STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of
DTE Electric Company for approval
of special contracts and related relief. MPSC No. U-22058

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The Attorney General's
PUBLIC
Initial Brief

Respectfully submitted,

Dana Nessel
Attorney General

Joel B. King (P81270)
Lucas Wollenzien (P86928)
Assistant Attorney General
Special Litigation Division
Sixth Floor Williams Bldg.
525 W. Ottawa Street
P. O. Box 30755
Lansing, Michigan 48909
517-335-7627

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I. Introduction

In this case, DTE Electric Company ("DTE Electric," "DTE," or "the Company") seeks approval from the Michigan Public Service Commission ("Commission" or "MPSC") of two special contracts between DTE and Google LLC ("Google") concerning the operation of a data center in Van Buren Township, Michigan (the "Google Data Center" or "the Customer"): a proposed Primary Supply Agreement ("PSA") and a proposed Clean Capacity Accelerator Agreement ("CCAA") (collectively, the "Special Contracts").[1] DTE further seeks approval of other terms attendant to providing service under the proposed Special Contracts.

DTE is seeking to provide service to Google at a contract capacity of 1.0 GW.[2] The proposed terms of the special contracts, if approved, would operate in combination with the terms of the Company's Rate D11.[3] DTE's application here represents the first time a Michigan utility is seeking approval in a contested proceeding for a data center customer of this magnitude. As such, this matter presents numerous novel issues and through the evidence developed in this matter, the Attorney General has identified cost shifting risks of unprecedented scale for Michigan ratepayers. Accordingly, the Attorney General makes the following recommendations to the Commission concerning DTE's requested relief:[4]

[1] DTE's Application at 1.
[2] Id. at 2.
[3] Id.
[4] To the extent not addressing any topic or issue herein, the Attorney General does not waive her ability to address such topics or issues in reply to other parties' briefs or in further pleadings in this matter.

- **Minimum Billing Demand**. The Attorney General recommends that the Commission direct DTE to require a 90% minimum billing demand ("MBD") figure in its calculation of Google's so-called "Minimum Monthly Charge" in the PSA (i.e., using the greater of a demand of 90% of Google's contract capacity or the actual demand figure), rather than the 80% MBD figure proposed by DTE in its application (Section III.A below).
- **Termination Payment Calculation**. The Attorney General recommends that the Commission direct DTE to require a termination payment calculation using 100% MBD in calculating minimum monthly charge, rather than an 80% figure under DTE's proposed term. Further, the Commission should direct DTE to require that the termination payment be calculated by multiplying the monthly charge (using 100% MBD) by the remaining months in the entire 20-year contract term, rather than a shorter period as proposed by DTE (Section III.B below).
- **Collateral Terms**. The Attorney General recommends that the Commission reject any limitations on the parent guarantee and bank letter of credit collateral terms in the PSA and CCAA (Section III.C below).
- **Demand Response Agreement**. The Attorney General recommends the Commission order that any penalties assessed to the Customer for non-performance under the DR program should be accounted for separately, disclosed in DR or PSCR proceedings, and credited to other customers' rates (Section III.D below). To the extent the Company agrees to such tracking

through PSCR Reconciliation proceedings, in such a context the Attorney General would further recommend that the Commission require the Company to identify any DR non-compliance and applicable credits in testimony as well as to provide supporting exhibits to allow proper tracking of DR costs versus credits as to the Google Data Center.

- **Transmission Cost Tracking**. The Attorney General recommends that the Commission direct the Company to implement appropriate cost accounting tracking procedures to allow complete and accurate reporting of all transmission-related incremental costs for each new data center for presentation of the aggregate costs and benefits that are impacting other customers (Section III.E below). Such tracking procedures should include accounting for transmission upgrade costs associated with generation and storage projects developed to serve the customer and/or included within the scope of the CCAA, along with other incremental MISO transmission-related oversight and system management costs pertaining to the new data centers.

- **Regulatory Liability Account for Benefit/Cost Tracking**. The Attorney General recommends that the Commission should order that the Company establish a regulatory liability account to capture the annual financial benefits from the Google data center, and any other data centers, for inclusion in future rate cases as a reduction to future base rate increases or as a direct passthrough of the financial benefits to customers through a separate credit refund (Section III.F below). A benefit/cost reconciliation should be completed annually based on actual costs, including costs and revenues under the CCAA. These recommendations further operate in conjunction with witness Coppola's other recommendation (discussed in Section III.E) for tracking incremental transmission costs caused by each of the Google and Oracle data centers, and any other data centers that may come along.

- **DTE as a Cost Backstop**. In addition to the other recommendations identified above, the Commission should require that DTE at all times serve as a backstop for the incremental costs of serving the Google Data Center, should aggregate costs exceed benefits. Specifically, the Attorney General adopts the recommendation of witness Coppola that, if at any time during the term of the PSA, CCAA, or other agreements with the Customer or after the expiration of those agreements, costs related to the Customer exceed any benefits, or there are no longer any offsetting benefits, the Company and not the other customers should be responsible for such costs (Section III.G. below).

II. Applicable Law

A. Burden of Proof

DTE bears the burden of proving, by a preponderance of the evidence, that its proposed Special Contracts, including the terms of those contracts, and other requested relief are reasonable and prudent. In administrative cases, a party seeking relief must prove their claim by a preponderance of the evidence.[5] In Commission cases, a utility has the burden of proof by a preponderance of the evidence.[6] Given the nature of the burden of proof, the Commission may reject even uncontradicted evidence.[7] When the burden of proving a fact falls on one party, the other party does not have the burden of proving the opposite fact.[8]

B. PA 235

DTE's proposed addition of the Google Data Center raises issues concerning compliance with the clean and renewable energy standards set forth in PA 235. PA 235 establishes a renewable energy standard requiring utilities to develop a portfolio of renewable energy credits equivalent to 60% of their retail sales by 2035,[9] and further to develop a portfolio of clean energy credits equivalent to 100% of their retail sales by 2040.[10]

III. Argument

A. Minimum Billing Demand

The Attorney General adopts the recommendation of witness Sebastian Coppola that the Commission reject DTE's proposed 80% Minimum Billing Demand

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[5] *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).
[6] *In re Michigan Gas Utilities Co,* MPSC Case No. U-7484, Opinion & Order August 30, 1983, p. 10, and *In re Detroit Edison Co,* MPSC Case No. U-8030-R, Opinion & Order, July 9, 1987, pp. 16-17.
[7] *Woodin v Durfee,* 46 Mich 424, 427; 9 NW 457 (1881). *Accord, Yonkus v McKay,* 186 Mich 203, 211; 152 NW 1031 (1915), and *Cuttle v Concordia Mut Fire Ins Co,* 295 Mich 514, 519; 295 NW 246 (1940).
[8] *S C Gary, Inc v Ford Motor Co,* 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).
[9] MCL 460.1028.
[10] MCL 460.1051.

("MBD") and order the Company to set an MBD of no lower than 90% for the Google data center customer.[11]

As identified in the testimony of witness Coppola, DTE set its proposed MBD threshold at 80% of maximum contract capacity of 1,000 MW, or 800 MW.[12] If the Customer power usage falls below 800 MW, the Company will bill the Customer at the 800 MW level.[13] But the Company is obligated to provide up to 1,000 MW of power at any point in time and must have full generating and energy storage resources in place to serve that full load;[14] if the Customer is not taking the full load, then the Company must sell the 200 MW of excess capacity at a value potentially lower than the cost of acquiring the capacity.[15] Witness Coppola observed that the cost differential could negatively impact DTE's other customers.[16]

In contrast to the cost-shifting risks posed by an 80% MBD, in preparing various cost scenarios supporting its testimony the Company assumed an average load factor of 90% of contracted maximum capacity.[17] 90% and higher MBD terms have been adopted in other jurisdictions. For example, a 90% MBD was approved and implemented by Kentucky Power in its respective jurisdiction.[18] More recently, the

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[11] The Attorney General hereby incorporates by reference all of the testimony of witness Sebastian Coppola as to the topics addressed herein.
[12] 3 TR, Coppola Direct at 472:21 – 473:10.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] Id. See also, e.g., 3 TR, Willis Direct at 412:9 – 1 ([t]he analysis assumes the underlying load is at full ramp of 1000 MW and a 90% load factor.").
[18] See, Kentucky Public Service Commission's March 18, 2025, Order in KPSC Docket No. 2024-00305, accessible at https://psc.ky.gov/pscscf/2024%20Cases/2024-00305/20250318_PSC_ORDER.pdf (referencing a 90% MBD term on page 3).

Wisconsin Public Service Commission approved a "Very Large Customer" tariff that appears to include a 100% minimum billing demand term for transmission service.[19] Here, the Attorney General is simply asking that DTE be required to institute a minimum demand term reflecting the Company's assumed average 90% load factor.

In rebuttal testimony, DTE did not challenge that its modelling assumed a 90% load factor. It further proffered no analyses in rebuttal to explain how an 80% MBD term would be sufficient, instead merely referencing the Commission's opinions in Cases U-21859 and U-21990.[20] This completely ignores the standard set for case-by-case review of large data center customers in case U-21859 that:

> [T]he filing should detail the generation, storage, and other resources (including, potentially, VPPs and demandside resources) that will be required to serve that large load customer and how that interconnecting customer will cover the costs of such resources.[21]

The U-21859 Order also specified that an adequate showing would include "that costs caused by the interconnecting large load customer to be served under this tariff are not being paid for by other customers"[22] and likewise for special contracts "that the full costs of serving the large load customer are paid for by that customer under the provisions of the special contract."[23] The Commission further elaborated on the policy bases for these requirements, finding that:

> [I]n order to ensure that other customers are not effectively subsidizing these new large load customers, it is critical to

[19] See, the Public Service Commission of Wisconsin's May 21, 2026, Order in PSCW Docket 6630-TE-113 at 26 – 27, accessible at https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=591873.
[20] Id.
[21] *See* the Attorney General's Petition for Rehearing and Clarification at pages 14 – 23 (quoting here from the Commission's November 6, 2025, Order in Case U-21859 at 117).
[22] Id, (quoting here from Case U-21859, November 6, 2025, Commission Order at 117).
[23] Id.

> understand the resources being used or constructed to serve these customers and the costs associated with doing so.[24]

It is thus clear that the Commission intended for utilities to present a more robust explanation in special contracts as to how terms will function to recover added costs to serve large load customers such as the Google Data Center.[25] DTE appears to have wholly ignored this requirement in its rebuttal testimony on the topic of MBD. Instead, the Company incorrectly asserts that the Case U-21859 findings on MBD can necessarily be used as a benchmark for sufficient terms in every instance. In short, it has failed to meet its burden of proof on this topic. Similarly, as noted in testimony by witness Coppola, material presented by Consumers Energy in case U-21859 did not entail the details of a specific large data center that would have allowed the Commission and other parties to more fully assess what the potential dollar impact of an 80% MBD would be for non-data center customers, in contrast to a higher MBD.[26]

Further significant here is that DTE has omitted certain categories of costs from its analyses and modelling in this case. Witness Coppola identified in testimony that the Company did not include in its application and testimony any discussion of transmission upgrade costs to "connect[] energy storage locations and new renewable energy projects to transmit power generation from those projects to DTEE" or transmission costs "involved in delivering power to recharge the batteries after they

[24] Id. at 118.
[25] See, e.g., Id. at 117 ("Without better understanding how these large new loads will be served and the costs involved in doing so, it is impossible for the Commission to understand whether existing customers will end up bearing a portion of such costs.").
[26] 3 TR, Coppola Direct at 475:8 – 22.

are discharged."[27] DTE confirmed in discovery responses that its analyses for added transmission costs did not include these cost categories.[28]

With an incomplete cost estimate, DTE again has failed to meet its burden of proof to show how an 80% MBD term would be sufficient to avoid the risk of cost-shifting from the massive new data center customer. In contrast, the Company does not dispute that a 90% MBD would better track with the Google Data Center's expected load factor. And a 90% MBD term would categorically be better suited to ensure against cost shifting when taking into account the cost categories that DTE omitted from its analyses.

DTE's reference to approval in U-21990 is also unpersuasive; as identified in testimony by witness Coppola, Case U-21990 was a secretive process with minimal public disclosure of key terms or financial impacts on other customers.[29] DTE provides no basis of comparison with U-21990 (not surprising given the lack of public material produced in that matter) to explain how an 80% MBD term might have been deemed to be sufficient in that context versus here, such as where any comparisons might be drawn between the two matters.

[27] 3 TR, Coppola Direct at 484:14 – 485:2.
[28] See, e.g., Exhibit AG-7 at 1 (DTE confirming in a discovery response that the difference in the Company's modelling for "Base Case" and "Customer Datacenter Case" transmission expenses "does not include any projection or estimation of transmission upgrade costs associated with interconnecting" the full scope of generation assets to serve that data center customer); See also, e.g. Exhibit AG-8 at 10 (DTE confirming in a discovery response that table 1 on page 7 of witness Burgdorf's rebuttal testimony [3 TR, 397:1] includes only the transmission costs incurred at the Google data center site and does not include any of the transmission costs emanating from the locations where the energy storage resources and 1,600 MW of renewable projects would be sited).
[29] 3 TR, Coppola Direct at 476: 1 – 6.

In light of the above, the Commission should direct DTE to require a 90% minimum billing demand ("MBD") figure in its calculation of Google's so-called "Minimum Monthly Charge" in the PSA (i.e., using the greater of a demand of 90% of Google's contract capacity or the actual demand figure), rather than the 80% MBD figure proposed by DTE in its application.

B. Termination Payment Calculation

As noted by witness Coppola, DTE's proposed PSA termination payment would use 80% minimum monthly charge as a baseline, meaning that the Company does not get to recover 100% of the demand costs billable to the Customer, but only 80% of the total costs.[30] The remaining 20% would be absorbed by other customers if the Company is not able to find a replacement customer to take the capacity.[31] Witness Coppola thus identified, using sample calculations provided in Exhibit E to the PSA, that the remaining charges for the 20% not included in the termination payment could be as much as [Start Confidential] [redacted] End Confidential].[32]

Further, the duration of time to be factored against the minimum monthly charge in calculating the termination payment does not include the full duration of the contract term. According to discovery responses, and as explained in cross-examination of witness Foley, the maximum duration that would be used to calculate the termination payment would be 16 years, instead of for the 20-year term of the contract; until and at the point the Customer starts paying a minimum monthly

[30] 3 Tr, Coppola Direct at 473:13 – 18.
[31] Id.
[32] See, 3 TR, Confidential Coppola Direct at 908:18 – 22; See also Exhibit AG-1 Confidential (including the calculation of the remaining 20% of the total termination costs based on the Company's model).

charge, the termination payment would be calculated as the expected minimum monthly charge (as defined using 80% MBD) multiplied by the number of months between when the customer starts paying a minimum monthly charge and the 15th anniversary of the load ramp completion date.[33] If termination occurs other than due to a so-called "Customer Event of Default," it appears that there is no termination payment obligation after that 15th anniversary.[34]

Per the PSA contract language, the termination payment calculation also changes "after the thirteenth (13th) anniversary of the [Load Ramp Completion Date]" if "due to a Customer Event of Default."[35] In that context, the maximum termination payment would be calculated using 2 years of monthly charges,[36] rather than the potentially 5-plus years remaining in the contract term (for example if the commencement date occurs anytime in 2027,[37] and the load ramp is completed in December 2028). These terms represent a departure from the Commission's findings in U-21859, which set as default an exit fee calculation based on the remaining months in the contract term, and including any evergreen contract extension.[38]

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[33] See, DTE's Exhibit A-16 Confidential – revised at 13 (Section 7.3); See, e.g., 3 TR, Foley Cross at 205:15 – 206:11; See also, e.g., 3 TR Confidential, Foley Cross at 217:2 – 220:11.

[34] No provision addressing such circumstance appears to be included in Section 7.3.

[35] See, DTE's Exhibit A-16 Confidential – revised at 13 (Section 7.3) (material in brackets here noting the Company's amendment to the proposed contract language as addressed in its Exhibit A-22).

[36] See, DTE's Exhibit A-16 Confidential – revised at 13 (paragraph 7.3(3)).

[37] Note that under the proposed PSA language the end of the "Initial Term" is "11:59 p.m. EPT on the date which is the twentieth (20th) anniversary of the Commencement Date" (Paragraph 3.1). The commencement date is defined in the proposed PSA terms to mean "the date on which the Customer first receives Electric Service at the Facility under [the] Agreement" (Exhibit A-16 Confidential – Revised at 29).

[38] Commission's November 6, 2025, Order in Case U-21859 at 109 – 110.

The Company provides no analysis to explain how its proposed calculation using 80% MBD and a lesser duration-calculation might in fact account for the caused-costs of the Google Data Center. For example, the Attorney General asked in cross-examination if the Company had considered whether its termination payment calculations would cover the potential costs of decommissioning assets constructed to interconnect the customer should the customer leave service. Company witness Folley responded as follows:

> Construction of the termination payment under the PSA is not tied to specific investments that the Company may or may not make, instead the termination payment is based on the minimum monthly charges that the Customer would owe to the Company.[39]

This response is very concerning, especially under the framework set forth in U-21859 that explicitly aspires to a cost-causer-cost-payor framework for assessing terms of service (see as described further in Section III.A above). Aside from the decommissioning cost example the Attorney General asked about in cross-examining witness Foley, another major cost category at issue here would be transmission costs, including the transmission upgrade costs associated with generation development (as addressed in Section III.A above) that the Company did not include in its analyses in this case. Once again, without taking into account the impact of these cost categories in assessing cost-shifting risks, the Company has failed to meet its burden of proof.

Also as to transmission costs, the "Minimum Monthly Charge" calculation used in the termination payment, while including the 80% MBD, does not appear to

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[39] 3 TR, Foley Cross at 203:2 – 12.

include a PSCR surcharge component.[40] This means that Google's termination payment would not contribute towards transmission upgrade costs as would be expected if the Customer were to remain in service,[41] such as by potentially acting to decrease the PSCR factor through incremental sales.[42] DTE has presented no evidence to show that removing a PSCR contribution from expected revenues would still result in sufficient cost coverage. This is not surprising given that—by witness Foley's apparent admission on cross—DTE did not design its termination payment calculation around achieving incremental cost coverage. Once again, DTE fails to meet its burden of proof as to why its proposed calculation here is reasonable and prudent.

In rebuttal testimony, DTE once again attempted to point to the Commission's findings on exit fee calculation from case U-21859.[43] But as identified above, DTE's termination payment calculation here falls short of the U-21859 findings given the Company's proposed limitations. Further, DTE ignores the Attorney General's analysis, referenced by the Commission in Case U-21859, that—for even a partial summary of expected data center costs—an exit fee calculation of 80% MBD multiplied by 15 years of payments could result in a multi-million dollar shortfall for

[40] See, DTE Exhibit A-16 confidential- revised at 9 (Para 5.2) (defining "Minimum Monthly Charge").
[41] See, e.g., 3 TR, Bilyeu Direct at 284:9 – 10 ("With the Customer being subject to the PSCR, they will contribute to the Company's existing and future renewable and transmission costs.").
[42] See, e.g., 3 TR, Burgdorf Direct at 385:23 – 386:1 (asserting that "[e]ven though the overall transmission expense is increasing, the effective transmission rate for all customers decreases due to the large increase in load from the Customer, who also pays a portion of the Company's transmission expense through PSCR allocations."); See also, e.g., 3 TR, Bilyeu Direct at 284:9 – 10 ("With the Customer being subject to the PSCR, they will contribute to the Company's existing and future renewable and transmission costs.").
[43] 3 TR, Foley Rebuttal at 136:21 – 137:5.

incremental cost coverage.[44] And in any event, as described in Section III.A above, the Commission's November 6, 2025, Order in Case U-21859 directed that assessment of contract terms occur on a case-by-case basis to ensure in each instance that large load customers were covering their caused costs. The Company's rebuttal references to Case U-21990 are irrelevant for the same reasons described in Section III.A above.

In light of the above, the Company has failed to meet its burden of proof to show how, including under the Commission's standards for contract review set forth in Case U-21859, the Company's proposed termination payment calculation would serve to cover Google's caused-costs. The Attorney General thus recommends that the Commission direct DTE to require a termination payment calculation using 100% MBD in calculating minimum monthly charge, rather than an 80% figure under DTE's proposed term. Further, the Commission should direct DTE to require that the termination payment be calculated by multiplying the monthly charge (using 100% MBD) by the remaining months in the entire 20-year contract term, rather than a shorter period as proposed by DTE.

The Attorney General's proposed termination payment calculation would better ensure against the risks of cost shifting that the Company has not adequately forecasted in its materials and analyses here. Such a calculation would also better ensure against the distinct risk of an industry-wide overcapacity scenario

[44] See, November 6, 2025, MPSC Order in Case U-21859 at 69 ("She states that such a [100 MW] customer would have an exit fee of $359.14 million, which would fail to satisfy estimated costs by more than $85 million, even with the low-end and noncomprehensive data that is available here. Attorney General's initial brief, p. 18.").

whereunder DTE might not be able to find any replacement customer for Google. Witness Coppola explained this concern in his testimony. He noted that most hyperscale projects, similar to DTE's Google and Oracle data centers, rely on anticipated demand for computing power from AI.[45] Should that demand fail to materialize, the resulting overcapacity could result in project cancellations, failures, or data centers underutilization.[46] The result could be that data centers, such as those backed by Google and Oracle, will not require the anticipated level of electric capacity and energy consumption, triggering defaults and termination payments.[47]

Witness Coppola further noted that the same overcapacity concern was echoed by utility and other industry executives in a 2025 article published by the Institute for Energy Economics and Financial Analysis (IEEFA).[48] He thus identified that to protect other customers it is critical to ensure that payments for electric service, generation and storage resources, termination payments, and collateral guarantees cover 100% of the costs attributable to the data center customer. The Attorney General's proposed termination payment calculation—using 100% MBD and the entire remaining contract duration—is better suited to address that concern. And any potential mitigation of the termination payment, such as in an instance where DTE might be able to find a replacement customer for Google, could be adjudicated through a contested proceeding before the Commission.

C. Parent Guarantee

[45] 3 TR, Coppola direct at 481:1 – 7 (including reference to Exhibit AG-2).
[46] Id. at 481:8 – 11.
[47] Id.
[48] Id. at 481:11 – 13 (referencing Exhibit AG-3).

In confidential testimony, witness Coppola identified that Exhibit C confidential specifies [Start Confidential] [redacted].[52] [End Confidential]

Witness Coppola thus identified in testimony that, "should the data center fail to start operations or significantly underperform, triggering a Termination Payment, the parent company guaranty needs to be at the level that ensures full payment of the Customer's total obligations."[53] He further noted that "[t]he Company and other customers should not be at risk to absorb any shortfall in costs for which the Customer and its parent are responsible."[54] The Attorney General thus adopts witness Coppola's recommendation that the Commission reject the [Start Confidential] [redacted] [End Confidential].[55]

Similarly, witness Coppola identified in confidential testimony that Exhibit C Confidential to the CCAA specifies a parent company [Start Confidential] [redacted]

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49 3 TR Confidential, Confidential Coppola Direct at 909:11 – 910:7.
50 Id.
51 Id. (referencing Exhibit E to the PSA in Exhibit A-16 Confidential for December 2027).
52 Id. (referencing Exhibit E amount plus Exhibit AG-1 for December 2027).
53 3 TR, Coppola Direct at 475:1 – 7.
54 Id.
55 3 TR Confidential, Confidential Coppola Direct at 910:1 – 7.

[redacted] End Confidential].

As with the PSA collateral terms, should the data center fail to start operations or significantly underperform, triggering a termination payment, the parent company guaranty needs to be at the level that ensures full payment of the Customer's total obligations.[59] As noted by witness Coppola, this point is even more important under the CCAA given the fact that the actual full cost of the energy storage and renewable generation resources is unknown; the Company and other customers should not be at risk of absorbing any shortfall in costs for which the Customer and its parent are responsible.[60] A full parent guarantee is also imperative in light of the industry-wide overcapacity risk addressed in Section III.B above. The Attorney General thus adopts witness Coppola's recommendation that the Commission reject the parent guaranty cap [Start Confidential] [redacted]

[56] Id. at 915:1 – 8.
[57] Id.
[58] Id. (referencing Schedule 1 on page 26 of the CCAA in Exhibit A-18 Confidential).
[59] 3 TR, Coppola Direct at 480:9 – 17.
[60] Id.

[redacted] [End Confidential].[61]

DTE does not appear to have provided rebuttal testimony directly addressing these recommendations concerning the PSA and CCAA collateral terms. DTE witness Foley asserts in his rebuttal testimony that "DTE Electric's position is that it would not seek to recover from other customers costs that are ultimately determined by the Commission, pursuant to Section 5.1.3 of the PSA, to be in excess of the combined revenues payable to the Company under the PSA and Related Agreements;"[62] but that does not address the concern identified by witness Coppola as to requiring the customer to provide collateral for the entirety its PSA and CCAA obligations.

Also insufficient here is witness Foley's assertion that "the Company acknowledges that it bears the risk of collateral insufficiency for costs that the Commission ultimately determines in excess of revenues received under the PSA, CCAA, and other related agreements."[63] Even if the Company were to adopt the Attorney General's backstop recommendation (as discussed in section III.G) below, this alone does not sufficiently mitigate the risk of cost-shifting to the Company's other customers. Crucially, DTE has not presented any evidence in this matter as to how it could absorb any portion or particular amount of credit risk from the customer. When the Attorney General asked in discovery about DTE's ability to absorb a credit

[61] 3 TR Confidential, Confidential Coppola Direct at 915:15 – 17.
[62] 3 TR, Foley Rebuttal at 134:11 – 135:3.
[63] Id.

risk, the Company merely pointed back to the section of witness Foley's rebuttal quoted above and provided no details or analyses to explain how it might do so.[64]

Relying solely on a utility credit backstop has also historically presented a risk that a utility might nonetheless eventually seek ratepayer coverage. In the case of the Midland Nuclear Power Plant, the Commission permitted Consumers Energy to seek a "financial stabilization" rate increase on the premise that debt incurred to finance a stalled and converted project would otherwise present a solvency risk to the utility. *See, Att'y Gen v Pub Serv Comm'n*, 189 Mich App 138 (1991). Thus, without further proof from the Company, witness Foley's proposal in rebuttal does not appear sufficient on its own to ensure against a future financial hardship for the Company and potential subsidization by other customers.

Given that context, and in light of the other deficiencies described above, DTE has failed to meet its burden of proof to show how its proposed parent guarantee terms would reasonably and prudently protect its other customers. The Attorney General thus adopts and reiterates the recommendation of witness Coppola that the Commission reject any limitations on the parent guarantee and bank letter of credit collateral terms in the PSA and CCAA.

D. Demand Response Agreement

In testimony, witness Coppola described the details of DTE's proposed Demand Response (DR) contract with the Customer.[65] He noted testimony from DTE witness

[64] Exhibit AG-8 at 13 (asserting that "the speculative and undefined downstream financial consequences mentioned in the question are outside the record of this proceeding").
[65] 3 TR, Coppola Direct at 482:4 – 14.

Burgdorf that the Customer has requested to participate in the Demand Response program for up to 250 MW, or 25% of its peak load of 1,000 MW.[66] The DR contract would begin on June 1, 2027, and end May 31, 2033, with a required firm service level of 650 MW, which would allow for an interruption or reduction in energy delivery for up to 250 MW during a MISO-called demand response or emergency event.[67] The Company further stated in testimony that MISO can assess penalties to the Customer for non-performance in reducing power usage to the level called upon, including losing accreditation of resources and other damages for lost auction price revenues in future MISO plan years.[68]

Attorney General witness Coppola expressed concerns with DTE's proposed DR contract.[69] He noted that the 250 MW load reduction commitment under the DR program seems extremely aggressive for a data center that must run 24 hours per day for 365 days of the year, nearly unimpeded; the concern being that other customers will pay the costs for the Customer participating in the DR program.[70] Witness Coppola thus concluded that to the extent the Customer is not able to meet its commitment to shed load when called upon by MISO under the DR program, it is necessary for the Company to ensure that other customers are made whole for any payments made to the Customer for participation in the DR program.[71]

[66] Id.
[67] Id.
[68] Id.
[69] Id. at 483:13 – 484:5.
[70] Id.
[71] Id.

In light of the above, the Attorney General adopts the recommendation of witness Coppola that any penalties assessed to the Customer for non-performance under the DR program should be accounted for separately, disclosed in DR or other proceedings and credited to other customers' rates.[72]

In rebuttal testimony, DTE witness Burgdorf stated agreement with the proposal that any penalties assessed for non-performance under the DR program should be accounted for separately.[73] However, witness Burgdorf distinguished that "[t]he Company intends to track any such non-performance penalties through the Power Supply Cost Recovery (PSCR) Reconciliation proceedings…",[74] rather than in a general rate case as recommended in witness Coppola's testimony. While the Attorney General does not necessarily disagree with the premise of tracking through PSCR Reconciliation proceedings, in such a context the Attorney General would further recommend that the Commission require the Company to identify any DR non-compliance and applicable credits in testimony as well as to provide supporting exhibits to allow proper tracking of DR costs versus credits as to the Google Data Center.

E. Transmission Cost Tracking

As described in section III.A above, Attorney General witness Coppola identified concerns with the Company omitting consideration of certain transmission costs in its application materials. While the Company's analysis in this matter

[72] Id.
[73] 3 TR, Burgdorf Rebuttal 398:12 – 17.
[74] Id. at 22 – 23.

ostensibly addresses some transmission upgrade costs through its proposed Line Extension Agreement and other ITC services,[75] witness Coppola identified other categories of transmission costs that the Company did not account for in its application materials or analyses.[76] He identified that ITC will likely be involved in connecting the energy storage locations and new renewable energy projects to transmit power generation from those projects to DTEE.[77] He further noted that, for the energy storage resources, ITC will most likely also be involved in delivering power to recharge the batteries after they are discharged.[78] The Company confirmed in discovery that it did not factor these cost categories into its analyses.[79]

Given the array of transmission upgrade costs both included and omitted by DTE, witness Coppola concluded in testimony that transmission capital costs associated with incremental resources need to be tracked and reported separately, along with ITC O&M costs related to all of the new transmission facilities installed to supply power to the Google data center from resource origin to the data center delivery point.[80] He further noted the potential for additional incremental MISO transmission-related oversight and system management costs pertaining to the new data centers, which are billed through other transmission schedules.[81] He likewise cautioned that additional incremental transmission costs, including ITC costs, related to the Google, Oracle (Case U-21990), and other data centers that may occur

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[75] See, as described in witness Coppola's testimony at 3 TR, Coppola Direct at 482:15 – 483:12.
[76] 3 TR, Coppola Direct at 484:6 – 485:15.
[77] Id.
[78] Id.
[79] See, as discussed in detail in Section III.A above.
[80] Id.
[81] Id.

in future years need to be separately identified to ensure that other customers are not subsidizing data center customers.[82]

DTE does not dispute in rebuttal testimony the categories of transmission costs, identified by witness Coppola, that the Company omitted from its application analyses. Nor does it necessarily challenge witness Coppola's recommendation for transmission cost tracking.[83] The Company instead merely asserts that "while the Company can provide reasonable estimates and supporting detail for transmission-related costs associated with serving the Customer's load, it may not be able to provide the precise project-by-project billing traceability implied by some intervenor recommendations."[84] Thus, there does not appear to be substantive opposition to witness Coppola's recommendations on this topic.

In light of the above, the Attorney General adopts and reiterates the recommendation of witness Coppola that the Commission direct the Company to implement appropriate cost accounting tracking procedures to allow complete and accurate reporting of all transmission-related incremental costs for each new data center for presentation of the aggregate costs and benefits that are impacting other customers.[85] Such tracking procedures should include accounting for transmission upgrade costs associated with generating and storage projects developed to serve the customer and/or included within the scope of the CCAA, along with other incremental

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[82] Id.
[83] Id.
[84] Id. at 146:14 – 16.
[85] 3 TR, Coppola Direct at 485:12 – 15.

MISO transmission-related oversight and system management costs pertaining to the new data centers.[86]

F. Regulatory Liability Account for Benefit/Cost Tracking

In testimony, Attorney General witness Coppola summarized DTE's proposals for cost and benefit tracking.[87] He noted that concerning the proposed CCAA, the Company has stated it plans to present the additional costs incurred for renewable energy projects in its annual REP reconciliations.[88] The Company also has indicated that it plans to present in future rate cases the annual reconciliation of costs incurred from CCAA resources against the amounts billed to the Customer to demonstrate that the Customer is paying the total cost of those resources.[89]

As discussed by DTE witnesses Foley and Willis, the Company has further indicated that it plans to calculate and present a periodic aggregate reconciliation of net benefits accruing to other customers from the Google data center.[90] In Exhibit A-19, the Company presented an illustration of potential net benefits by year from 2028 to 2047 that total to $1.7 billion. As referenced in witness Coppola's testimony and elsewhere in this Brief, the costs and financial benefits shown in Exhibit A-19 are based on certain assumptions about future cost increases and resource additions that will likely vary from actual costs in future years.[91] However, the Company's concept

[86] While DTE's testimony and discovery responses indicate some willingness to track transmission costs, it has yet to specifically assent to the tracking for all of the transmission costs witness Coppola identified in testimony. See, e.g., Exhibit AG-7 at 4, 6, 10.
[87] 3 TR, Coppola Direct at 485:16 – 485:17.
[88] Id.
[89] Id.
[90] Id.
[91] Id.

for a cost and benefit tracking/reconciliation mechanism has merit.[92] Likewise, in discovery the Company referenced Paragraph 5.1.3 of the PSA as applicable "if the Commission determines that the benefits [of serving the customer] do not exceed the costs."[93] The language of Paragraph 5.1.3 of the proposed PSA includes that:

> If, at any time during the Term, the Commission (a) issues a ruling or order determining that the costs to serve Customer exceed the combined revenues paid or payable to the Company under this Agreement and the applicable Related Agreements, or (b) disallows Company's recovery of costs to the extent attributable to serving Customer, then, in either case, Customer agrees to comply with any such ruling or order to ensure that Customer pays all costs associated with its service from Company, and, as applicable, Customer shall reimburse Company for any unrecovered costs, plus interest accrued on such amount at the Interest Rate within ninety (90) days of any such order....[94]

The Attorney General is hopeful that the Company's proposals and terms described above will provide a foundation for ensuring that the Google data center will cover its caused costs and pass any benefits on to ratepayers. That being said, the Commission should require further specific and concrete mechanisms for ensuring that DTE's proposals might in fact produce benefits as the Company asserts. Namely, as recommended by witness Coppola, the Commission should order that the Company establish a regulatory liability account to capture the annual financial benefits from the Google data center, and any other data centers, for inclusion in future rate cases as a reduction to future base rate increases or as a direct

[92] Id.
[93] Exhibit AG-8 at 21.
[94] DTE Exhibit A-16 Confidential – Revised at 8.

passthrough of the financial benefits to customers through a separate credit refund.[95] This tracking mechanism will ensure that financial benefits are actually passed through to customers and do not merely accrue to the benefit of the utility.[96]

The importance of establishing a regulatory asset is emphasized by DTE's recent assertion that due to additional data center revenues it may defer filing a new rate case for a couple of years.[97] That announcement assumes that the Company will retain any financial benefits from additional revenues billed to the data center customers.[98] Such an approach obscures the claim that new large data centers will provide incremental benefits to customers and reduce rates.[99] In discovery, the Attorney General asked the Company to confirm that such a suspension of rate case filings would result in only the net benefits for the projected test year being reflected in base rates (i.e., not reflecting the entirety of any net benefits accrued in any skipped years of rate cases);[100] in response, the Company did not acknowledge nor provide a solution to this concern, instead proffering only the vague assertion that:

> In general, to the extent that there is revenue generated by Customer sales that is not assumed in base rates, then the Company intends to use that revenue to the benefit of customers by supporting the Company's objective of providing safe and reliable electric service, offsetting the need to request a rate increase.[101]

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[95] 3 TR, 486:18 – 187:4.
[96] Id.
[97] Id.at 487:5 – 14.
[98] Id.
[99] Id.
[100] Exhibit AG-8 at 25.
[101] Id.

The better approach is to capture the financial benefits in a regulatory liability account and for the utility to take those benefits into consideration when deciding whether or not to file a rate case.[102] Such a mechanism will provide a more sound and transparent approach to show that other customers are actually benefiting and are not being financially disadvantaged by the new large data centers served by the Company.[103]

Witness Coppola's concern on this point has also been borne out historically in the context of DTE's NEXUS transportation capacity contract; despite an assertion of customer benefits from that contract, net benefits have not yet materialized after six years from the start of the contract.[104] The Attorney General provided DTE the opportunity to respond to this comparison in discovery, but the Company only proffered legal objections in response.[105]

Other discovery responses from the Company are similarly reflective of an overall unwillingness to provide clarity or specificity as to how, in practice, the Company would accomplish the ostensible goals of its cost/benefit tracking proposals.[106] For example, in discovery, the Company was unwilling to identify outcomes for a potential lack of benefits materializing over the course of the Special Contracts;[107] the Company merely responded instead that "the Company will present aggregate costs and benefits in rate cases and PSCR proceedings" and that "[i]f the

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[102] 3 Tr, Coppola Direct at 487:9 – 14.
[103] Id.
[104] Exhibit AG-7 at 8.
[105] Id.
[106] See, Exhibit AG-8 at 21 – 24.
[107] Exhibit AG-8 at 21.

Commission determines that the benefits do not exceed the costs, Section 5.1.3 of the PSA is applicable."[108] Company witness Foley's rebuttal testimony on this topic is likewise unpersuasive; for example, witness Foley completely fails to address concerns about DTE's recent announcements as to a suspended rate case schedule.[109] Witness Foley's rebuttal likewise failed to address the potential for a regulatory liability account to operate in conjunction with other mechanisms, such as the PSCR process, for allowing benefit pass-through.

In light of the above, DTE has not met its burden of proof to establish how its proposed benefit/cost tracking plan, without a more specific mechanism for implementation, would be reasonable and prudent to track such benefits/costs and ensure that benefits are passed on to ratepayers as the Company ostensibly envisions. Accordingly, the Attorney General reiterates the recommendation of witness Coppola that the Commission should order that the Company establish a regulatory liability account to capture the annual financial benefits from the Google data center, and any other data centers, for inclusion in future rate cases as a reduction to future base rate increases or as a direct passthrough of the financial benefits to customers through a separate credit refund.[110] A benefit/cost reconciliation should be completed annually based on actual costs, including costs and revenues under the CCAA.[111] These recommendations further operate in conjunction with witness Coppola's other recommendation (discussed in Section III.E above) for tracking incremental

[108] Id.
[109] 3 TR, Foley Rebuttal at 148:9 – 149:2.
[110] 3 TR, Coppola Direct at 486:18 – 187:4.
[111] Id. at 486:15 – 17.

transmission costs caused by each of the Google and Oracle data centers, and any other data centers that may come along.[112]

G. DTE as a Cost Backstop

In addition to the other recommendations identified above, the Commission should require that DTE at all times serve as a backstop for the incremental costs of serving the Google Data Center, should aggregate costs exceed benefits.[113] Specifically, the Attorney General adopts the recommendation of witness Coppola that, if at any time during the term of the PSA, CCAA, or other agreements with the Customer or after the expiration of those agreements, costs related to the Customer exceed any benefits, or there are no longer any offsetting benefits, the Company and not the other customers should be responsible for such costs.[114]

In testimony, witness Coppola identified that such a requirement is similar to the Commission's pronouncement in case U-21990 that:

> Moreover, the approval in the instant case is conditioned upon the assumption, as represented by DTE Electric in its application, testimony, and subsequent filings, and in the materials provided pursuant to the Staff's audit, that the Customer's obligations under Rate D11 and the special contracts will at least cover the costs to serve the Customer (including generation, transmission, distribution, or other costs)… In addition, in the event of a failure to pay the MBD under the PSA, or in the event of a termination, default, or other event whereby DTE Electric is required to draw on the letter of credit or parental guaranty, if the company determines that the specified collateral is not sufficient to cover the full amount of the remaining financial exposure associated with the ESA or the PSA (minus the value to customers), the Commission specifically cautions DTE Electric that any unrecovered costs shall not be borne by ratepayers and that DTE

[112] Id. at 486:5 – 8.
[113] Id. at 487:15 – 488:16.
[114] Id.

> Electric bears responsibility for any remaining liability. All risk associated with the sufficiency of the collateral shall be borne by DTE Electric.[115]

It is also worth noting that the language and context of the Special Contracts entail risks to ratepayers that would be entirely determined by DTE's performance. For example, the Attorney General confirmed in cross-examination of DTE witness Foley that there is no termination payment applicable under the proposed PSA for any "Company Event of Default."[116]

IV. Conclusion

For the reasons discussed above, the Attorney General respectfully requests that the Commission adopt her recommendations as set forth above.

Respectfully submitted,

Dana Nessel
Attorney General

Joel King

Digitally signed by Joel King
Date: 2026.07.20 20:10:50 -04'00'

Joel B. King (P81270)
Lucas Wollenzien (P86928)
Assistant Attorney General
Special Litigation Division
Sixth Floor Williams Bldg.
525 W. Ottawa Street
P. O. Box 30755
Lansing, Michigan 48909
517-335-7627

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[115] Id. (referencing Case U-21990, December 18, 2025, Order at 40 – 41).
[116] 3 Tr, Foley Cross at 188:18 – 23 (note that there appears to be errata in the transcript here where the word "length" as included should read "language"); See DTE Exhibit A-16 Confidential – Revised at 13 (Section 7.3).

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The undersigned certifies that a copy of the ***Attorney General's PUBLIC Initial Brief*** was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 20th day of July 2026.

Lucas Wollenzien Digitally signed by Lucas Wollenzien Date: 2026.07.20 20:08:50 -04'00'

Lucas Wollenzien

DTE Electric Company:
John Janiszewski
Andrea Hayden
John.janiszewski@dteenergy.com
Andrea.hayden@dteenergy.com
Mpscfilings_account@dteenergy.com

ALJ:
Hon. Theresa Staley
Staley1@michigan.gov

Attorney General of Michigan:
Lucas Wollenzien
Joel King
wollenzienl@michigan.gov
kingj38@michigan.gov
ag-enra-spec-lit@michigan.gov

Sebastian Coppola
sebcoppola@corplytics.com

MPSC Staff:
Adam Cozort
Amit Singh
Daniel Sonneveldt
Cozorta1@michigan.gov
Singha9@michigan.gov
sonneveldtd@michigan.gov

ABATE:
Stephen Campbell
Michael Pattwell
scampbell@clarkhill.com
mpattwell@clarkhill.com

MEC/NRDC/SC:
Christopher Bzdok
Sean Clark
Sue Fruchey
Shannon Fisk
Jacob Elkin
Helen Li
Natasha Fowles
Bryndis Woods
Joshua Castigliego
chris@tropospherelegal.com
Sean@tropospherelegal.com
sue@tropospherelegal.com
sfisk@earthjustice.org
jelkin@earthjustice.org
hli@earthjustice.org
natasha@tropospherelegal.com
Bryndis.woods@aeclinic.org
Joshua.castigliego@aeclinic.org

IEI/EC/UCS/MEIBC/ELPC/VS:
Katherine Duckworth
Daniel Abrams
kduckworth@elpc.org
dabrams@elpc.org

GLREA:
Don Keskey
donkeskey@publiclawresourcecenter.com