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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Attorney General's
Reply Brief

Respectfully submitted,

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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.

On July 20, 2026, parties to this case, including the Attorney General, DTE Electric, the Association of Businesses Advocating Tariff Equity (ABATE), Great Lakes Renewable Energy Association (GLREA), MPSC Staff (Staff), Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club (collectively "MNS"), and Michigan Energy Innovation Business Council, Institute for Energy Innovation, the Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively "MEI/CEO") filed initial briefs.

The Attorney General files this reply brief to respond to or otherwise address arguments made by other parties in their initial briefs. The Attorney General's decision not to address certain issues in this reply brief is neither a waiver of those issues nor an acceptance of the other parties' positions. All of the Attorney General's

[1] DTE's Application, p. 1.

briefs, testimony, and exhibits should be considered in evaluating her position(s) on the issues appearing in this case.

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, which make approval of these contracts neither reasonable nor prudent. In her initial brief, the Attorney General put forward the following recommendations, which she continues to support:

- **Minimum Billing Demand**. The Attorney General recommends that, as a condition of approval of the special contracts, 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.
- **Termination Payment Calculation**. The Attorney General recommends that, as a condition of approval of the special contracts, 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.

- **Collateral Terms**. The Attorney General recommends that, as a condition of approval of the special contracts, the Commission reject any limitations on the parent guarantee and bank letter of credit collateral terms in the PSA and CCAA.
- **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. 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, as a condition of approval of the special contracts, 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. 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, as a condition of approval of the special contracts, 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. 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 the AG's other recommendation 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.

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 its claim by a preponderance of the evidence.[2] In Commission cases, a utility has the burden of proof by a preponderance of the evidence.[3] Given the nature of the burden of proof, the Commission may reject even uncontradicted evidence.[4] When the burden of proving a fact falls on one party, the other party does not have the burden of proving the opposite fact.[5]

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

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[2] *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).
[3] *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.
[4] *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).
[5] *S C Gary, Inc v Ford Motor Co,* 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

of renewable energy credits equivalent to 60% of their retail sales by 2035,[6] and further to develop a portfolio of clean energy credits equivalent to 100% of their retail sales by 2040.[7]

III. Argument

A. Response to DTE Electric

In its initial brief, DTE Electric reiterates its positions from direct and rebuttal testimony, primarily framing its discussion of other parties' testimony within the context of its witnesses' rebuttal. There are numerous topics to which the AG replies here, as follows[8]:

1. Standard of Review
2. Minimum Billing Demand (MBD) Figure
3. Termination Payment
4. Credit and Collateral Requirements
5. Affordability Backstop (PSA Section 5.1.3)
6. Clean Capacity Acceleration Agreement – Minimum Billing Demand

1. Jurisdiction and Standard of Review

After Introduction and History of Proceedings sections, DTE provides a section on Jurisdiction and Standard of Review.[9] The AG provides several replies to this section.

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[6] MCL 460.1028.
[7] MCL 460.1051.
[8] To the extent not addressing any topic or issue herein, that does not indicate agreement or acquiescence by the Attorney General and she does not waive her ability to address such topics or issues in any further pleadings or appeals in this matter.
[9] DTE Initial Brief, pp. 4-10.

First, on page 5 DTE discusses *Union Carbide*[10] for the proposition that the MPSC's authority in this proceeding is defined, and bounded, by statute. DTE points out that the MPSC is a "creature of the Legislature possessing only express authority granted to it by statute, and it has no common-law or inherent powers." DTE states that

> the Commission's role with respect to the Special Contracts is accordingly to approve, or to decline to approve, the PSA and CCAA as presented. The Commission, however, possesses no statutory authority to reform, rewrite, or nullify the contracting parties' negotiated bargain, or to compel the Company and the Customer to accept terms to which they did not agree. Where the Commission concludes that a special contract should not be approved as presented, its remedy is to decline approval — not to rewrite the contract or order it modified or rescinded. This limitation bears directly on several intervenor recommendations, which do not merely urge rejection but ask the Commission to rewrite specific, negotiated commercial terms of the Special Contracts.[11]

The Attorney General replies that, to the extent the Commission accepts DTE's argument on this point, the Commission must reject the PSA and CCAA as presented by DTE.

To elaborate, DTE is correct that it is well within the Commission's power to not approve these contracts as structured, given the MPSC's power to regulate the rates and terms at which DTE provides power. Given the above, and the well-documented failure of DTE to support the reasonableness and prudence of these special contracts – based on missing information, gaps in modelling, and continued risk that customers will ultimately be forced to act as a backstop for stranded costs –

[10] *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 148-149; 428 NW2d 322 (1988); *see also Consumers Power Co v Pub Serv Comm*, 460 Mich 148, 155; 596 NW2d 126 (1999).
[11] DTE Initial Brief, pp. 5-6.

the Commission must deny approval of these contracts under DTE's asserted legal framework. However, in doing so, the Commission should provide details for what would need to be included in revised contracts, such that they might be approved. Those details should be based on the AG's concerns and recommendations in this case.

Second, on the bottom of page 7 and onto page 8, DTE argues that the decisions the Commission arrived at in U-21990 should, for the most part[12] be applied in this case, despite the fact that U-21990 was dealt with in an *ex parte* fashion. The AG replies that this position should be rejected, as no other parties had the ability to examine or weigh in on the substance of U-21990 or the deal struck between DTE and Oracle. DTE's position that the U-21990 "December 18 Order provides applicable Commission precedent and an analytical framework for approving the Special Contracts" should be rejected.

Third and finally, on pages 8-10 of this section DTE presents discussion on the applicable standard of review in this proceeding. DTE's discussion on the top of page 9 that it "has the initial burden to prove its case by a preponderance of the evidence" but that once "a utility has satisfied its initial burden of proof, another party 'may challenge that evidence and present evidence of unreasonableness,'" and at that point "the other party has the burden to demonstrate its position is correct," is an inappropriate attempt to shift the burden from DTE to Staff and Intervenors. It bears

[12] Where the Commission's decisions in U-21990 differ from DTE's preferred approach in this case, for example with the frequency of reporting as discussed on pages 41-42 of its brief, the Company is quick to argue that the "standard" from U-21990 should *not* apply in this case. Such a self-serving approach directly undercuts all of DTE's argument on this issue.

noting that regardless of whether Staff or Intervenors present any information, evidence, or testimony challenging a specific issue, DTE has the burden of proof on that issue[13] and the burden to support its requests remains on DTE at all times.

In addition, DTE's mention of "competent, material, and substantial evidence on the whole record" at the bottom of page 9 is an attempt to confuse the standard of proof the Commission and ALJ apply in evaluating the evidentiary record with the standard of judicial review used by a reviewing court. DTE's initial acknowledgement that it has the burden of proving its case by a preponderance of the evidence is the correct standard.[14]

2. Primary Supply Agreement – Minimum Billing Demand

In the third section of DTE's discussion of its Primary Supply Agreement (PSA), it discusses the Company's position that the

> PSA reasonably and prudently establishes an MBD equal to 80% of the Customer's contract capacity for a given billing period — equal to 800 MW once the Customer reaches its full 1,000 MW contract capacity — which the Customer must pay regardless of whether its actual usage reaches that level.[15]

DTE's brief goes on to argue that the AG's witness' recommendation that the Commission reject the 80% MBD and order the Company to set the threshold at no lower than 90% should be rejected for four reasons: 1) the 80% MBD is consistent with Commission precedent (i.e. the Commission's position in U-21859 and U-21990), 2) AG witness Coppola's proposal conflates two distinct concepts — MBD and

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[13] *In the matter of the application of DTE Gas Company for a gas cost recovery Reconciliation proceeding for the 12 months Ending March 31, 2014*, Proposal for Decision, December 14, 2015, MPSC Case No. U-17131-R, pp. 39-42.
[14] DTE Initial Brief, p. 8.
[15] DTE Initial Brief, p. 18.

projected load factor, 3) AG witness Coppola's concern that other customers could be harmed if the Company resells unused capacity at a loss is not supported by the record, and 4) the Commission cannot lawfully direct DTE to set the MBD threshold at a level that was not negotiated by DTE and Google.[16]

The AG replies here to each of those in turn.

The Company's argument that an 80% MBD is "consistent with Commission precedent" because the Commission greenlit DTE's U-21990 *ex parte* application and okayed that level in U-21859 is irrelevant. This is the first large load customer to have a contested case in DTE's footprint for such contracts, and so all of these issues are novel. Moreover, the world and the details surrounding these data centers is evolving in real time, so what the Commission approves in one case or for one utility may not be appropriate in another. To that point, DTE itself, on the topic of the frequency of reporting requirements, argues that "Commission precedent" from U-21990 should be ignored in this case. Accordingly, this line of thinking should be rejected.

DTE and Staff"s emphasis on distinguishing MBD from load factor is a non sequitur. It is true that these are distinct concepts, but both DTE and Staff misunderstand that Mr. Coppola is merely using the 90% projected load factor as a proxy for a discount on Google's added capacity costs. That is to say, as the Attorney General made clear in her Initial Brief,[17] that because DTE is contractually obligated to provide 1,000 MW of power on demand 24 hours per day, seven days per week, to

[16] DTE Initial Brief, pp. 20-21.
[17] Attorney General Initial Brief, pp. 5-10.

meet that demand it needs to build or purchase 1,000 MW of storage or generating capacity. Thus, ideally the demand factor would be 100% for Google to cover that capacity cost. This explains, for example, why the Wisconsin Public Service Commission has instituted a 100% MBD term in its tariff.[18]

Instead, the 90% MBD term as recommended by Mr. Coppola is a compromise. The 90% figure more closely aligns DTE's expectations for Google's power consumption. A load factor describes a customer's average hourly energy consumption as a percentage of the peak (hourly) demand; DTE's projected load factor assumes Google consuming energy at 90% of its peak demand. Thus, as explained in the Attorney General's initial brief, the fact that DTE uses a 90% load factor in its modelling for this case makes a 90% MBD term a better candidate for a compromise below 100% than DTE's proposal of an 80% MBD term. It would not be in error for the Commission to reject these special contracts and instruct DTE to include a 100% MBD term in any revised contracts.

Mr. Coppola's proposal for a 90% MBD requirement is also more effective to minimize the very real exposure to other customers if Google's demand falls below expectations. The 90% threshold was chosen because it matches the Customer's load factor and if Google's demand matches its load factor, then there is no incremental cost to Google of having a 90% MBD. However, if Google underperforms, other customers are not backstopping Google for 20% of the capacity but only half of that amount, or 10%. Mr. Coppola's proposal is reasonable and prudent given the large

[18] Attorney General Initial Brief, pp. 6-7.

financial exposure of the Google contract and DTE's argument to the contrary should be rejected.

As to the Company's argument that Mr. Coppola's "concern that other customers could be harmed if the Company resells unused capacity at a loss is not supported by the record," the AG disagrees. Mr. Coppola laid this out in his testimony[19] and DTE's argument that "Staff's minimum bill scenario analysis demonstrated that the minimum bill covers the non-production costs of serving the Customer in every year" completely ignores the proxy production costs side of the equation, which Staff identified in its own brief as "the biggest downside risk of serving the Customer."[20]

DTE's further argument that, "to the extent that any cost exposure were nonetheless to arise during the term, it is addressed not by inflating the MBD but by the Affordability Backstop, which obligates the Customer to make up any Commission-determined shortfall," should also be rejected.[21] That stance relies upon a series of happenings, all of which works to shift risk inappropriately onto DTE's current customers. It relies upon the Customer avoiding bankruptcy, as well as an indeterminate process by which the "Commission-determine[s]" a shortfall. DTE makes no attempt to explain how that process would play out, which parties would be able to participate and how, or how that payment would be collected and eventually remitted to customers who were overcharged. The appropriate process is

[19] 3 TR, Coppola Direct at 472:21 – 473:10.
[20] Staff Initial Brief, p. 7.
[21] DTE Initial Brief, p. 21.

to protect customers up front, so the MPSC and parties are not left trying to establish an ad-hoc, after the fact process.

As to DTE's contention that the Commission cannot lawfully direct the Company to set the MBD threshold at a level that was not negotiated by DTE and Google, if the Commission determines that is the case, then it should reject the special contracts as unreasonable and imprudent, for failing to adequately protect DTE's other customers.

Accordingly, the Commission should reject the special contracts based on DTE's failure to adopt 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.

3. Primary Supply Agreement – Termination Payment

In the fourth section of DTE's discussion of its Primary Supply Agreement (PSA), it discusses the Company's position that the

> PSA includes a reasonable and prudent termination payment designed such that the Company will recover at least 15 years of Minimum Monthly Charges ("MMC") once the Customer achieves their max load.[22]

DTE's brief goes on to argue that the AG's witness' recommendation that the termination payment should instead be based on 100% of total demand for the full 20-year term of the PSA should be rejected "as commercially unreasonable,

[22] DTE Initial Brief, p. 23.

inconsistent with previously approved termination payments, and unnecessary."[23] DTE avers that: 1) witness Coppola's premise that there is "no further obligation by the Customer after 17 years" is incorrect, 2) the 80% MBD basis for the termination payment is consistent with Commission precedent, 3) witness Coppola's stated justifications for departing from Case Nos. U-21859 and U-21990 (that no details regarding the impact of termination payments and collateral requirements were presented in U-21859 and that U-21990 was decided on an *ex parte* basis) should be rejected, 4) witness Coppola's underlying concern — that other customers could bear costs if the Company cannot resell the Customer's capacity following an early exit — is already addressed by the PSA's layered protections, and 5) the Commission cannot lawfully direct DTE to set the termination payment at a level that was not negotiated by DTE and Google.[24]

The AG replies here to each of those in turn.

The Company's first argument is that "witness Coppola's premise that there is "no further obligation by the Customer after 17 years" is incorrect. The discussion that DTE lays out on page 26 and the top of page 27 of its brief is incomprehensible and fails to answer the question of how short DTE's arrangement with Google comes from covering the entire term of the contract. DTE first states that, as DTE witness

> Foley explains, under Section 7.3 of the PSA the Customer is responsible for a termination payment that provides 15 years of MMCs calculated on the Customer's full load ramp, and Section 7.3(3) additionally requires the Customer to pay a termination fee equal to the lesser of 24 months of MMCs or the number of months remaining in the contract term if the PSA is

[23] DTE Initial Brief, p. 26.
[24] DTE Initial Brief, pp. 26-29.

> terminated after the thirteenth anniversary of the Load Ramp Completion Date.[25]

That citation seems to support Mr. Coppola's contention that the maximum termination fee would only cover 17 of the 20 years considered by the contract. However, on further review, and based on numerous instances in DTE's brief,[26] it appears that the maximum termination fee is only for 15 of the 20 years considered in the contract. This makes Mr. Coppola's recommendation even more relevant and important.

The next section of DTE's brief underscores this point, and appears illogical. It states that

> AG witness Coppola's "three years short" critique — that Section 7.3 ends the payment obligation after the seventeenth anniversary of the Commencement Date — overlooks the additional Section 7.3(3) obligation, which requires the Customer to pay a further termination fee (the lesser of 24 months of MMCs or the months remaining in the term) if termination occurs after the thirteenth anniversary of the Load Ramp Completion Date. The PSA thus imposes a continuing termination obligation that AG witness Coppola's characterization overlooks.[27]

It is unclear how that discussion points to a "continuing termination obligation that AG witness Coppola… overlooks." If anything, AG witness Coppola made an error in DTE's favor, based on the unclear language in the contract. If the contract is terminated right on the 13th anniversary, it appears Google's only obligation is "a further termination fee [equalling] (the lesser of 24 months of MMCs or the months

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[25] DTE Initial Brief, p. 26. Internal citations omitted.
[26] *See*, DTE Initial Brief, pp. 23, 25, 26, 30.
[27] DTE Initial Brief, pp. 26-27. Internal citations omitted.

remaining in the term)." That means that the *maximum* termination fee in that instance is only two years (24 months).

Section 7.3(1) of the contract specifies that if the agreement is terminated after the Effective Date but prior to the 15th anniversary of the Load Ramp Completion Date, Google will pay DTE MMCs for each month between that early termination and the 15th anniversary of the Load Ramp Completion Date.[28] As the maximum time before conclusion of the Load Ramp is two and a half years (if the full 18 month grace period is applied),[29] that means if Google terminates the agreement the day after the Effective Date, the maximum termination payment will be 17 years. Thus, DTE's first contention is incomprehensible and should be rejected.

DTE's second contention, that Mr. Coppola's recommendation is not "consistent with Commission precedent" and therefore is somehow invalid is irrelevant, the same as above for MBD. Again, this is the first large load customer to have a contested case in DTE's footprint for such contracts, and so all of these issues are novel. Moreover, the world and the details surrounding these data centers is evolving in real time, so what the Commission approves in one case or for one utility may not be appropriate in another. To that point, DTE itself, on the topic of the frequency of reporting requirements, argues that "Commission precedent" from U-21990 should be ignored in this case. Accordingly, this line of thinking should be rejected. The Commission's number one focus for these cases must be making sure

[28] Exs. A-16 and A-22.
[29] 3 Tr 100 (Figure 1); *see also*, Ex. A-16.

that DTE's ratepayers and Michigan as a whole are protected – not the desires of Google and DTE and not blindly adhering to what it did in another docket.

As to the Company's argument that Mr. Coppola's stated justifications for departing from Case Nos. U-21859 and U-21990, namely that those costs did not fully consider or provide details or the impact of termination payments, should be rejected, the AG replies as follows. Again, this is the first instance where a massive data center case is being considered on a contested basis within DTE's footprint. As to U-21859, DTE engages in a hypothetical scenario, averring what could have been done in a case in which it was not a party. 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 incremental cost coverage.[30] In U-21990, neither the Attorney General, Staff, nor any other party had a full opportunity to examine the presentation, ask discovery, and recommend changes. DTE's self-serving briefing on this should be rejected.

As to DTE's contention that the Commission cannot lawfully direct DTE to calculate the termination payment in a way that was not negotiated by DTE and Google, if the Commission determines that is the case, then it should reject the special contracts as unreasonable and imprudent, for failing to adequately protect DTE's other customers.

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[30] See, November 6, 2025, MPSC Order in Case U-21859, p. 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.").

Accordingly, the Commission should reject the special contracts based on DTE's failure 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 that any reasonable contract requires 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.

4. Primary Supply Agreement – Credit and Collateral Requirements

In the fifth section of DTE's discussion of its Primary Supply Agreement (PSA), it discusses the Company's position that the

> PSA includes reasonable and prudent credit and collateral requirements designed to protect the Company and its other customers in the event of Customer default.[31]

DTE's brief goes on to argue that the AG's witness' recommendation that the Commission remove any limit on the PSA and CCAA collateral should be rejected "as commercially unreasonable and unnecessary."[32] DTE avers that: 1) the premise of AG witness Coppola's recommendation — that other customers are "at risk to absorb any shortfall" — is incorrect, 2) the proposed collateral structure is consistent with Commission precedent, 3) the credit and collateral structure already escalates to address the very credit risk AG witness Coppola identifies, and 4) the Commission

[31] DTE Initial Brief, p. 31.
[32] DTE Initial Brief, p. 33.

cannot lawfully direct DTE to remove any limit on the PSA and CCAA collateral that was not negotiated by DTE and Google.[33]

DTE's first argument, that "DTE Electric has accepted the risk of collateral insufficiency being borne by the Company" and that DTE's other customers are not at risk to absorb any shortfall, fails to fully address the AG's concerns and should be rejected.[34]

As noted in the AG's briefing, DTE did not provide particular rebuttal on this topic, and the Company's briefing does not add anything to the discussion. DTE's stance that it will serve as the credit and collateral backstop for any shortfall ignores the very real concerns of what happens to DTE itself, in an instance where it is forced to absorb tremendous amounts of a shortfall or stranded costs related to an early exit or insolvency of the customer. Even though DTE's posture is that its ratepayers would not "cover" such costs out of pocket, the problems and economic impacts reverberating from such a situation would *still* eventually be borne by ratepayers. If DTE's credit ratings or other financial situation take a significant hit, the customers that make up the Company will be the ones who eventually suffer. Neither DTE's presentation nor its briefing in this case have taken this into consideration. The Company's argument fails to consider the very real risk of eventual subsidization by other customers that its proposal presents, and on that basis should be rejected.

DTE's argument that the proposed collateral structure is consistent with Commission precedent should be rejected for the same reasons as are discussed

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[33] DTE Initial Brief, pp. 33-34.
[34] DTE Initial Brief, p. 33.

above. Again, this is the first large load customer to have a contested case in DTE's footprint for such contracts, and so all of these issues are novel. Moreover, the world and the details surrounding these data centers is evolving in real time, so what the Commission approves in one case or for one utility may not be appropriate in another. To that point, DTE itself, on the topic of the frequency of reporting requirements, argues that "Commission precedent" from U-21990 should be ignored in this case. Accordingly, this line of thinking should be rejected. The Commission's number one focus for these cases must be making sure that DTE's ratepayers and Michigan as a whole are protected.

As to the Company's argument that the credit and collateral structure already escalates to address the very credit risk AG witness Coppola identifies, because the parental guaranty converts to a letter of credit if the parent's credit rating falls below the defined threshold, such argument still does not address the situation of what happens if the Customer defaults or goes bankrupt before any change in credit rating, and does not address the industry-wide overcapacity risk identified in the Attorney General's Initial Brief,[35] which would have broad ripple effects that a letter of credit would not cover. Accordingly, this argument should also be rejected.

As to DTE's contention that the Commission cannot lawfully direct DTE to remove any limit on the PSA and CCAA collateral that was not negotiated by DTE and Google, if the Commission determines that is the case, then it should reject the

[35] Attorney General Initial Brief, pp. 14-15.

special contracts as unreasonable and imprudent, for failing to adequately protect DTE's other customers.

Accordingly, the Commission should reject the special contracts based on DTE's inclusion of limitations on the parent guarantee and bank letter of credit collateral terms in the PSA and CCAA.

5. Primary Supply Agreement – Affordability Backstop (PSA Section 5.1.3)

In the sixth section of DTE's discussion of its Primary Supply Agreement (PSA), it discusses the "Affordability Backstop" and the Company's position that

> Section 5.1.3 of the PSA is the contractual mechanism that guarantees, on a going-forward basis, that if the Commission ever determines that the aggregate costs to serve the Customer exceed aggregate benefits, the Customer bears that net shortfall.[36]

Numerous Intervenors and Staff provided discussion on this topic. With regard to the AG's testimony, DTE's brief agreed in part and disagreed in part with the AG's witness' recommendation that the Commission direct the Company to implement cost-accounting procedures to track and report all transmission-related incremental costs for each data center.[37] DTE "agrees that the incremental transmission cost attributable to serving the Customer's load is a proper input to in the presentment of aggregate costs and benefits in support of the Affordability Backstop assessment, and it will present that cost in the applicable contested proceedings and proposed annual reporting."[38]

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[36] DTE Initial Brief, p. 35.
[37] DTE Initial Brief, p. 43.
[38] DTE Initial Brief, p. 43.

DTE goes on to disagree "to the extent AG witness Coppola seeks an implied, project-by-project transmission cost-tracking regime imposed as a condition of approval,"[39] arguing that "the Company may not be able to provide the precise project-by-project billing traceability implied by some intervenor recommendations."[40]

The AG replies here, arguing that DTE's position that all it can provide is a "reasonable estimate for transmission-related costs associated with serving the Customer's load"[41] is neither reasonable nor prudent and objectively fails to protect customers from the risk of tremendous cost shifting. DTE's briefing does not directly argue that the Company cannot track the costs, but is simply a hedge that they might not be able to track with precision and an admission that the Company has not done the necessary research and legwork to accurately calculate these costs.

This discussion blends in with the broader discussion on pages 35-43 of DTE's briefing, which argues that the Commission should take an "aggregate" view of the benefits and costs of serving Google, which DTE lays out as

> The customer benefit analysis and the Affordability Backstop both operate over the life of the Contracts because this proceeding approves 20-year contracts and any assessment of costs and benefits must match the same period.[42]

The problems and pitfalls with this are clear. DTE wants to offset costs with its various *projections* of benefits – doing so will allow DTE to claim, seemingly at its discretion, that the projected benefits always outweigh the actual costs. This

[39] DTE Initial Brief, p. 43.
[40] DTE Initial Brief, p. 44.
[41] DTE Initial Brief, p. 43.
[42] DTE Initial Brief, p. 40.

arrangement would thwart the entire idea that costs of serving this Customer will not be borne by other customers, and is directly analogous to the NEXUS problem, wherein a multi-decade contract with very real, heightened costs, is being "supported" by future benefit projections that never come to fruition.

The Commission should recognize the tenuous nature of any "benefits," of this arrangement, for example DTE's desire to include as part of any benefits its subjective calculation of "avoided costs realized," and should reject DTE's attempts to structure its affordability backstop as real costs offset by benefit projections. This extends to specific areas such as requiring DTE to provide actual calculations for transmission costs to serve the Customer. The risks of cost-shifting are real and DTE's arguments to the contrary should be rejected.

In light of the above, the Attorney General reiterates her recommendation that the Commission direct the Company to implement comprehensive 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. 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 MISO transmission-related oversight and system management costs pertaining to the new data centers.

Also in this section of its brief, DTE notes Mr. Coppola's recommendation that the Company be directed to establish a regulatory liability account to capture the affordability benefit and ensure its annual pass-through to customers.[43] DTE argues that the Commission should rejected this recommendation as "unnecessary and counterproductive."[44] Specifically, DTE avers that: 1) a regulatory liability account to capture annual financial benefits is unnecessary because the benefits already flow to customers through existing ratemaking mechanisms (PSCR and rate cases), and 2) witness Coppola's proposed mechanism would also delay, not accelerate, the realization of those benefits.[45]

The AG replies here, noting that the broad problems with DTE's stance on this issue are covered in the above discussion on affordability backstop. Again, the clear bent of DTE's position here is to avoid scrutiny and transparency for customers. Without rigorous, specific and concrete mechanisms for ensuring that DTE's proposals produce the benefits the Company asserts, customers will be left to the whim of DTE's internal calculations and benefits projections.

DTE's protestations that a regulatory liability account is "unnecessary and counterproductive" because "the benefits already flow to customers through existing ratemaking mechanisms" underscore DTE's attempts to avoid scrutiny on this topic. As laid out in the AG's briefs, to the extent DTE does not file a rate case, the Company retains any financial benefits from additional revenues billed to the data center customers.[46] In addition, DTE's arguments that a regulatory liability account would somehow create additional regulatory processes or "delay" the realization of benefits

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[43] DTE Initial Brief, p. 46.
[44] DTE Initial Brief, p. 46.
[45] DTE Initial Brief, pp. 46-47.
[46] Attorney General Initial Brief, pp. 26-27.

by customers is self-serving. It is better to make sure that the benefits are accurately accounted for and *actually* pass to customers, on whatever timeline that takes, rather than just relying on the PSCR and unmandated rate case processes to pass through benefits to ratepayers. DTE's argument as to "delay" also appears to assume, without explanation, that the Attorney General's proposal could not operate in conjunction with benefits passing through other processes. That is not the case.

The better approach, for both transparency and the integrity of this entire undertaking, 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. 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. 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 her recommendation that the Commission order DTE to 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.

A benefit/cost reconciliation should be completed annually based on actual costs, including costs and revenues under the CCAA.

6. Clean Capacity Acceleration Agreement – Minimum Billing Demand

In the second section of DTE's discussion of its Clean Capacity Acceleration Agreement (CCAA), it discusses the Company's position that the CCAA, like the PSA, "holds the Company's other customers harmless through layered contractual and regulatory protections."[47] After an overview of its testimony on the CCAA and the positions of various other parties, DTE notes AG witness Coppola's recommendation that the Commission remove any limit on the PSA and CCAA collateral, based on his argument that the parent company guaranty needs to be at the level that ensures full payment of the Customer's total obligations.[48]

> PSA includes reasonable and prudent credit and collateral requirements designed to protect the Company and its other customers in the event of Customer default.[49]

DTE's brief goes on to argue that the AG witness' recommendation that the Commission remove any limit on the PSA and CCAA collateral should be rejected "as commercially unreasonable and unnecessary."[50] DTE avers that: 1) the premise of AG witness Coppola's recommendation — that other customers are "at risk to absorb any shortfall" — is incorrect, 2) the proposed collateral structure is consistent with Commission precedent, 3) the credit and collateral structure already escalates to

47 DTE Initial Brief, p. 59.
48 DTE Initial Brief, p. 64.
49 DTE Initial Brief, p. 31.
50 DTE Initial Brief, p. 33.

address the very credit risk AG witness Coppola identifies, and 4) the Commission cannot lawfully direct DTE to remove any limit on the PSA and CCAA collateral that was not negotiated by DTE and Google.[51]

The AG replies here, arguing that this is fully addressed above in Section A.2. As laid out, 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 reiterates her recommendation that the Commission reject any limitations on the parent guarantee and bank letter of credit collateral terms in the PSA and CCAA. 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.

B. Response to Staff

In its initial brief, Staff primarily reiterates the positions and recommendations taken by its witnesses in testimony. Staff does respond to two areas of the AG's testimony, to which the AG replies here.

1. Primary Supply Agreement – Termination Payment Amount

In the Revenue Analysis section of its brief, Staff discusses the termination payment provisions laid out in the PSA and the AG's concern that ""under the Minimum Monthly Charge calculation the Company does not get to recover 100% of

[51] DTE Initial Brief, pp. 33-34.

the demand costs billable to the Customer, but only 80% of the total costs.""[52] Staff goes on to argue that the AG's framing is "not an accurate description of the costs imposed by nor the minimum revenues to be collected from the Customer," because the "minimum monthly bill in the PSA sets the floor at 80% of the Customer's demand revenue, not 80% of total costs."[53] Staff concludes that the

> rates a customer pays are designed to recover costs allocated to its class, not directly assigned to the individual customer, so it cannot be said that paying a minimum bill of 80% of peak demand is only paying for 80% of the customer's individual costs.[54]

The AG replies here, arguing that this is addressed above, in section A.3.

The Attorney General further notes that Staff's Exhibit S.3.3 scenario analysis, on which both Staff and DTE base arguments in this matter, is fundamentally flawed as it does not appear to account for the categories of transmission upgrade costs that DTE omitted from its application materials.[55] Staff witness Isakson appears to have confirmed in testimony that Staff's analysis merely assumed as accurate the transmission costs presented between DTE's Exhibits Exhibit A-9, line 30 and Exhibit A-7, line 30.[56] Given that Staff did not consider the full scope of Google's added costs, its analysis here cannot be taken as assuring that DTE's proposed terms sufficiently avoid cost shifting risks.

2. Primary Supply Agreement – Minimum Billing Demand

[52] Staff Initial Brief, pp. 6-7.
[53] Staff Initial Brief, p. 7.
[54] Staff Initial Brief, p. 7.
[55] Attorney General Initial Brief, pp. 8-9.
[56] 3 Tr, Isakson Direct at 874:7 – 9 ("Staff isolated the net transmission cost by year by finding the difference between Company Exhibit A-9, line 30 and Exhibit A-7, line 30, which is the difference in transmission cost between the base case and case with the Customer.").

In the Contract Terms section of its brief, Staff discusses the MBD provisions laid out in the PSA and the AG's recommendation to set the minimum billing demand at 90% instead of the 80% per the PSA, arguing that the recommendation is unsupported.[57] Staff argues, similar to DTE, that the AG's position improperly conflates minimum demand and load factor, which it argues "are not related."[58] Staff concludes that its "analysis found that minimum billing demand of 80% is sufficient to cover the non-production costs," and therefore, "the Commission should not approve the AG's recommendation on the basis that a 90% load factor was used to determine energy sales."[59]

The AG replies here, arguing that this is addressed above, in section A.2.

The Attorney General further notes that, like with the termination payment amount, Staff's Exhibit S.3.3 scenario analysis, on which both Staff and DTE base arguments in this matter, is fundamentally flawed as it does not appear to account for the categories of transmission upgrade costs that DTE omitted from its application materials.[60] Staff witness Isakson appears to have confirmed in testimony that Staff's analysis merely assumed as accurate the transmission costs presented between DTE's Exhibits Exhibit A-9, line 30 and Exhibit A-7, line 30.[61] Given that Staff did not consider the full scope of Google's added costs, its analysis here cannot be taken as assuring that DTE's proposed terms sufficiently avoid cost shifting risks.

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[57] Staff Initial Brief, pp. 12-13.
[58] Staff Initial Brief, p. 13.
[59] Staff Initial Brief, p. 13.
[60] Attorney General Initial Brief, pp. 8-9.
[61] 3 Tr, Isakson Direct at 874:7-9 ("Staff isolated the net transmission cost by year by finding the difference between Company Exhibit A-9, line 30 and Exhibit A-7, line 30, which is the difference in transmission cost between the base case and case with the Customer.").

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
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The undersigned certifies that a copy of the ***Attorney General's Reply Brief*** was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 3rd day of August 2026.

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