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. Case No. U-22058

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MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S
<u>REPLY BRIEF</u>

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

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I. Introduction

In accordance with the August 3 filing deadline contained in the April 15, 2026, scheduling memorandum, Staff files this reply brief. Staff reasserts the correctness of each of its positions taken in its initial brief and this reply brief, supported by its testimony and exhibits. The Michigan Public Service Commission (MPSC or Commission) should not consider Staff's silence on any argument raised by another party as an agreement with that party's position.

II. Argument

A. The Commission should require the Company to ensure RECs associated with Large Load Customer VGP and removed from the REP compliance calculation are retired at the time the associated VGP customer load is removed from retail sales.

DTE Electric Company (DTE or Company) acknowledged that Staff has concerns with the transfer of Voluntary Green Pricing (VGP) Renewable Energy Credits (RECs) generated from the Clean Capacity Accelerator Agreement (CCAA) resources due to the potential for double counting. (DTE Initial Brief, p 76.) However, the Company goes on to suggest that Staff's concerns are not warranted, and the Company claims it should be allowed to transfer RECs to the Customer, remove the enrolled load from the Renewable Portfolio Standard (RPS) compliance calculation, and not ensure that the associated RECs are retired. (*Id.*, p 77.) Indeed, Staff does have concerns that if the RECs are transferred and are not subsequently retired, that there may be an opportunity for double counting. Therefore, Staff recommends that RECs generated by the CCAA renewable resources be retired in the year that the Company is subtracting those VGP sales from its renewable portfolio requirement calculation. (3 TR 842, 845.) The Company claims that they share the same objective, to avoid double counting, but states that Staff's recommendation is in error because it assumes that REC retirement is the only way of achieving the objective. (DTE Initial Brief, p 76.) Furthermore, the only alternative solution that the Company puts forth is to maintain an appropriate REC record to ensure that RECs associated with the Customer's VGP participation are not also used by the Company for RPS compliance in a manner that would result in double counting. (DTE Initial Brief, p 79; 3 TR 295-296.) Staff asks the Commission to find that this solution is not sufficient. As stated in Staff's testimony, the Company has acknowledged that the RECs delivered to the Customer are not necessarily going to be retired by the Customer or on the Customer's behalf. (3 TR 841.) Not only does this conflict with the Commission's July 12, 2017, Order in Case No. U-18349, but Staff also contends that the Company's proposed solution does nothing to alleviate Staff's concern because RECs can be double counted in ways beyond just being used by the Company.

The Company has agreed that the REC represents the renewable attribute associated with the renewable generation acquired under the CCAA, but argues that if the REC is transferred, the energy produced still remains renewable. (DTE Initial Brief, p 78.) This results in an absurd outcome because it would allow for energy to be counted as renewable without the certified renewable attribute that makes it so. The Company's argument boils down to allowing counting a REC as covering load that gets subtracted from its RPS without ensuring that either the Company or Customer retires the REC at the time the energy is accounted for, thereby allowing it to be used, sold, or counted again in the future. This is effectively double counting. Furthermore, the Company's proposal to prevent this through proper accounting to ensure that DTE does not use the REC in the future does not alleviate the potential for the REC to be sold to or accounted for by some other entity. Any scenario where a REC and the associated renewable attribute it represents is used more than once is a form of double counting. Staff contends that transferring RECs from the Company to the Customer does make the underlying energy non-renewable because the renewable attribute has been removed. However, if the Company were to conduct the transfer and then ensure the Customer retired the RECs immediately, Staff is satisfied that double counting would be avoided while also allowing the Customer to claim being served by some percentage of renewable or clean energy. Therefore, Staff asks the Commission to reject the Company's arguments on the matter and require the Company to ensure that RECs associated with VGP resources are retired in the year that the VGP load is removed from the RPS compliance calculation.

1. The Commission should reject the Company's argument that, since Public Act 235 does not require that RECs be retired to enable load enrolled in VGP to be subtracted from the RPS compliance calculation, Staff's argument is moot.

Public Act 235 (PA 235) of 2023 established a clean energy standard, increased renewable energy targets, and expanded the state's distributed generation (DG) cap. The Company suggests that, because PA 235 did not explicitly require RECs to be retired to enable load enrolled in VGP to be subtracted, Staff's arguments to the contrary are invalid. (DTE Initial Brief, p 77.) Staff disagrees. Staff contends that the statute appropriately excludes both DG outflow and VGP because both are assumed (and indeed, required) to be renewable. (Staff Initial Brief, p 33.) Excluding load that was not covered by both the renewable generation, and its associated renewable attribute again results in an absurd outcome ultimately allowing for RECs to be counted, used, etc., more than once, effectively allowing for double counting.

2. The Commission should require the Company to ensure RECs used for Clean Energy Plan compliance are retired in the year they are claimed, reaffirming previous Commission guidance.

The Company has admitted that it intends to use the renewable generation acquired through the CCAA to help achieve Clean Energy Plan compliance. (Exhibit S-1.1.) The Commission provided guidance in its December 18, 2025, Order in Case No. U-21867, that one REC could be retired to meet 1 MWh of clean energy requirement. This guidance ensures that RECs retired for the purpose of meeting the RPS can also count toward the Clean Energy Plan (CEP) and that additional RECs can be retired to meet the Clean Energy Plan targets to the extent that a utility needs to do so. (3 TR 843.) Although the Company acknowledges that the CEP and REP need to be aligned, they seem to also dismiss the precise method that the Commission has provided to ensure such alignment. (DTE Initial Brief, p 79.) Therefore, Staff asks the Commission to confirm its requirement to ensure REP and CEP alignment by requiring that a REC be retired in the year it is used to meet CEP compliance.

3. The Commission should find that the financial incentive associated with the transfer of 300 ZRCs should not be recorded as non-refundable income and disregard the Company's arguments to the contrary.

In its brief, the Company details that the Zonal Resource Credits (ZRCs) that are to be transferred from the Customer to the Company are at no cost to the Company and that the Customer has agreed to pay the Company a financial adder. (DTE Initial Brief, p 66.) The Company notes that although the financial adder is conceptually similar to a Financial Compensation Mechanism (FCM) in that it accounts for the opportunity cost of the Company foregoing the development of a Company-owned resource and that because the Company views the financial adder as having a similar concept, it should be given similar accounting treatment. (DTE Initial Brief, pp 66-67.) All intervening parties oppose the Company's request for reasons further detailed below.

4. The Commission should find that since there is no statutory requirement for the Company to earn a financial incentive pursuant to MCL 460.1028, accounting treatment consistent with an FCM is not warranted.

The Company admits that there is no statutory requirement for a financial mechanism as there is for power purchase agreements under MCL 460.1028. (DTE Initial Brief p 67.) Rather, they suggest the lack of a statutory requirement is irrelevant; however, they also state that the financial incentive serves a similar purpose and therefore should be allowed similar accounting treatment anyway. The Company goes on to suggest that disallowing this treatment creates an inequitable allocation of risks and benefits, claiming that all intervening parties suggest the Company should accept the downside risks without receiving the benefit of the financial adder. (DTE Initial Brief, pp 67-68.) The Company misconstrues Staff's argument. The Company is already receiving the benefits from the added revenue from retail sales to the Customer and revenue associated with the Company owned resources included in the Special Contract. (Staff Initial Brief, pp 31-32.) Although the Company has negotiated a financial incentive, it is not mandated by statute and therefore the same accounting treatment should not be allowed. Allowing the Company to record the incentive as non-refundable income for the benefit of its shareholders creates a precedent and future incentive for the Company to seek customers willing to pay an increased rate for service. (3 TR 844.) The Company asserts that it should be entitled to an incentive for the risk of serving the customer; however, as correctly stated by ABATE, even if Google voluntarily provides such a financial incentive it should not be a cost for which DTE's other customers may ultimately be responsible. (ABATE Initial Brief, pp 12-13.) This statement further supports Staff's position in brief that the risk is ultimately being borne by DTE's other Customers and therefore any such incentive should be recorded as revenue that is used to offset other revenue deficiencies, further protecting other customers from the risks and costs of the Company providing service to this Customer. (Staff Initial Brief, p 32.)

B. The Commission has authority to determine accounting treatment of the financial adder included with the 300 ZRC transfer.

The Company claims that if the Commission does not grant the accounting treatment it requested that it interferes with the Company's right to negotiate contract terms, even going so far as to reference *Union Carbide*. (DTE Initial Brief, p 68.) That is simply incorrect, as demonstrated by the simple fact that the Commission has authority to approve or deny the special contract. (MCL 460.6a) Meanwhile, the Company is free to negotiate contract terms as it deems appropriate and to protect other customers from costs and risks associated with serving this Customer and the associated resources that other customers may ultimately be responsible for. The accounting treatment of the financial adder does not interfere with allowing the Company to negotiate that this specific Customer pay a financial adder due to the risk to DTE's other customers and DTE cannot deny that such risks exist. Therefore, Staff asks the Commission to find that it has complete authority to ensure that appropriate accounting treatment of any such financial adder occurs.

C. The Company's claims that Staff's recommendation regarding the prioritization of resources to serve all customers as compared to those necessary to serve the CCAA is unnecessary and unworkable should be disregarded.

The Company says that it shares Staff's underlying objective but respectfully submits that the recommended condition to prioritize resources to serve all customers over those to serve this Customer is unnecessary and unworkable. (DTE Initial Brief, p 85.) That misstates Staff's position. Staff contends that the Company should prioritize resources to meet its IRP first such that the Company's other customers do not pay more for resources of the same technology type contracted at a similar time as compared to this single Customer. (3 TR 840.) The Company leans heavily on two past settlement agreements stating that this would effectively add a new procurement priority condition even though the Company states that it is not in disagreement with Staff's objective. (DTE Initial Brief, p 85.) The Company argues that adding such a condition would modify the previously negotiated and approved VGP Settlement Agreements outside of the forum in which those agreements were adopted. (DTE Initial Brief, p 85.) Staff contends that any such modification is appropriately determined in this case as it directly impacts the procurement of VGP resources for this Customer that will take place as part of the CCAA. It will not impact DTE's previous large load filing in Case No. U-21990 because that Special Contract was not for the procurement of VGP resources. Staff has a long-standing concern about DTE's procurement practices related to VGP resources and cost parity between resources procured for VGP and those procured for all customers. DTE also routinely issues Requests for Proposals (RFP) for the procurement of resources. Therefore, the Company should be able to show project bids transparently, allowing comparability for Staff audits. This ensures projects prioritize all customers rather than potentially allowing only Large Load resources to be picked as the most reasonable and prudent solution under an RFP. The Company offered no other resolution and therefore Staff requests the Commission find that Staff's recommendation is reasonable.

D. Staff and the Company are aligned on Staff's recommendation to re-examine collateral and termination payment within 3 years of load ramp completion.

The Company does not oppose providing information necessary to re-examine collateral and termination payment amounts as recommended by Staff. (DTE Initial Brief, p 30.) However, the Company notes that the Commission cannot unilaterally alter the terms of existing, approved special contracts. (*Id.*) Staff does not intend to alter the terms of the special contracts through re-examination. Instead, Staff intends the re-examination be used to assess the risk posed to the Company by the customer and provide the Commission with extra context when determining the impact that potential rulings may have vis-à-vis the affordability backstop. Because the termination payment will change over time as base rates change and the collateral requirement may change depending on the Customer's parent company's credit rating it is important for the Commission to understand how engaging the affordability backstop may affect the Company, the specific Customer, and other customers. For this reason, the Commission should direct the Company to provide updated data for the collateral and termination payment amounts within three years of the Load Ramp Completion Date in either a general rate case or another filing at the Company's convivence.

E. Staff and the Company are aligned on Staff's recommendation to use IRPs to inform future cost allocation rulings in general rate cases.

Finally, to provide clarity, Staff replies that it does not dispute the Company's recommendation regarding the role of integrated resource plans (IRPs) and general rate cases regarding cost allocation data and decisions. (DTE Initial Brief, p 92.) Specifically, the intention of Staff's original recommendation is better described in the Company's initial brief as "the IRP will inform the record by identifying the changes in the Company's resource mix attributable to serving the Customer's load, and the subsequent general rate case will use that information… to make any cost-allocation and cost-recovery determinations…" (DTE Initial Brief, p 92.) As explained in Staff's initial brief, Staff's recommendation is that information presented in IRPs should be used to support future cost allocation determinations. (Staff Initial Brief, p 17.) For these reasons Staff and the Company are in alignment in their recommendation to only address cost allocation in general rate cases, which will rely on the identification of resources used to serve the Customer's load via IRP cases.

III. Conclusion

For all the reasons presented in Staff's testimony, exhibits, and briefing, Staff respectfully requests the Commission's adoption of Staff's recommendations in its final order

Respectfully submitted,

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PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

Erin Fielder-Attia, being first duly sworn, deposes and says that on **August 3, 2026,** she served a true copy of **Michigan Public Service Commission Staff's Reply Brief** upon the parties listed on the attached service list **via email only:**

E. M. Fielder-Attia

Erin Fielder-Attia

Subscribed and sworn to before me
this **3rd** day of **August, 2026**.

Cherie A. R. Shea

Cherie A. R. Shea, Notary Public
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