulate a specific issue.[3]

Moreover, the Commission's voluminous January 23 Order, p 5, held that only the arguments and evidence necessary for a reasoned analysis of the disputed issues would be specifically addressed:

> Despite the voluminous record and the number and complexity of issues presented in this case, legislation requires that the Commission reach a final decision in this matter within a 10-month time frame. MCL 460.6a(5). As a result, it is noted that not all of the material presented in this case will be expressly discussed in this order. The various parties' summaries of the evidence and arguments in support of their respective positions are fully set forth in the evidentiary record. **While the Commission has considered the entire record in arriving at its findings and conclusions expressed in this order, only the arguments and evidence necessary for a reasoned analysis of the disputed issues will be specifically addressed in this order.** (Emphasis added).

This context reflects that the Commission did not make an "error of omission" as MI-MAUI suggests. Instead, MI-MAUI failed to present arguments and evidence necessary for a reasoned analysis. The Commission has stated on numerous occasions that a petition for rehearing is not merely an opportunity for a party to reargue a position or express disagreement with the Commission's decision.[4] The fact that MI-MAUI disagrees with the Commission's implicit and

161-62, n 8; 528 NW2d 707 (1995) ("Failure to properly brief an issue on appeal constitutes abandonment of the question"); *Isagholian v Transmerica*, 208 Mich App 9, 14; 527 NW2d 13 (1994).

[3] Fundamental due process requires adequate notice and an opportunity to be heard. See generally, *Gonzales v United States*, 348 US 407, 413 n 5; 75 S Ct 409; 99 L Ed 467 (1955) ("Those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard on its proposals before it issues its final command"); *Bendix Corp v FTC*, 450 F2d 534, 537, 542 (CA 6, 1971) (vacating agency decision where agency violated the federal Administrative Procedures Act by changing its theory of the case, without notice to the affected party, and then finding adversely to that party); *NLRB v Johnson*, 322 F2d 216 (CA 6, 1963).

[4] February 23, 2023 Order in Case No. U-21099, p 14 (citing January 31, 2017 Order in Case No. U-17691, p 8).

proper rejection of its arguments does not amount to an "error" as required by Rule 437 for granting rehearing.

For completeness and to the extent that the Commission may wish to analyze MI-MAUI's Petition, the Company notes without waiving its objection that the Petition apparently concerns MI-MAUI's witness Bunch's assertion that the requirement for cash-only payments for some customers increases uncollectible expense, and so the Commission should disallow 1% of the uncollectible expense. MI-MAUI also proposed that the Commission should restrict DTE Electric's ability to require cash payments from customers whose payments are dishonored or returned, and to change the tariff language that allows this practice.

The Company disagrees with MI-MAUI's uncollectible expense propositions because they lack any sound foundation, and the cash-only policy serves as a proactive measure to curb the escalation of arrears resulting from returned payments. DTE Electric disagrees with MI-MAUI's additional propositions because section C4.6 of the Company's rate book for electric service is a longstanding and appropriate provision (Sparks, 6T 2396-98). The Company also complies with the billing rules (Sparks, 6T 2396), as even MI-MAUI acknowledged (See, *e.g.*, MI-MAUI's Initial Brief, p 32: "the rules provide no explicit prohibition against imposing a cash-only payment for customers"; MI-MAUI's Initial Brief, p 35: "MAUI does not dispute DTE witness Sparks' statement that the MPSC approved the current language allowing DTE to require cash payments in Case No. U-17767. 6 Tr. 2396."). MI-MAUI's attempt to escape from this dispositive point by "negative implication" (MI-MAUI Initial Brief, p 33) fails because, for example, the proposed prohibition is still not there and it would be improper to impose a restriction that is not there.[5] When unraveled, MI-MAUI's Petition essentially boils down to a continuing proposal to change

[5] *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993).

the rules. Even if there were a basis to change the rules (which there is not), Case No. U-21534 is not a proper forum to do so.[6] It would also be improper for the Commission to order the Company to not do something that is allowed by the rules.[7] (See also DTE Electric Reply Brief, pp 85-86).

Although it is unclear whether the issue falls under the auspices of MI-MAUI's Petition, MI-MAUI witness Bunch's recommended disallowing 1% of uncollectible expense as allegedly somehow relating to cash-only payments. First, the Commission should not consider this recommendation as part of MI-MAUI's vaguely referenced "cash-only payment issues" for which it seeks rehearing because it is not expressly addressed in the Petition. Additionally, MI-MAUI's proposal is so far beyond the scope of reasonable discussion on uncollectible expense that it did not (and still does not) merit discussion. The Commission's uncollectible expense discussion reflects that that the Company originally projected $50.9 million of uncollectible expense, but ultimately supported $47.0 million consistent with the Attorney General's ("AG") proposal. Staff proposed $41,029,000 based on the use of existing revenue (instead of projected revenue) and exclusion of PSCR revenue. The Commission agreed with Staff (January 23 Order, pp 233-35). Although the Company maintains its position, for purposes of this discussion, the dispositive point is that the range of methodologies meriting consideration for calculating uncollectible expense was fairly narrow with specific disagreements among experts, and MI-MAUI's arbitrary proposal for

[6] *In re Public Service Commission Guidelines for Transactions Between Affiliates*, 252 Mich App 254, 267; 652 NW2d 1 (2002).

[7] See, *e.g.*, *In re Complaint of Consumers Energy Co*, 255 Mich App 496, 501; 660 NW2d 785 (2002); *DeBeaussaert v Shelby Twp*, 122 Mich App 128, 130; 333 NW2d 22 (1982) ("Once an agency has issued rules and regulations to govern its activity, it may not violate them"); *Bohannen v Sheridan-Cadillac Hotel, Inc*, 3 Mich App 81, 82; 141 NW2d 722 (1966) ("When an administrative agency promulgates a rule for the benefit of litigants and then deprives a litigant of this right, it is a violation of both the 1908 and 1963 Michigan Constitutions").

a 1% reduction was properly excluded. Even MI-MAUI witness's attempt to support the proposal acknowledged that it was an unsupported "assumption" (Bunch, 6T 4298).[8]

III. REQUEST FOR RELIEF

Based on the foregoing, DTE Electric respectfully requests that the Michigan Public Service Commission deny MI-MAUI's Petition for Rehearing because MI-MAUI failed to comply with Rule 437 and the well-established standards for granting rehearing.

Respectfully submitted,

DTE ELECTRIC COMPANY
Legal Department

Dated: February 14, 2025

By: Andrea E. Hayden Digitally signed by Andrea E. Hayden Date: 2025.02.14 12:55:22 -05'00'

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[8] An agency decision may not be based on speculation. *Ludington Service Corp v Comm'r of Insurance*, 444 Mich 481, 483, 494-97, 500-501, 507; 511 NW2d 661 (1994), *amended* 444 Mich 1240 (1994) (unanimously reversing agency decision that exceeded the limits of the agency's statutory authority, and that was based on speculation instead of the required competent, material and substantial evidence); *In re Complaint of Pelland*, 254 Mich App 675, 685-86; 658 NW2d 849 (2003); *Battiste v Dep't of Social Services*, 154 Mich App 486, 492; 398 NW2d 447 (1986) (holding that agency's decision was not supported by in evidence that a reasonable person would consider adequate).

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ESTELLA R. BRANSON states that on February 14, 2025, she served a copy of DTE Electric Company's Answer Opposing the Michigan Municipal Association for Utility Issues Petition for Rehearing in the above captioned matter, via electronic mail, upon the persons listed on the attached service list.

Estella R. Branson

Digitally signed by Estella R. Branson
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