

October 6, 2026

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48909

Via E-File

RE: MPSC Case No. U-22061

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Initial Brief by Natural Resources Defense Council and Sierra Club;
and
- Proof of Service.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Sincerely,



Digitally signed
by Sean C. Clark
Date: 2026.10.06
14:48:10 -04'00'

Sean C. Clark
sean@tropospherelegal.com

CC: Parties to Case No. U-22061

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **DTE
ELECTRIC COMPANY** for approval of Case No. U-22061
approval of amendments to Rate D11 and
related relief.

INITIAL BRIEF BY

NATURAL RESOURCES DEFENSE COUNCIL AND SIERRA CLUB

October 6, 2026

Table of Contents

I.	INTRODUCTION	1
II.	LEGAL STANDARDS	2
III.	ARGUMENT	3
A.	Applicability Criteria	3
1.	The Large Load Provisions should apply to any customer whose aggregate load exceeds 100 MW across multiple sites, irrespective of when individual sites enter service..	3
2.	The large load provisions should apply to co-located customers whose combined load exceeds 100 MW on a single site.....	6
B.	Collateral Provisions	9
1.	The Commission should not allow a parent guarantee as a default collateral option...	10
2.	The Commission should place restrictions on any use of parent guarantees.....	11
3.	Any deviation from default collateral options should require Commission review and approval.....	13
4.	The Commission should prevent cost recovery of stranded asset costs from other ratepayers.	14
C.	Contract Capacity and Minimum Billing Demand	16
1.	The prohibition on reductions in contract capacity for the term of the large load contract should be explicit in the tariff language.....	16
2.	Minimum Billing Demand should be set to 90% of contract capacity.	17
D.	Termination Conditions	18
1.	The termination fee should recover, at minimum, the minimum billing demand for the remaining months of the contract term, rather than be capped at 15 years.	18
2.	The Commission should require four years of notice for early exit and for declining to extend a contract.	21
E.	Administrative Fee: The administrative fee should be subject to upward reconciliation based on actual costs.....	22
F.	Cost of Service and Cost Allocation: Large Load provisions do not ensure against cost-shifting; in the ongoing rate case, the Commission should directly assign incremental production, transmission, and distribution costs.....	22
IV.	CONCLUSION.....	23

I. INTRODUCTION

In this proceeding, DTE Electric Company (DTE or the Company) proposes tariff provisions under Rate Schedule D11 that will be applicable to large load customers. If designed appropriately, such large load tariff provisions can help protect other ratepayers from some of the significant costs and risks associated with data center load growth. With such goals in mind, the Michigan Public Service Commission (the Commission) approved Consumers Energy's (Consumers) large load tariff on November 6, 2025. In an order issued on December 18, 2025, the Commission then required that DTE also propose a large load tariff and that the proposed tariff be "align[ed] with the findings in the November 6 order."¹ Despite the Commission's order, DTE's proposed large load tariff contains provisions that are less protective than those in Consumers' approved tariff and that should be strengthened.

The Natural Resources Defense Council and Sierra Club (NRDC-SC) submit this brief to address issues with DTE's application for the proposed Large Load Provisions, and to provide the following recommendations.

1. *Regarding applicability criteria:* The Large Load Provisions should apply to any customer whose aggregate load exceeds 100 MW across multiple sites and to co-located customers whose combined load exceeds 100 MW on a single site.
2. *Regarding collateral:* Parent guarantees should not be allowed as a default collateral option, further restrictions should be placed on any use of parent guarantees, any deviation from default collateral options should require Commission review and approval, and the Large Load Provisions should make clear that stranded asset costs will not be recovered from other ratepayers.

¹ Case No. U-21990, Order, December 16, 2025, p 39.

3. The *minimum billing demand* should be set at 90% of contract capacity.
4. *Regarding termination*: The termination fee should at least recover the minimum billing demand for the remaining months of the contract term, and a four-year termination notice should be required for both early exit and for contract non-extension.
5. The *administrative fee* should be subject to upward reconciliation based on actual costs.
6. In the ongoing rate case, the Commission should directly assign incremental production, transmission, and distribution costs, as the Large Load Provisions do not ensure against cost-shifting.

II. LEGAL STANDARDS

The ratemaking process requires the Commission to balance competing interests. *ABATE v Public Service Comm*, 208 Mich App 248, 266; 527 NW2d 533 (1994). The Commission is not bound by any particular method or formula in determining just and reasonable rates. *Building Owners & Managers Ass'n of Metropolitan Detroit v Public Service Comm*, 424 Mich 494, 510; 383 NW2d 72 (1986). “What is important is whether the result reached is just and reasonable.” *ABATE*, 208 Mich App at 266. The Commission can “make the pragmatic adjustments which may be called for by particular circumstances.” *Id.* at 266-67 (citing *Mich Bell Tel Co v Pub Serv Comm*, 332 Mich 7, 36, 50 NW2d 826 (1952)). As the applicant and proponent of an order in this case, DTE must prove by a preponderance of the evidence that its requests are just and reasonable.

III. ARGUMENT

A. Applicability Criteria

The Company only proposes to apply its Large Load Provisions to customers “seeking or receiving service for incremental load (‘Contract Capacity’)” that is either (1) “greater than 100 MW at a single site,” or (2) “greater than 100 MW across multiple sites in the Company’s service territory, with an average site size of greater than 20 MW which will begin taking service within five years.”² According to DTE witness Willis, the stated intent of the proposed applicability criteria “is to ensure that adequate protections are in place to manage the potential risk associated with serving new, large loads.”³ Notwithstanding the Company’s intent, the applicability criteria – as written – provide loopholes by which prospective customers can evade application of the Large Load Provisions, leaving other ratepayers unprotected from stranded-cost risk.⁴ NRDC-SC witness Ben Havumaki’s testimony included recommendations that would address two apparent loopholes and strengthen protections for ratepayers.

1. The Large Load Provisions should apply to any customer whose aggregate load exceeds 100 MW across multiple sites, irrespective of when individual sites enter service.

Customers with aggregate loads exceeding 100 MW across multiple sites will be subject to the Company’s proposed Large Load Provisions if the average load per site is at least 20 MW.⁵ The Company’s proposed aggregation term is meant to help protect ratepayers in a scenario where

² Ex A-1, p 4; see also Rebuttal Testimony of Aaron Willis, 2 Tr 42 (“[T]he Company confirms that the aggregation criteria apply to contract capacity and not actual demand.”).

³ Direct Testimony of Aaron Willis, 2 Tr 28.

⁴ See Direct Testimony of Ben Havumaki, 2 Tr 322.

⁵ Ex A-1, p 4.

a large load customer's total load (at least 100 MW) is divided across multiple smaller sites.⁶ However, DTE's aggregation term includes a significant qualifier and loophole – the Company will only aggregate sites that enter service *within a five-year period*.⁷ In his direct testimony, Witness Havumaki objected to the five-year limitations period, aptly characterizing it as arbitrary and warning that it “could create a loophole for some customers to avoid DTE's large load provisions.”⁸ For example, every six years, an existing customer could add up to 99 MW of incremental load at a new site without ever triggering the Large Load Provisions. Witness Havumaki appropriately concluded that multiple sites entering service over a greater-than-five-year period could therefore create real and significant cost-shifting risks – risks that would not exist if the Company simply aggregated the load for all sites where a customer receives service, “*irrespective of when the individual sites included in the aggregation . . . entered service.*”⁹

DTE witness Aaron Willis and ABATE witness James Dauphinais both submitted rebuttal testimony opposing the recommendation to remove the five-year time limit on load aggregation.¹⁰ Together, their testimonies include three main arguments, none of which provide sufficient justification for adopting the short, five-year limit on aggregating loads that is not adequately protective of ratepayers.

First, witnesses Willis and Dauphinais argued that the five-year aggregation window is reasonable because it “ties the applicability of the Large Load Provision to a planning horizon”¹¹

⁶ See Willis Direct, 2 Tr 28-29.

⁷ Havumaki Direct, 2 Tr 322.

⁸ *Id.*

⁹ See *id.* at 323.

¹⁰ See Willis Rebuttal, 2 Tr 41; see also Rebuttal Testimony of James Dauphinais, 2 Tr 150.

¹¹ Dauphinais Rebuttal, 2 Tr 150.

– i.e., the “statutory timeline for filing an integrated resource plan [(IRP)].”¹² Strictly speaking, the proposed aggregation term does *not* tie the aggregation term to the IRP timeline.¹³ Under the proposed applicability criteria, a customer’s total load will be calculated over a rolling five-year period, meaning two or more aggregated sites may be split between different IRP filings, thus negating (or at least minimizing) any planning benefits.

Second, witnesses Willis and Dauphinais claimed that removing the aggregation window would unduly burden hypothetical customers that add small loads at new sites over long, decade-plus timelines.¹⁴ For example, witness Willis questioned “what risk is being generated by a 15 MW load addition ten years from now that needs mitigation, which, on its own is 15% of the threshold for applicability.”¹⁵ Witness Dauphinais similarly argued that “[a]ttaching protections designed for super-scalar data center additions to a load one-twentieth their typical 300 MW or larger size would unduly inhibit traditional economic development.”¹⁶ Both witnesses claim error in the way an unbounded aggregation period may capture smaller loads over long time horizons, but both witnesses fail to appreciate how a five-year aggregation period fails to protect ratepayers against

¹² Willis Rebuttal, 2 Tr 41 (“[T]he Company[] explains the . . . five-year window as ‘. . . aligned with the statutory timeline for filing an integrated resource plan, and provides a reasonable period during which 100 MW of load should be considered on a risk and system planning basis.’”).

¹³ See Ex A-1, p 4 (aggregating sites that enter service over any five-year period).

¹⁴ See Willis Rebuttal, 2 Tr 41; see also Dauphinais Rebuttal, 2 Tr 150 (“A traditional manufacturer expanding across multiple sites over decades could reach 100 MW in the aggregate and find each incremental addition – however modest – saddled with a fifteen-year minimum term, a minimum billing demand obligation, a termination fee and a collateral requirement.”).

¹⁵ Willis Rebuttal, 2 Tr 41.

¹⁶ Dauphinais Rebuttal, 2 Tr 150-151.

larger load additions (up to 99 MW)¹⁷ over a short timeframe. The large load provisions should apply in those scenarios to protect ratepayers from the associated stranded asset risks.

Third, witness Willis objected to a hypothetical scenario where “a new 15- year contract” is imposed on all a customer’s sites – including decades-old sites – upon crossing the 100 MW aggregate load threshold.¹⁸ To clarify, neither witness Havumaki nor NRDC-SC support that position, and instead advocate that the large load provisions be applied only to the *incremental* load, consistent with the Company’s proposal.¹⁹ Simply, if the Commission adopted an unbounded aggregation period, the Company would not be required to “look back potentially 10 or 20 years and impose new requirements on [earlier load additions].”²⁰ To determine the applicability of the large load provisions, the Company should therefore be required to aggregate all of a customer’s sites, *irrespective of when they enter service*.

2. The large load provisions should apply to co-located customers whose combined load exceeds 100 MW on a single site.

Witness Havumaki expressed concern that the Company’s applicability criteria would exempt co-located customers²¹ with combined load exceeding 100 MW, but each with individual loads less than 100 MW.²² In discovery, DTE confirmed that it plans to determine the applicability

¹⁷ If an existing customer established a new site with a 99 MW load, that site alone would currently rank among the ten largest customers accepting service on Rate D11. Exhibit AG-NS-10, Company Response U-22061-NRDCSCDE-1.4a-c, p 3.

¹⁸ Willis Rebuttal, 2 Tr 41.

¹⁹ See Havumaki Direct, 2 Tr 322.

²⁰ See Willis Rebuttal, 2 Tr 41.

²¹ “Co-located” customers are customers that are located at the same site rather than dispersed across multiple locations. Havumaki Direct, 2 Tr 325 (“co-located data centers” are those that exist “on the same campus”).

²² *Id.* (“[Co-located customers with combined load exceeding 100 MW] should be subject to the Large Load Provisions even if their average capacity is less than 20 MW, since they are located at the same site rather than dispersed across

of the Large Load Provision based only on the amount of load demanded “by the entity requesting service.”²³ If one company requests service and accepts billing on behalf of multiple co-located customers with combined load exceeding 100 MW, then the Large Load Provisions would apply.²⁴ If the same co-located customers separately request service and accept billing – each with loads less than 100 MW but with combined load exceeding 100 MW – then the provisions would not apply.²⁵ In the latter scenario, the Large Load Provisions would not necessarily apply even if the co-located customers were all subsidiaries of the same parent company.²⁶ For example, a DTE discovery response confirms that nothing in the proposed applicability criteria would prevent “a single customer from creating ten separate ‘shell’ companies, each requesting 90 MW of service through separate billing and metering, and effectively becoming a 900 MW large load customer at one site while avoiding the Large Load Provisions.”²⁷ Witness Havumaki characterized this “separate billing and metering” scenario as a loophole that could allow customers to avoid the Large Load Provisions “even when they should in the aggregate be subject to the tariff because of their co-location, combined scale, and the potential risks of cost-shifting and stranded assets that they collectively impose on the system.”²⁸ Accordingly, he recommended that the Commission

multiple locations.”); *see also* AG-NS-10, DTE Response to DR U-22061-NRDCSCDE-1.4a-c, p 1 (defining “site” as “a single location or premise”).

²³ Ex AG-NS-10, Company Response U-22061-NRDCSCDE-1.4a-c, p 3; *see also* Willis Rebuttal, 2 Tr 43 (“The Company applies the applicability criteria based on the contract capacity of the entity that requests service and executes the applicable power supply agreement.”).

²⁴ *See* Ex AG-NS-10, Company Response U-22061-NRDCSCDE-1.4a-c, p 3 (“For example, if the requesting entity is seeking load of >100 MW, then the provision would apply, all else equal.”).

²⁵ *See id.* (“If the requesting entity is seeking 15 MW of load, [the provision] would not apply, all else equal.”).

²⁶ *See* Ex AG-NS-15, Company Response U-22061-NRDCSCDE-2.1a-c, p 1.

²⁷ *See id.* In response to that hypothetical, the Company simply stated that it “will conduct *appropriate diligence* of new requests for load such as the scenario described above.” *Id.* (emphasis added).

²⁸ Havumaki Direct, 2 Tr 324.

apply the Large Load Provision to co-located customers (i.e., customers located at the same site) whose combined load exceeds 100 MW.²⁹

In rebuttal, DTE witness Willis and ABATE witness Dauphinais both opposed the application of the tariff provisions to co-located customers. First, witness Willis disagreed that the proposed applicability criteria create a loophole, arguing that “[a] series of 10 MW loads with varying ownership and billing responsibility do not introduce risk consistent with new 100 MW loads under single ownership.”³⁰ The Company, however, wrongfully assumes that co-located customers operate wholly independently from each other – i.e., that when one co-located customer terminates service, the others are unaffected. The Company likewise fails to acknowledge that the incremental costs of serving 100 MW of new load at a single site are the same (or similar) regardless of the number of customers located at the site. Furthermore, to the extent stranded-cost risk varies based on the number of industrial customers sharing a site, that risk still should not be borne by other ratepayers.

Second, witness Dauphinais asserts that a provision to aggregate the loads of co-located customers would “reach small tenants of industrial parks, sub-20 MW loads that no party contends present stranded asset risk.”³¹ NRDC-SC note that small tenants of industrial parks could only become subject to the Large Load Provisions if combined on-site load exceeds the 100 MW threshold, which is not guaranteed to happen. However, *without* aggregating the loads of co-located customers, any number of large tenants with loads up to 99 MW could congregate on a single site, evading the Large Load Provisions and creating significant stranded cost risk.

²⁹ *Id.*

³⁰ Willis Rebuttal, 2 Tr 43.

³¹ Dauphinais Rebuttal 2 Tr 151. Note – small tenants of industrial parks could only become subject to the large load provisions if combined on-site load exceeds the 100 MW threshold, which is not guaranteed to happen.

Designing the large load provisions to protect ratepayers against such severe risks is just, reasonable, and consistent with the Company’s goal to provide “protections for other customers.”³²

Third, witness Dauphinais argued that aggregating the loads of co-located customers would not narrowly address a scenario where “a single enterprise might structure itself into multiple nominal customers to evade the [applicability] threshold.”³³ According to Dauphinais, the ‘co-located subsidiaries’ loophole could be fixed by borrowing from the aggregation provision approved in Case No. U-21859, which applies to any sites that share a “common owner.”³⁴ NRDC-SC acknowledge that the recommendation to aggregate the loads of co-located customers applies to more than a ‘co-located subsidiaries’ scenario, but to the extent it does, it is also more protective. Nonetheless, witness Dauphinais’ point regarding the “common owner” language from Case No. U-21859 is well-taken; the Commission should adopt that language again in this case, in addition to the recommendation to aggregate the loads of co-located customers.

B. Collateral Provisions

DTE’s proposed collateral provisions are less protective than those approved by the Commission in Consumers’ large load tariff in several notable ways. First, DTE would allow parent guarantees as a default form of collateral. Second, DTE initially reserved “sole discretion” to determine both (1) the form of collateral and (2) a lower collateral amount than the default.³⁵

³² See Willis Direct, 2 Tr 26.

³³ Dauphinais Rebuttal 2 Tr 152.

³⁴ *Id.*; see also Case No. U-21859, Order, November 6, 2025, pp 105-106 (“Additionally, these provisions should apply to customers with an aggregate load of 100 MW or more when those customers share a *common owner* and individually have a load of 20 MW or more.”) (emphasis added).

³⁵ Willis Direct, 2 Tr 33; Ex A-1, p 6.

Though DTE appears to have backtracked from this position, its testimony and discovery responses on this issue are vague and unclear.

The Commission has made clear that a large load tariff must ensure “there are adequate guardrails in place to avoid both cross-subsidization from other customers and the risk of stranded assets should the anticipated load fail to fully materialize.”³⁶ Indeed, as NRDC-SC witness Havumaki testified, the “terms and conditions in the Large Load Provisions that are intended to protect consumers are only as good as the collateral that that customer is made to provide.”³⁷ As they stand, DTE’s collateral provisions should be revised to prevent potential cost-shifting to other ratepayers.

1. The Commission should not allow a parent guarantee as a default collateral option.

In its Order approving Consumers’ large load tariff, the Commission held that “[b]ecause of the uncertainty regarding the credit quality of an unknown large load customer, the Commission is not approving a parent guarantee as sufficient to meet this default collateral requirement. . . .”³⁸ In contravention of the Commission’s order, in this proceeding, DTE “proposes to hold that [default] collateral in the form of a letter of credit, cash, *a parent guarantee*, or a combination of the three.”³⁹ As explanation for why a parent guarantee should be a default option, DTE witness Willis only stated that “[i]t is the Company’s responsibility to determine the sufficiency of the collateral, as it is the contract counterparty, and therefore reasonable for the Company to determine

³⁶ Case No. U-21859, Order, November 6, 2025, p 103.

³⁷ Havumaki Direct, 2 Tr 327.

³⁸ Case No. U-21859, Order, November 6, 2025, p 112.

³⁹ Willis Direct, 2 Tr 33 (emphasis added); *see also* Ex A-1, p 6 (“The Company, at its sole discretion, may determine a lower required collateral amount. . . . The Company, at its sole discretion and determination, may require a letter of credit, cash, parent guarantee, or a combination thereof, as collateral.”).

the form of the collateral.”⁴⁰ In his rebuttal testimony, witness Willis provided no additional support for the Company’s position and departure from the Commission’s order, stating only that “[w]hether a parent guarantee is ultimately appropriate, and to what extent, will continue to be determined case-by-case. The Company’s proposal should be approved.”⁴¹

As this Commission found in U-21859, a parent guarantee should not be included as a default form of collateral. Parent guarantees “might expose the Company and its customers to undue risk if the parent company does not remain financially healthy.”⁴² This is true even for healthy corporate parents; the Commission has rightfully recognized the risk of “any potential industry-wide decline that also impacts the financial position of *otherwise healthy corporate parents*.”⁴³ The Commission should require DTE to align its default collateral form provision with the approved Consumers’ Rate GPD provisions and not allow parent guarantees as a default form. The default forms of collateral should be limited to an irrevocable letter of credit and/or cash.⁴⁴

2. The Commission should place restrictions on any use of parent guarantees.

In its Order approving Consumers’ large load tariff, the Commission noted that it “remains open to considering the use of parent guarantees—either on their own or in concert with other collateral—on a case-by-case basis Consumers’ application should demonstrate that it is reasonable and prudent to adjust the level(s) or form of collateral.”⁴⁵ As argued in the section

⁴⁰ See Ex AG-NS-14, Company Response U-22061-NRDCSCDE-1.10.

⁴¹ Willis Rebuttal, 2 Tr 52.

⁴² Havumaki Direct, 2 Tr 328.

⁴³ Case No. U-21859, Order, November 6, 2025, p 104 (emphasis added).

⁴⁴ Havumaki Direct, 2 Tr 328.

⁴⁵ Case No. U-21859, Order, November 6, 2025, pp 112-113.

above, parent guarantees should not be allowed as a default form of collateral. In addition, should DTE ultimately seek Commission approval of a parent guarantee on a case-by-case basis, the Commission should apply standardized criteria to decide whether to approve the parent guarantee. DTE has noted that it has “no specific ‘standardized criteria’” for determining what form of collateral is appropriate and has declined to identify even a minimum credit rating below which it would not consider a parent guarantee;⁴⁶ however, objective standards are important for ensuring consistency amongst large load customers and for making sure risk to other customers is the foremost consideration.

Furthermore, these objective standards exist; the Wisconsin Public Service Commission (WPSC) ordered that Very Large Customers of We Energies would need a minimum credit rating of A- from Standard & Poor’s Financial Services LLC and A3 from Moody’s Investors Service, Inc. in order to use a parent guarantee as collateral.⁴⁷ The WPSC also found that Very Large Customers would also need either (i) Tangible Net Worth, net of its Commitments and Contingent Liabilities, of 2.0x the required [Very Large Customer Security/VLC Security] amount or (ii) liquidity, as calculated in a commercially reasonable manner at the discretion of the Company and as evidenced by providing quarterly financial statements and certifications, greater than 10x the required [Very Large Customer Security/VLC Security] amount, in order to use a parent guarantee as collateral.⁴⁸ The Commission should make clear in its Order in this proceeding that it will

⁴⁶ Havumaki Direct, 2 Tr 325; *see also* Ex AG-NS-5, Company Response U-22061-AGNSDE-1.2a & b; Ex AG-NS-17, Company Response U-22061-NRDCSCDE-2.3a-c.

⁴⁷ Ex AG-NS-17, Company Response U-22061-NRDCSCDE-2.3a-c (citing Public Service Commission of Wisconsin, Application of Wisconsin Electric Power Company for Approval of its Very Large Customer and Bespoke Resources Tariff, Docket 6630-TE-113, Final Decision, available at <https://apps.psc.wi.gov/ERF/ERFview/viewdoc.aspx?docid=591873>).

⁴⁸ *Id.*

require the same or similar minimum conditions should DTE subsequently request approval for a parent guarantee on a case-by-case basis. NRDC-SC reiterate that a parent guarantee should not be allowed as a default form of collateral.

3. Any deviation from default collateral options should require Commission review and approval.

In its application, DTE first reserved “sole discretion” to determine both (1) the form of collateral and (2) a lower collateral amount than the default.⁴⁹ This position is contrary to the Commission’s order in U-21859, where the Commission required an *ex parte* filing to address deviations from the default collateral and required that Consumers “demonstrate that it is reasonable and prudent” to deviate from the default.⁵⁰ In addition, as witness Havumaki testified, “DTE should not have sole discretion over the amount of collateral required because this decision has major financial implications for ratepayers.”⁵¹ Instead, as the Commission found in U-21859, deviation from the default collateral requirements should only be allowed if, after taking into account the risk level and credit rating of the large load customer and its parent company, the Commission finds that “a different level or form of collateral presented in the filing is commensurate with the risk presented by the customer.”⁵²

Subsequently, witness Willis’ rebuttal testimony addressed Staff and intervenors’ “Credit and collateral” positions, again arguing that “[a]pproving Company discretion in determining the amount of the collateral requirement is reasonable”⁵³ and “the Commission should not adopt the

⁴⁹ Willis Direct 2 Tr 33; Ex A-1, p 6.

⁵⁰ Case No. U-21859, Order, November 6, 2025, p 113.

⁵¹ Havumaki Direct, 2 Tr 327.

⁵² Case No. U-21859, Order, November 6, 2025, p 113.

⁵³ Willis Rebuttal, 2 Tr 51.

recommendations of Staff or AG-NS.”⁵⁴ Later in his rebuttal testimony, witness Willis stated that DTE does not oppose making an *ex parte* filing before each customer subject to the Large Load Provisions begins taking service.⁵⁵ However, witness Willis also stated that DTE opposes ABATE witness Dauphinais’ proposed requirement regarding collateral amount, arguing that “the determination of the *actual sufficiency or insufficiency of collateral*, and any resulting assignment of cost responsibility, is most appropriately addressed *at the time of a default*, should one occur.”⁵⁶ Confusingly, in response to discovery requests, DTE then stated that “it takes no exception to the proposals made by certain intervenors that applicable contracts be filed for approval on an *ex parte* basis. These contract terms would include a collateral amount.”⁵⁷

Currently on the record are multiple contradictory positions by DTE on whether it reserves discretion to determine collateral forms and amounts and no support for why it should retain such discretion. The Commission should require that DTE align its Large Load Provision with the approved Consumers’ large load tariff and order that any deviation from default collateral provisions require (a) that DTE provide a “demonstration that the alternative collateral requirement will not burden other customers with the risk of stranded costs,” and (b) Commission review and approval prior to the large load customer taking service.

4. The Commission should prevent cost recovery of stranded asset costs from other ratepayers.

Finally, as witness Havumaki testified, in the event of large load customer default where collateral is insufficient and results in DTE incurring stranded asset costs, the Commission should

⁵⁴ *Id.* at 54.

⁵⁵ *Id.* at 73.

⁵⁶ *Id.* at 74 (emphasis added).

⁵⁷ See Exhibit AG-NS-16, Company Response U-22061-NRDCSCDE-2.2.

not permit cost recovery for these stranded assets from other customers.⁵⁸ The Commission ordered as much in U-21990, finding that “any unrecovered costs shall not be borne by ratepayers . . . [a]ll risk associated with the sufficiency of the collateral shall be borne by DTE Electric.”⁵⁹ The Commission most recently took the same position in U-22058, finding that, for the Google Special Contracts, “any unrecovered costs shall not be borne by other customers and that DTE Electric bears responsibility for any remaining liability. All risk associated with the sufficiency of the collateral shall be borne by DTE Electric.”⁶⁰

In rebuttal, witness Willis attempted to distinguish U-21990 as “a specific contract with a specific set of terms and considerations – the specific facts and decision do not necessarily apply to a generally applicable tariff.”⁶¹ Witness Willis does not explain why the specific contract with a large load customer in U-21990 might distinguish it from other large load customers, or explain why the risk of stranded assets caused by insufficient collateral would not be the same for all large load customers. The Commission has made clear through its order in U-21990 and its language in both U-21990 and U-21859 that it will not condone cost-shifting; this should be particularly true when a large load customer defaults and does not sufficiently cover its now-stranded assets.

NRDC-SC acknowledge that in U-21859, the Commission found that, if Consumers sought recovery of stranded costs, the Commission would “address recovery of those stranded costs at that point in time.”⁶² However, first, the Commission subsequently took the more-protective approach described above in U-21990, one that it then reiterated in U-22058. And second, since

⁵⁸ Havumaki Direct, 2 Tr 328.

⁵⁹ Case No. U-21990, Order, December 18, 2025, p 41.

⁶⁰ Case No. U-22058, Order, October 1, 2026, p 137.

⁶¹ Willis Rebuttal, 2 Tr 53.

⁶² Case No. U-21859, Order, November 6, 2025, p 113.

the Commission's decision in U-21859, DTE has finalized special contracts with 1.4 GW (U-21990) and 1.0 GW (U-22058) large load customers and has testified that it has a "number of pending requests for electric service from large load customers at levels of 100 MW or greater."⁶³ This unprecedented level of energy demand will likely lead to DTE bringing a similarly large number of new assets online to meet the demand, as DTE has already demonstrated it intends to do in its Integrated Resource Planning application (U-22168). Given the magnitude of stranded assets now on the table, the Commission should make clear from the beginning that none of the costs from stranded assets meant to serve large load customers will be borne by other ratepayers.

NRDC-SC respectfully request that the Commission adopt its order and reasoning in U-21990 and U-22058 and require that DTE not be permitted to recover the costs stranded assets from other customers should collateral requirements be insufficient.

C. Contract Capacity and Minimum Billing Demand

1. The prohibition on reductions in contract capacity for the term of the large load contract should be explicit in the tariff language.

NRDC-SC have confirmed through discovery requests that DTE intends to prohibit reductions in contract capacity for the term of the large load contract.⁶⁴ Witness Havumaki agreed with this approach but noted that the prohibition should be explicit in the large load tariff language.⁶⁵ In rebuttal, DTE further verified this prohibition and proposed language that is

⁶³ Willis Direct, 2 Tr 25.

⁶⁴ See Exhibit AG-NS-2, Company Response U-22061-NRDCSCDE-1.12.

⁶⁵ Havumaki Direct, 2 Tr 330.

acceptable to NRDC-SC.⁶⁶ NRDC-SC respectfully request that the Commission approve this agreed-upon addition to the proposed Large Load Provisions.

2. Minimum Billing Demand should be set to 90% of contract capacity.

DTE's proposal sets the minimum monthly charge for a large load customer using a Minimum Billing Demand (MBD) of 80% of contract capacity. NRDC-SC request that the Commission require that the MBD in DTE's large load tariff be set to 90% of contract capacity. In doing so, NRDC-SC recognize that the MBD approved in the Consumers large load tariff was 80%. Nonetheless, we recommend a departure from the Consumers case precedent "in favor of more robust consumer protection," because "the Company's monthly minimum charge proposal is deficient and risks under-recovering the fixed costs associated with serving large load customers, which could result in cost-shifting."⁶⁷

Two reasons support raising the MBD in this instance (and further revisiting the Consumers large load tariff). First, DTE "will make capital investments to serve large load customers at full capacity," so an MBD set at any level under 100 percent of contract capacity creates some risk.⁶⁸ Any higher MBD will more appropriately mitigate that risk. Second, DTE recovers a portion of its fixed costs used to serve all customers through energy rates and riders, rather than through the MBD established by Rate D11.⁶⁹ Thus, costs that are incurred to serve large load customers may not be properly reflected in a minimum monthly charge that relies solely on MBD. For example, DTE has confirmed that, at the very least, "the Company's proposed calculation for a termination

⁶⁶ Willis Rebuttal, 2 Tr 48 (proposing additional language "Contract capacity may not be reduced during the term of the contract.").

⁶⁷ Havumaki Direct, 2 Tr 329.

⁶⁸ *Id.*

⁶⁹ *Id.* at 330.

fee [which is based on 80% MBD] does not include a component to account for or otherwise serve as a proxy for a PSCR surcharge amount.”⁷⁰ Thus, a higher MBD better accounts for the risk of cost-shifting from components that fall outside Rate D11. For the foregoing reasons, NRDC-SC respectfully request that the minimum monthly charge for the Large Load Provisions be set at an MBD of 90% of contract capacity.

D. Termination Conditions

DTE’s proposed termination conditions are less protective than those approved by the Commission in Consumers’ large load tariff and do not properly disincentivize early termination after investments have already been made for a large load customer. First, DTE has placed inappropriate caps on the termination fees. And second, DTE’s Large Load Provisions require less notice for terminating or declining to renew a contract. The Commission should strengthen the termination conditions in DTE’s proposed tariff to prevent potential cost-shifting to other ratepayers.

1. The termination fee should recover, at minimum, the minimum billing demand for the remaining months of the contract term, rather than be capped at 15 years.

In its initial application, DTE stated that its proposed maximum termination fee is “[u]p to 15 years of minimum billing demand (plus applicable ramp)” for the initial contract⁷¹ and up to 2 years during the five-year extension periods.⁷² Its proposed minimum termination fee is 2 years.⁷³

⁷⁰ See Exhibit AG-NS-25, Company Response U-22061-AGNSDE-1.10a-c.

⁷¹ Willis Direct, 2 Tr 28.

⁷² *Id.* at 32; *see also* Exhibit AG-NS-7, Company Response U-22061-AGDE 1.7e (Q: Is the Company proposing that during any 5-year automatic contract extension the maximum exit fee would be equivalent of “two years of MBD * prevailing demand charges”? A: Yes.)

⁷³ Willis Direct, 2 Tr 32.

As witness Havumaki testified, this proposed termination fee is not sufficiently consumer protective. First, during the initial contract period, a maximum of 15 years of minimum billing demand does not sufficiently protect other ratepayers from early termination for contract terms longer than the default. For example, if a large load customer enters into a 25-year contract and terminates service 15 years after a 3-year ramp period ends, this early exit leaves, at minimum, *seven years* of remaining costs for potential investments made on the large load customers' behalf. DTE has confirmed that the termination fee in that scenario would only recover *two years* of those remaining costs, or the proposed minimum termination fee.⁷⁴ Second, during contract extension periods, if a large load customer automatically extends its contract for an additional five years, but terminates service shortly after the start of the extension period, this early exit could potentially result in *five years* of remaining costs for potential investments made on the large load customers' behalf. DTE has confirmed that the termination fee would again only recover *two years* of those remaining costs.⁷⁵

In contrast, in the Consumers' large load tariff proceeding, the Commission required that the termination fee should be "equal to the MBD multiplied by the number of months remaining on the contract term . . . (and including contract extensions . . .)" full stop.⁷⁶ The Commission did not cap the termination fee based on a fifteen-year contract. Indeed, the Commission considered and rejected the Data Center Coalition's proposed cap of five years' worth of exit fee, noting that the "proposal would create an unacceptable potential for stranded costs where there is anything above five years remaining on the contract, as this represents investments that have not yet been

⁷⁴ See Exhibit AG-NS-18, Company Response U-22061-NRDCSCDE-2.4a, b.

⁷⁵ See *id.*

⁷⁶ Case No. U-21859, Order, November 6, 2025, pp 109-110.

paid off.”⁷⁷ The same is true of a twenty-five year contract where there is no penalty for leaving at fifteen years after the ramp period.

In rebuttal, witness Willis testified that the termination requirement “must be considered in the context of collateral requirements,”⁷⁸ and that because DTE’s collateral requirements are set to 100% of the termination fee, it would impair DTE’s ability to secure contracts longer than 15 years.⁷⁹ As an initial matter, NRDC-SC are fully supportive of DTE’s decision to require collateral equal to 100% termination fee and agree that the Commission should adopt this approach. However, this decision should not justify a lower termination fee. The termination fee protects other customers from early exit; the collateral guarantees the ability to collect the termination fee and prevents speculative requests for service. Both serve aligned but different purposes and using one to justify a *less protective* result for the other is not a reasonable approach. In addressing a separate argument in the Consumers’ Rate GPD proceeding where parties attempted to link different provisions, the Commission noted that it “is not persuaded that the extension should be limited to three years simply to reduce the exit fee and collateral requirement. . . .”⁸⁰ The Commission should reject that argument again here. Further, DTE’s argument that requiring a robust termination fee would impair its business operations is also not an appropriate reason to allow less protective provisions and justify deviating from the approved Consumers’ Rate GPD provision.⁸¹

⁷⁷ *Id.* at 110.

⁷⁸ Willis Rebuttal, 2 Tr 62.

⁷⁹ *Id.* at 63.

⁸⁰ Case No. U-21859, Order, November 6, 2025, p 108.

⁸¹ DTE has asserted that it may lower the collateral amount. As discussed above, DTE’s position on whether it can lower the default collateral at its sole discretion is unclear; NRDC-SC maintain that any deviation from default collateral terms must be subject to Commission review and approval.

NRDC-SC respectfully request that the Commission not allow DTE to cap the termination fee based on a fifteen-year contract. Namely, NRDC-SC request the following change to DTE's proposed tariff sheet: "The termination fee is the greater of the remaining MBD * prevailing demand charges ~~through year fifteen of the post-ramp contract term~~, or two years of MBD * prevailing demand charges."⁸²

2. The Commission should require four years of notice for early exit and for declining to extend a contract.

In its initial application, DTE required a two-year termination notice and three-year notice for declining to extend the contract.⁸³ In the Consumers large load tariff proceeding, the Commission approved Consumers' four-year proposed notice for both termination and contract non-extension.⁸⁴ The Commission found the four-year notice to be "reasonable and provides a nexus with the capacity demonstration process established pursuant to Section 6w of Public Act 341 of 2016."⁸⁵ In rebuttal, DTE stated that it "has no objection to aligning the two notice terms," but continued to argue for three-year notice periods. DTE provided no explanation for why it deviates from the four-year notice period approved by the Commission in Rate GPD, only stating without support that "the three years proposed by the Company is an appropriate length of time for a customer to provide notice."⁸⁶ This statement alone is not sufficient for differing from the Commission's prior findings, where the Commission's finding was based on an objective standard.

⁸² See Exhibit A-1, p 5.

⁸³ Willis Direct, 2 Tr 28.

⁸⁴ Case No. U-21859, Order, November 6, 2025, p 108.

⁸⁵ *Id.*

⁸⁶ Willis Rebuttal, 2 Tr 61.

The Commission should require that DTE align its termination notice provision for both termination the contract and declining to extend a contract with the provision of Consumers' large load tariff of four years notice.

E. Administrative Fee: The administrative fee should be subject to upward reconciliation based on actual costs.

In its initial application, DTE proposed a fixed administrative fee for customers subject to the Large Load Provision. This approach is not aligned with the Commission's Order in U-21859, which required that the administrative fee be reconciled with actual costs.⁸⁷ In rebuttal, DTE "st[ood] by its initial proposal of a fixed fee approach," however noted that it does not object to an administrative fee requirement that is subject only to upward reconciliation.⁸⁸ The Commission should thus order that DTE's Large Load Provisions' administrative fee requirement be subject to upward reconciliation based on actual costs.

F. Cost of Service and Cost Allocation: Large Load provisions do not ensure against cost-shifting; in the ongoing rate case, the Commission should directly assign incremental production, transmission, and distribution costs.

Finally, as NRDC-SC witness Havumaki testified, "Large Load provisions could represent a reasonable set of provisions to reduce the risk of cost-shifting, but they do not ensure that there is no cost-shifting."⁸⁹ The Commission has acknowledged the potential for cost-shifting, which is of "particular concern given the size of the potential large load customers, making it necessary to add greater visibility into the generation and other resources needed to serve them."⁹⁰ While tariff

⁸⁷ Case No. U-21859, Order, November 6, 2025, p 123.

⁸⁸ See Exhibit AG-NS-22, Company Response U-22061-NRDCSCDE-2.14.

⁸⁹ Havumaki Direct, 2 Tr 336.

⁹⁰ Case No. U-21859, Order, November 6, 2025, pp 103-104.

provisions can set baseline protections, the *rate* under which the large load customer takes service must “fully cover all costs associated with serving them—including generation and other resources, as well as transmission and distribution.”⁹¹ Issues concerning cost allocation are currently subject to the ongoing rate case (U-22046); as witness Havumaki noted, to prevent the potential cost-shifting that the Commission found “unacceptable” in the Consumers large load tariff proceeding, the Commission should “directly assign any incremental production, transmission, and distribution costs of serving each new large load customer to that customer, while also requiring large load customers to contribute their fair share of embedded system costs.”⁹²

IV. CONCLUSION

For the reasons discussed above, Natural Resources Defense Council and Sierra Club respectfully request that the Commission:

- Require that the Large Load Provisions apply to any customer whose aggregate load exceed 100 MW across multiple sites, irrespective of when individual sites enter service;
- Require that the Large Load Provisions apply to co-located customers whose combined load exceeds 100 MW on a single site;
- Decline to allow a parent guarantee as a default collateral option;
- Place restrictions on any use of parent guarantees;

⁹¹ *Id.* at 103.

⁹² Havumaki Direct, 2 Tr 338.

- Require Commission review and approval for any deviation from default collateral options;
- Prevent cost recovery of stranded asset costs from other ratepayers;
- Require DTE to make explicit the prohibition on reductions in contract capacity;
- Require that Minimum Billing Demand be set to 90% of contract capacity;
- Require that the termination fee at least recover the minimum billing demand for the remaining months of the contract term, rather than be capped at 15 years;
- Require four years of notice for early exits and for contract non-extensions; and
- Require that the administrative fee be subject to upward reconciliation based on actual costs.

Respectfully submitted,

Troposphere Legal
Counsel for NRDC-SC

Date: October 6, 2026

By:



Digitally signed
by Sean C. Clark
Date: 2026.10.06
14:48:30 -04'00'

Sean C. Clark (P88870)
Christopher M. Bzdok (P53094)
420 E. Front St.
Traverse City, MI 49686
Phone: 231-709-4000

Helen Li (pro hac vice)
Earthjustice
Co-Counsel for Sierra Club
hli@earthjustice.org

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **DTE
ELECTRIC COMPANY** for approval of Case No. U-22061
amendments to Rate D11 and related relief.

Proof of Service

On the date below, an electronic copy of **Initial Brief by Natural Resources Defense Council and Sierra Club; and Proof of Service** was served on the following:

Name/Party	E-mail Address
ALJ Hon. Sarah A. Stancati	stancatis@michigan.gov
DTE Electric Company John A. Janiszewski Andrea E. Hayden	mpscfilings_account@dteenergy.com john.janiszewski@dteenergy.com andrea.hayden@dteenergy.com
Counsel for MPSC Staff Adam M. Cozort Monica M. Stephens Lori Mayabb	cozortal@michigan.gov stephensm11@michigan.gov mayabbl@michigan.gov
Michigan Attorney General Joel B. King Lucas Wollenzien	ag-enra-spec-lit@michigan.gov kingj38@michigan.gov wollenzienl@michigan.gov
Association of Businesses Advocating Tariff Equity Michael J. Pattwell Stephen A. Campbell Benjamin Holwerda Lauren Degnan James Dauphinais Jessica York	mpattwell@clarkhill.com scampbell@clarkhill.com bholwerda@clarkhill.com jdauphinais@consultbai.com jyork@consultbai.com ldegan@clarkhill.com
Counsel for Gerdau MacSteel, Inc. Jennifer U. Heston	jheston@potomacclaw.com
Natural Resources Defense Council and Sierra Club Chris Bzdok Sean Clark Natasha Fowles Sue Fruchey Ben Havumaki	chris@tropospherelegal.com sean@tropospherelegal.com natasha@tropospherelegal.com sue@tropospherelegal.com bhavumaki@synapse-energy.com

Great Lakes Renewable Energy Association Don L. Keskey Brian W. Coyer Carol Dane	donkeskey@publiclawresourcecenter.com bwcoyer@publiclawresourcecenter.com adminasst@publiclawresourcecenter.com
The Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar Daniel Abrams Katie Toolan Alondra Estrada Katie Duckworth Bradley Klein Krystin McArdle Eliza Patlan	mpscdockets@elpc.org dabrams@elpc.org ktoolan@elpc.org astrada@elpc.org kduckworth@elpc.org bklein@elpc.org kmcardle@elpc.org epatlan@elpc.org

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

Troposphere Legal
Counsel for NRDC-SC

Digitally signed by
 Natasha Fowles
Date: 2026.10.06
14:49:00 -04'00'

Date: October 6, 2026

By: _____

Natasha Fowles, Legal Assistant
420 E. Front St.
Traverse City, MI 49686
Phone: 231-709-4000
Email: natasha@tropospherelegal.com