STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of	)	
DTE ELECTRIC COMPANY for	)	Case No. U-22058
approval of special contracts and for other relief.	)	

REPLY BRIEF OF THE
GREAT LAKES RENEWABLE ENERGY ASSOCIATION

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The Great Lakes Renewable Energy Association (GLREA) files this Reply Brief in accordance with the schedule established by the Administrative Law Judge (ALJ). This Reply Brief responds to certain arguments made by other parties in their initial briefs. The GLREA's decision not to address certain issues in this Reply Brief is neither a waiver of those issues nor an acceptance of other parties' positions. GLREA retains its positions on other issues not addressed herein, but which are presented in GLREA's briefs, testimony, and exhibits.

I. THE COMMISSION SHOULD ORDER QUARTERLY REPORTING DURING THE CUSTOMER'S RAMP-UP PERIOD

In initial testimony, GLREA recommended reporting consistent with the order in U-21990, which included some quarterly reporting (Richter, 3 TR 586). In rebuttal, the Company asserted that "Except during the Customer's ramp period, the information provided in the recommended report is not expected to change meaningfully, and even during the ramp period, the value of receiving this information every three months is unclear" (Foley rebuttal, 3 TR 153-4 lines 23-25 and 1-2 respectively). The Company repeated this assertion in its brief (DTE Electric brief, p 42). GLREA modified its proposal in its brief, by recommending quarterly reporting only during the ramp period, and only of the Customer's energy consumption. GLREA's Brief explained that this "would provide a leading indicator of the Company's progress towards meeting its schedule and making use of its contracted capacity." (GLREA brief, p 17). GLREA stands by that proposal.

II. THE COMMISSION SHOULD ADOPT STAFF'S RECOMMENDATION FOR AN ANALYSIS OF RESOURCE REQUIREMENTS WITH AND WITHOUT THE LARGE LOAD CUSTOMERS IN AGGREGATE

Staff recommended that, "In its next integrated resource plan application and its initial clean energy plan application (filed together), DTE Electric Company shall include a comparison of the resource requirements necessary to serve the Company's load and meet the RPS, CES, and resource adequacy and reliability, both with and without the addition of the Customer's load and Special Contract resources" (Simpson direct, 3 TR 838) for the *aggregated demand of the Company's large load customers*. The Company's brief opposes this suggestion, stating that the Company is required to present a revenue requirement for each large-load customer individually, as if that contradicted Staff's recommendation (DTEE brief, p 44-6). Staff's brief made it clear that they do not oppose the analysis of each large load customer separately, but maintains that a combined analysis is still necessary because it "will help illustrate the aggregated affordability impact and assess a future where both loads exist or both loads do not materialize because *the impacts many not be simply additive*" (Staff brief, p 25-6, emphasis added). GLREA agrees with Staff's assessment. Unlike conventional customers, these two customers are so large that their grid impacts will interact with each other. As a hypothetical example, 4-hour batteries may be sufficient to flatten the peak of the demand curve for either customer individually, but taken together, a battery system of longer duration may be needed to accomplish the same result. Additionally, the aggregated analysis that Staff recommends will support an analysis to determine if these large load customers should be treated as a separate customer class and/or a separate rate class. ABATE has recommended that large load customers be put in a separate rate class, asserting that not doing so will "almost certainly result in cost subsidies as a result of the D11 rate design…" (ABATE brief, p 11 - 2); the aggregated study recommended by Staff will support a numerical analysis of that assertion, and a quantification of the alleged cross subsidy.

III. THE COMMISSION SHOULD REJECT DTEE'S REQUESTED ACCOUNTING TREATMENT OF THE ZRC FEE

The customer has agreed to give the Company a quantity of zonal resource credits (ZRCs), and also to pay the company a fee when they do so. The fee is computed by multiplying the number of ZRCs by MISO's Cost of New Entry (CONE) multiplied by the Company's pre-tax weighted average cost of capital. The Company has proposed that it be allowed to record this amount as "non-refundable income" (i.e. profit). The Company compared this to the FCM it receives when signing a Power Purchase Agreement (PPA). GLREA did not object to the fee in the contract, but recommended that the Commission deny the requested accounting treatment (Richter direct, 3 TR 587). Staff, ABATE, and MEICO also objected (DTEE brief, p 67). In their brief, the Company made four counter arguments, listed in bold as follows:

1. **The ZRC fee is not tied to the statutory FCM (DTE Electric brief, p 67):** After making multiple comparisons to the FCM, the Company asserts that intervenor's objections misconstrue the basis of the request. The fact that four separate intervenors read the Company's proposal that way shows how the Company's original proposal suggested it was based on the FCM statute. Now the Company says,

> "…the financial adder is a negotiated term of a special contract, and the intervenors identify no factual or legal basis to deny the accounting treatment requested by the Company beyond the inapposite observation that there is no PPA." (DTE brief, pp 67-68).

The Company's first assertion is incorrect; the *fee* is a term of the special contract; the accounting treatment is not part of the contract. The customer has no say in the regulatory accounting treatment of any utility revenue or expense. The Company's second assertion gets the burden of proof backwards. The Company has requested special accounting treatment, and the Company bears the burden of showing why this special accounting treatment should be granted. The Company has not cited any legal basis for the *approval* of their unusual proposal. Additionally, Staff provided an excellent *factual reason* for denial of the accounting treatment – that approval would create "a future incentive for the Company to seek out large customers that are willing to pay more than is necessary to have their load served." (Staff brief, p 32). GLREA agrees.

Additionally, GLREA asserts that large load customers, eager to get interconnected at the earliest possible date, are at a decided disadvantage in negotiating with the Company.

2. **That denial would result in an "inequitable allocation of risks" (Ibid, p 68):** GLREA addressed this in its brief. Firstly, the Commission has no obligation to provide the Company with profits beyond those provided by law, and the Company cites no legal basis for their claim to unique profits from special contracts. Secondly, any financial risk to the Company from these special contracts is of its own making – the Company negotiated and accepted all the terms. Thirdly, the Company made no attempt to quantify the alleged risk it is exposed to, or provide any evidence that the ZRC fee is proportional to the alleged risk. Fourthly, the special contracts will provide the Company with very substantial profits (paid directly by the customer), without the need to repeatedly show the assets involved are "used and useful" (GLREA brief, p 7-8). Staff also described the extensive profits the Company will reap from these contracts (Staff brief, p 31).

3. **There is no harm to other customers (Ibid):** GLREA also addressed this assertion in its brief: while the requested accounting treatment may (or may not) cause direct harm to other customers, its denial would *benefit* other customers. Other customers are exposed to considerable risk by these contracts. If the customer cancels after their load ramp-up, but before the end of the contract, the Company will have built assets which will then be stranded; the exit fee will not cover the cost of their construction. The AG noted this risk (Coppola direct, 3 TR 472-4) as did Staff (Staff brief, p 32). It is the other customers, not DTE, that deserve a benefit for this exposure.

4. **The Commission lacks statutory authority to rewrite the PSA and CCAA (Ibid)**: The Company did not introduce this argument until its brief, and supported it by citing

"*Union Carbide*, at 148-149." All that the Company has done is knock down a strawman argument. The ZRC fee is in the contract; the *accounting treatment is not*. Whether the Commission does or does not have the authority to rewrite the contracts is not relevant to the issue of the Company's proposed accounting treatment of the ZRC fee, which is in the Company's filing, not in the contracts. GLREA did not propose a change to either of the contracts. GLREA proposed that the Commission deny the Company's proposal for special accounting treatment of the ZRC fee.

IV. THE COMMISSION SHOULD REQUIRE DTEE TO TAKE CERTAIN STEPS TO HELP ENSURE COMPLIANCE WITH THE RPS

In testimony, GLREA showed that the addition of this customer will increase the amount of renewable generation that the Company will need to meet its RPS obligation. GLREA explained that in its last IRP, DTEE insisted that it could not reasonably build or acquire more than 1,000 MW of renewable generation per year. Yet the addition of the two data center customers to the Company's existing PSA will require much more than that. GLREA recommended that the Commission issue a warning to the Company that any future application for an extension of the RPS deadline will only be approved if the Company has taken every reasonable and prudent measure to meet the RPS mandate (Richter direct, 3 TR 598 - 600). The Company opposed our recommendation, and replied that the customer will fund up to 1,600 MW of renewable generation, that the Company will identify any additional resources for compliance in its future IRP and Amended REP, and that it is committed to meeting its RPS obligations (DTEE brief, p 75-76). The Company did not explain why it insisted in its IRP that it could *not* build more than 1,000 MW of renewables per year, but that the Company can do so now. The Company did not even *assert* that it is able to do so. GLREA in its brief pointed out that the RECs generated by the (up to) 1,600 MW of renewables funded by the customer will be transferred to the customer; the Company cannot use these RECs for RPS compliance. GLREA never questioned the Company's *commitment* to RPS compliance, GLREA questioned their *ability* to comply without an extension. GLREA pointed out that a declaration that additional resources will be "identified" in a future proceeding does not demonstrate the ability to get the new facilities built in time (GLREA brief, p 9-10). Further, GLREA never questioned the Company's ability to *fund* the construction of sufficient renewable generation. GLREA questioned its ability to get it done on schedule (quoting the Company itself). In their brief, MNS-MEC showed that the 1,600 MW of renewables will not help the Company meet its RPS requirement; it simply *reduces the increase* in the number of RECs DTE needs (MNS-MEC brief p 8, emphasis in the source). MNS-MEC also provided a table showing the quantity of renewables that the Company will need, based on their IRP PCA (U-21662), for the special contracts for the Google data center in Saline (U-21990) and the instant case (Ibid, p 25). The cited table is represented here, with an additional row at the bottom that sums the MW of renewables required in each year, for the convenience of the ALJ and the Commission:

Case	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**	**2035**
U-21662	420	700	700	1000	600	1000	1000	1000
U-21990			662	331	808			
U-22058			500	700	400	(200)	(50)	
Total	420	700	1862	2031	1808	800	950	1000

The Company's three plans, in aggregate, now require it to acquire more than 1,800 MW of renewable capacity in each of three consecutive years; yet the Company has previously insisted that it would not be "feasible to implement" more than 1,000 MW in any given year.

In response to MNS-MEC discovery, and under cross examination, the Company admitted that it had not conducted any studies or analysis on the feasibility of acquiring sufficient land, interconnection rights, permitting approvals or contracts for meeting its RPS obligations (MEC-

MNS brief, p 26-7).

MEC-MNS also proposed a list of five specific recommendations regarding RFPs, DERS, a feasibility study, response to shortfalls in deployment, and presentation of renewable requirements in its next IRP – for the Commission to direct the Company to undertake (MNS-MEC brief pp 27-8).

GLREA now believes that the MNS-MEC list of specific directives provides a superior remedy to the risk of noncompliance with the RPS, compared to GLREA's prior recommendation of a warning. GLREA endorses the MNS-MEC recommendation.

V. THE COMMISSION SHOULD CONSIDER IN RATE CASES THE IMPACT ON THE UTILITY'S COST OF SERVICE OF INDIRECT COST INCREASES CAUSED BY DATA CENTERS

In direct testimony, witness Richter discussed the impact that the rapid build of data centers is having on energy market prices, and the cost of gas turbines, transformers, and other equipment. He explained that this data center will require the build of additional generation facilities, which *will cost substantially more* than they would have if they were built just three years ago, before the data center construction boom. He cited a Harvard Law study showing that conventional ratemaking results in data centers being cross-subsidized by other customers. He explained that only 4-5 parent companies are behind most of the data center construction, which can be considered a customer class; a customer class which is causing indirect (and direct) cost increases. He asked the Commission, in concurrent and future cases, should consider imposing a scarcity fee on data center customers to recover these costs from the customer group causing them (Richter direct, 3 TR 600-609).

In rebuttal, the Company opposed the scarcity fee, asserting that Richter's praise of the contract terms undermines his assertions, and that the costs are indirect and not caused by a particular data center. The Company pointed out that Richter had not offered an actual proposal for the Commission to evaluate (Burdorf rebuttal, 3 TR 400-402). DTEE's brief repeats these assertions (DTEE brief, pp 103-5).

GLREA's brief explained that it appears that the customer is willing to pay the full costs they impose on the grid, but that the customer cannot determine the dollar amount of their impact on the grid; it is up to the Commission to determine what those costs are. GLREA pointed out that in rate case proceedings, costs are not allocated to a single customer, they are allocated to an entire customer class. Treating data center customers as a customer class, would be appropriate to allocate the costs that group is causing to the class. GLREA pointed out that the indirect costs of data centers driving up the price of electrical equipment cannot be revealed by considering each data center in isolation. In response to the Company's criticism that GLREA did not present a specific proposal, GLREA modified its proposal, requesting that, "the Commission's order include a statement that the Commission will consider and weigh evidence concerning the manner in which both direct and indirect costs of providing data centers' energy service will affect the utility's cost of service and to impose remedies to protect other customers from cross-subsidizing data centers, and to require the recovery of those costs from data center customers as a group or customer class in concurrent and future proceedings" (GLREA brief, p 13 - 16). GLREA intends to provide evidence supporting its suggestion that data centers should be considered a separate customer rate class in U-22046 and U-22061. GLREA asserts that a regulatory review of both the direct and indirect costs caused by data centers is relevant for purposes of cost causation determinations and to establish just and reasonable rates.

VI. CONCLUSION AND RELIEF

The Great Lakes Renewable Energy Association respectfully requests that the ALJ recommend, and the Commission order:

1. Quarterly reporting during the customer's load ramp-up period, to provide an early indication of the customer's progress on meeting their contracted capacity commitment.

2. The adoption of Staff's recommendation for an analysis of resource requirements with and without the large load customers in aggregate.

3. Denial of the Company's proposed accounting treatment of the fee associated with the customer's delivery of ZRCs.

4. That, in concurrent or future proceedings, the Commission consider evidence in the record that data center customers, in aggregate, are indirectly increasing utility costs though their impact on market prices, in addition to the direct costs caused by data centers.

5. That the ALJ and Commission consider and adopt such further and consistent relief that is lawful and reasonable.

Respectfully submitted,

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PROOF OF SERVICE

Carol A. Dane says that on **August 3, 2026**, she served a copy of **Reply Brief of the Great Lakes Renewable Energy Association** upon the following parties via email:

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

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