
O L S O N , B Z D O K & H O W A R D



February 24, 2023

Ms. Lisa Felice
Michigan Public Service Commission
7109 W. Saginaw Hwy.
P. O. Box 30221
Lansing, MI 48909

Via E-Filing

RE: MPSC Case No. U-21297

Dear Ms. Felice:

The following is attached for paperless electronic filing:

Objections by Michigan Environmental Council, Natural Resources Defense Council, and Citizens Utility Board of Michigan to Protective Order Submitted by DTE Electric Company; and

Proof of Service

Sincerely,

Christopher M. Bzdok
chris@envlaw.com

xc: Parties to Case No. U-21297

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE ELECTRIC COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.

U-21297

**OBJECTIONS BY THE MICHIGAN ENVIRONMENTAL COUNCIL,
NATURAL RESOURCES DEFENSE COUNCIL,
AND CITIZENS UTILITY BOARD OF MICHIGAN
TO PROTECTIVE ORDER SUBMITTED BY DTE ELECTRIC COMPANY**

February 24, 2023

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Introduction

The Michigan Environmental Council, Natural Resources Defense Council, and Citizens Utility Board of Michigan (MNC) object to the proposed protective order submitted by DTE Electric Company with its application in this case. MNC object to four provisions in the DTE protective order, as set forth below. MNC are submitting an alternative proposed protective order as Attachment A along with a general non-disclosure certificate and a non-disclosure certificate for Critical Energy Infrastructure Information as Attachments B and C.

The Rate Case Filing Requirements provide specific guidance on the form of protective orders.¹ Further, the Administrative Law Judge (ALJ) addressed many of these issues in prior cases: by Rulings dated December 14, 2022 and January 6, 2022 in Case No. U-21193; by Ruling dated March 1, 2022 in Case No. U-20836; by Ruling dated September 23, 2019 in Case No. U-20561.

First Objection: Categorical Exclusions Including CEII

DTE Proposed Order, page 2, paragraph I.A.1.b:

Exclusions include Critical Energy Infrastructure Information (“CEII”), technical data subject to U.S. export control laws and regulations, including but not limited to 10 C.F.R. Part 810 et. seq., North American Electric Reliability Corporation (NERC) Critical Infrastructure Protection (CIP) material and information, DTE Electric distribution system information and operational data including Supervisory Control and Data Acquisition (SCADA) information, confidential Midcontinent Independent System Operator (MISO) and ITC Holdings Corp and/or its affiliate companies’ information in the possession of DTE Electric Company, and information regarding Cyber Security which shall not be disclosed pursuant to this Protective Order or under any other circumstance. No individual DTE Energy employee’s compensation benefits or other personal information is relevant in this proceeding. No

¹ See Rate Case Filing Requirements adopted in the Commission’s Order dated July 31, 2017 in Case No. U-18238, Attachment 13.

individual DTE Energy employee’s compensation, benefits or other personal information shall be required to be disclosed in this proceeding in the course of a hearing, through discovery, under this Protective Order, or otherwise.

Objection:

The ALJ in DTE Electric’s pending Integrated Resource Plan (IRP) case and last two electric rate cases rejected similar or identical language. In Case No. U-20561, the ALJ found the language “extraordinarily broad” and “outside the scope of a protective order to pronounce what might be relevant or discoverable at some future point in this case.”² In Case No. U-20836, the ALJ similarly found that “it is inappropriate for a protective order issued at the outset of a rate case to categorically exclude from discoverability the information broadly described in the proposed protective order language quoted above.”³ In U-20836, the ALJ noted that “DTE Electric’s concern for the confidentiality of information the public disclosure of which may create a security risk is not trivial, but it should not be addressed with such a broad preclusion on discoverability.”⁴ In U-21193, the ALJ found that this language forecloses future reconsideration of specific information, and “is not properly balanced because of this foreclosure.”⁵

As was true in the prior cases, the protective order reserves the right to seek further restrictions on the dissemination of protected material and also reserves the right to object to any specific recipient if there is reason to believe that there is an unacceptable risk of misuse of

² Case No. U-20561, Ruling Addressing Protective Order dated September 23, 2019, pp. 2-3.

³ Case No. U-20836, Ruling Addressing Protective Order disputes dated March 1, 2022, p. 3.

⁴ *Id.* at 4.

⁵ Case No. U-21193, Ruling Addressing Protective Order disputes dated December 14, 2022, p. 2.

confidential information.⁶ Because these provisions are sufficient to protect the interests of DTE and other disclosing parties, and categorical exclusions of information from discoverability are unnecessary, the ALJ should strike paragraph I.A.1.b.

MNC further request that the Protective Order in this case expressly include a FERC-compliant process for dealing with CEII, as the Protective Orders did in U-21193, U-20836, and also in in Case No. U-20763, the Enbridge tunnel case. As to CEII, the complete exclusion of this information from discovery is also inconsistent with FERC rules, which provide for access to certain parties via a CEII-specific non-disclosure certificate.⁷ FERC also publishes a CEII Non-Disclosure Agreement.⁸ FERC has stated that its CEII rule “does not propose to alter the traditional ability of State Commissions to obtain such data directly from the companies” and “does not intend that public utilities may rely on this rule to refuse to provide information directly to State Commissions.”⁹

In Case No. U-20763, the ALJ issued a ruling rejecting Enbridge’s proposal to allow parties view-only access to CEII and instead authorizing full party access to that information under a separate non-disclosure certificate specific to CEII.¹⁰ In Case No. U-20836, the ALJ similarly provided for party access to CEII under a separate non-disclosure certificate.¹¹ Importantly, the

⁶ DTE’s Proposed Protective Order, p. 8, paragraph II.I (right to seek further restrictions) and p. 6, paragraph II.C (right to object to specific reviewing representatives).

⁷ 18 CFR § 388.113.

⁸ Federal Energy Regulatory Commission, *Critical Energy/Electric Infrastructure Information Consultant Non-Disclosure Agreement*, available at <https://www.ferc.gov/sites/default/files/2020-04/consultant-nda.pdf>.

⁹ FERC Order No. 630, p. 44, ¶ 52.

¹⁰ Case No. U-20763, Ruling on Motion for Entry of a Protective Order dated December 10, 2020, pp. 1-5.

¹¹ Ruling in Case No. U-20836, p. 9.

ALJ in U-20836 found that Section 215A of the Federal Power Act expressly exempts CEII from the Michigan Freedom of Information Act.¹² In Case No. U-21193, the ALJ found that the U-20836 and U-20763 orders “provided additional protections to facilitate the disclosure of CEII;” and also found that “[t]he protective order itself is not a mandate to disclose all confidential information” – but rather “a vehicle to facilitate the exchange of information that merits protection...”¹³ Ultimately DTE and MNC resolved these issues by adding a “competitive duty personnel” term to the CEII provisions.¹⁴

Proposed alternatives:

- Delete paragraph I.A.1.b.
- Add the following language for CEII, which is taken from the protective order in Case No. U-21193 and which is included in the proposed alternative protective order provided as Attachment A:

If a Receiving Party seeks access to CEII as defined in 16 U.S.C § 824o-1(a)(3) and FERC rules, specifically 18 CFR § 388.113(c), the Receiving Party and Reviewing Representative shall also sign the CEII Nondisclosure Certificate (Attachment 2 to this Protective Order) and provide a copy of the executed CEII Nondisclosure Certificates to the Disclosing Party.

Protected Material containing CEII protected from disclosure under 16 USC § 824o-1 shall also be marked as “CONFIDENTIAL CEII PROTECTED FROM DISCLOSURE UNDER 16 USC § 824o-1.

¹² *Id.* at 7, citing 16 USC §824o-1(d)(1).

¹³ Ruling in Case No. U-21193, pp. 2-3.

¹⁴ Case No. U-21193, Second Ruling Addressing Protective Order Disputes dated January 6, 2023 and Protective Order dated January 6, 2023, pp. 3-4, Section I.F.

Protected Material containing CEII protected from disclosure under 16 USC § 824o-1 shall also be marked as “CONFIDENTIAL CEII PROTECTED FROM DISCLOSURE UNDER 16 USC § 824o-1.”

CEII shall be returned or disposed of as provided in the CEII Nondisclosure Certificate, not later than the conclusion of DTE Electric’s next rate case.

- Add the CEII non-disclosure certificate provided as Attachment C.
- MNSC have not included the competitive duty personnel provision from the Protective Order in U-21193 but are open to its inclusion if DTE accepted that inclusion as resolving the dispute as in U-21193.

Second Objection: 3rd Party Licensed Information

DTE Proposed Order, page 2, paragraph I.A.2:

To the extent permitted, information obtained under license from a third-party licensor, to which the Disclosing Party or witnesses engaged by the Disclosing Party is a licensee, that is subject to any confidentiality or non-transferability clause. This information includes reports; analyses; models (including related inputs and outputs); trade secrets; and confidential, proprietary, or commercially sensitive information that the Disclosing Party or one of its witnesses receives as a licensee and is authorized by the third-party licensor to disclose consistent with the terms and conditions of this Protective Order.

Objection:

At one level, this provision defines protected material to include information held by DTE or another disclosing party under a license that is subject to confidentiality or non-transferability clause. MNC do not object to treating this kind of information as protected material. However, the provision includes the problematic phrases “to the extent permitted” and “is authorized by the third-party licensor to disclose consistent with the terms and conditions of this Protective Order.”

These phrases suggest that DTE or another disclosing party may not provide licensed information if the third-party vendor does not grant permission to do so.

The Ruling in U-20561 rejected language that took a similar approach to licensed information, finding that “it appears to absolve DTE Electric of any responsibility to provide the parties to rate cases with the ability to evaluate the basis for the company’s revenue requests on this subject, if DTE contracts with a vendor that will claim confidentiality.”¹⁵ The Ruling in U-20836 rejected similar language, because “the company cannot immunize from review material such as analytical studies on which it relied in formulating its projected revenue requirement, merely because the third-party analysis or study was provided confidentially to the utility.”¹⁶ The Ruling in U-21193 similarly found that “the language DTE Electric proposes appears to shield it from an obligation to find a means to allow party review of the studies or analyses DTE Electric relies on as support for its plan;” and therefore should be deleted.¹⁷

Proposed alternative:

- Delete paragraph I.A.2 without replacement.

Third Objection: Contract Negotiations

DTE Proposed Order, page 4, paragraph I.C:

This protective order is insufficient to protect particularly sensitive commercial information regarding current contract negotiations and contract-renegotiations and such information shall not be disclosed without agreement of the parties or further proceedings regarding this information including, but not limited to, a determination by the presiding officer whether, and if so to what extent, the material is to be disclosed, and any additional protections that may be necessary

¹⁵ Ruling in Case No. U-20561, pp. 5-8.

¹⁶ Ruling in Case No. U-20836, p. 10.

¹⁷ Ruling in Case No. U-21193, p. 3.

on a case by case basis. The parties reserve the right to exhaust any appeals to the Commission and any court or appellate court of competent jurisdiction prior to making any ordered disclosure.

Objection:

This provision essentially imposes a rebuttable presumption that certain information will not be provided – even under the protective order – unless the parties agree or the ALJ decides the information should be provided. Such a framework is inconsistent with the Commission’s standards for confidentiality and protective orders, which provide that a party seeking to restrict the disclosure of information “must satisfy a stringent burden by making a particularized showing (1) that the information at issue is a trade secret or otherwise confidential, and (2) that disclosure would work a clearly defined and serious injury.”¹⁸ The proposed language shifts the burden to the requesting party to demonstrate that it should receive information in this category. The provision also places an automatic stay on any decision that information should be provided pending the exhaustion of all available appeals including the appellate courts, which could take years after this case is concluded.

As noted earlier, DTE already reserves the right to seek further restrictions on the dissemination of protected material to intervenors. That provision both protects DTE’s interest on this issue and is consistent with the Commission’s prior holdings that the party seeking to restrict disclosure has the burden of proving that such restriction is necessary with specific facts. In Case No. U-20836, the ALJ agreed that similar language should be stricken from the protective order.¹⁹ The ALJ struck it in Case No. U-21193 as well, finding that DTE retained the right to seek

¹⁸ Case No. U-10282, June 30, 2004, Order, pp. 12-14 (internal citations omitted).

¹⁹ Ruling in Case No. U-20836, p. 10. The prior version of the language prefaced the above passage with “The parties agree that...”

additional restrictions if needed and therefore it was inappropriate to create a rebuttable presumption that certain categories of information would not be provided.²⁰

Proposed alternative:

- Delete the provision without replacement.

Fourth Objection: Retention of Documents

DTE Proposed Order, page 11, paragraph V:

Protected Material remains the property of the Disclosing Party and only remains available to the Receiving Party until the time expires for petitions for rehearing of a final MPSC order in Case No. U-21297 or until the MPSC has ruled on all petitions for rehearing in this case (if any). However, an attorney for a Receiving Party who has signed a Nondisclosure Certificate and who is representing the Receiving Party in an appeal from an MPSC final order in this case may retain copies of Protected Material until either the time for appeal of the Commission's final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired. On or before the time specified by the preceding sentences, the Receiving Party shall return to the Disclosing Party all Protected Material in its possession or in the possession of its Reviewing Representatives – including all copies and notes of Protected Material – or certify in writing to the Disclosing Party that the Protected Material has been destroyed.

Objection:

The provision authorizing counsel to retain a copy of the confidential materials should be either not time-limited or at least extended for a longer period of time than the Final Order and any appeals in this case. The protective order in Case No. U-20561 included language that “Counsel for the requesting Party or Parties may maintain a single confidential file of Protected Material

²⁰ Ruling in Case No. U-21193, pp. 4-5.

subject to all other provisions in this Order.”²¹ The Ruling in Case No. U-20836 found that “[b]ecause attorneys have ethical obligations to maintain client files and to account for their legal advice and work product, they should generally be allowed to retain a single copy of their files in this case, subject to the terms of the protective order.”²² The Ruling in Case No. U-21193 found similarly.²³ In two Consumers Energy electric rate cases, U-17735 and U-17990, the ALJs issued protective orders with retention times for counsel that ran until resolution of the *next* electric rate case after the pending one, or resolution of any and all PSCR cases filed before the resolution of the company’s next general electric rate case – whichever came later. Consumers appealed, and in both cases, the Commission upheld the ALJs on this point.²⁴

As noted in the Ruling in Case No. U-20836, the proposed non-disclosure certificate for CEII does require return or destruction of CEII without the ability for counsel to retain a single copy for an additional period of time.²⁵ The proposed alternate Protective Order included as Attachment A contains language in Section V consistent with that approach.

Proposed alternative:

Counsel for the Receiving Party or Parties may maintain a single confidential file of Protected Material subject to all other provisions in this Order.

* * *

²¹ Case No. U-20561, Protective Order dated September 23, 2019, p. 9, section V.

²² Ruling in Case No. U-20836, p. 12.

²³ Ruling in Case No. U-21193, p. 5.

²⁴ Case No. U-17735, Final Order dated November 19, 2015, pp. 134-35; Case No. U-17990, Final Order dated February 28, 2017, pp. 160-66.

²⁵ Ruling in Case No. U-20836, p. 12; Attachment C to these Objections.

CEII shall be returned or disposed of as provided in the CEII Nondisclosure Certificate, not later than the conclusion of DTE Electric's next rate case.

Conclusion and Relief Requested

For the reasons discussed above, MNC respectfully requests that the ALJ decline to enter DTE's proposed protective order, and enter one consistent with the above recommendations.

Respectfully Submitted,

Dated: February 24, 2023

By: /s/ Christopher M. Bzdok
Christopher M. Bzdok (P53094)

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE ELECTRIC COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.

U-21297

Attachment A

PROPOSED PROTECTIVE ORDER

This Protective Order governs the use and disposition of Protected Material that DTE Electric Company (“Applicant”) or any other Party discloses to another Party during the course of this proceeding. The Applicant or other Party disclosing Protected Material is referred to as the “Disclosing Party”; the recipient is the “Receiving Party” (defined further below). The intent of this Protective Order is to protect non-public, confidential information and materials so designated by the Applicant or by any other party, which information and materials contain confidential, proprietary, or commercially sensitive information. This Protective Order defines “Protected Material” and describes the manner in which Protected Material is to be identified and treated. Accordingly, it is ordered:

I. “Protected Material” and Other Definitions

A. For the purposes of this Protective Order, “Protected Material” consists of trade secrets or confidential, proprietary, or commercially sensitive information provided in Disclosing Party’s Exhibits, discovery or audit responses, any witness’ related exhibit and testimony, and any arguments of counsel describing or relying upon the Protected Material. Subject to challenge under Paragraph IV.A, Protected Material shall consist of non-public

confidential information and materials including, but not limited to, the following information disclosed during the course of this case if it is marked as required by this Protective Order:

1. Trade secrets or confidential, proprietary, or commercially sensitive information provided in response to discovery, in response to an order issued by the presiding hearing officer or the Michigan Public Service Commission (“MPSC” or the “Commission”), in testimony or exhibits filed later in this case, or in arguments of counsel;
 - a. Examples of such trade secrets, confidential, proprietary, or commercially sensitive information include, but are not limited to, information regarding compensation, generation, transmission and distribution facilities and related equipment, infrastructure, energy market projections or assumptions, forecasts, gas conversion analyses, sensitivity analyses, revenue requirement analyses, or financial arrangements including but not limited to those set forth in contracts.
2. Where protection from all means of disclosure is demanded in writing by a vendor of commercially-available market analyses and/or studies concerning employee compensation levels and such written demand is submitted to the Commission by DTE Electric, no Party shall obtain access to such commercially-available market analyses and/or studies concerning employee compensation levels until the Commission promises confidentiality for such market analyses and/or studies concerning employee compensation levels in writing, the Chairman of the Commission authorizes that promise of confidentiality in writing and the Commission thereafter through issuance of an order grants Protected Materials involving such market analyses and/or studies concerning employee compensation levels exemption from disclosure under the Michigan Freedom of Information Act (“FOIA”) as “*Trade secrets or commercial or financial information*” pursuant to MCL 15.243(1)(f) and the material marked “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN CASE NO. U-21297 – EXEMPT FROM PUBLIC DISCLOSURE UNDER THE MICHIGAN FREEDOM OF INFORMATION ACT MCL 15.243(1)(f)”. If the AG or any other Party to this proceeding is itself subject to disclosure requirements under FOIA and wishes to obtain Protected Materials involving market analyses and/or studies concerning employee compensation levels that have been exempted by the Commission from disclosure under FOIA, the AG or other Party, in addition to executing a Non-Disclosure Certificate, must also exempt such Protected Materials from disclosure under FOIA prior to obtaining such Protected Materials.
3. Information that could identify the bidders and bids, including the winning bid, in a competitive solicitation for a power purchase agreement or in a competitively bid engineering, procurement, or construction contract at any stage of the selection process (*i.e.*, before the Disclosing Party has entered into a power purchase agreement or selected a contractor).

- B. The information subject to this Protective Order does not include:
1. Information that is or has become available to the public through no fault of the Receiving Party or Reviewing Representative and no breach of this Protective Order, or information that is otherwise lawfully known by the Receiving Party without any obligation to hold it in confidence;
 2. Information received from a third party free to disclose the information without restriction;
 3. Information that is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization;
 4. Information that is required by law or regulation to be disclosed, but only to the extent of the required disclosure; or Information that is disclosed in response to a valid, non-appealable order of a court of competent jurisdiction or governmental body, but only to the extent the order requires.

C. “Party” refers to the Applicant, MPSC Staff (“Staff”), Michigan Attorney General, or any other person, company, organization, or association that is granted intervention in Case No. U-21297 under the Commission’s Rules of Practice and Procedure, Mich Admin Code, R 792.10401 et al.

D. “Receiving Party” means any Party to this proceeding who requests or receives access to Protected Material, subject to the requirement that each Reviewing Representative sign a Nondisclosure Certificate attached to this Protective Order as Attachment 1.

E. “Reviewing Representative” means a person who has signed a Nondisclosure Certificate and who is:

1. An attorney who has entered an appearance in this proceeding for a Receiving Party;
2. An attorney, paralegal, or other employee associated, for the purpose of this case, with an attorney described in Paragraph I.F.1;
3. An expert or employee of an expert retained by a Receiving Party to advise, prepare for, or testify in this proceeding; or An employee or other representative of a Receiving Party with significant responsibility in this case.

A Reviewing Representative is responsible for assuring that persons under his or her supervision and control comply with this Protective Order.

F. If a Reviewing Representative's scope of employment includes any of the activities listed under this Paragraph (I)(G), such Reviewing Representative may not use information contained in any Protected Material obtained in this proceeding for a commercial purpose (e.g., to give a Participant or competitor of any Participant a commercial advantage):

1. Energy marketing and/or energy development;
2. Direct supervision of any employee or employees whose duties include energy marketing and/or energy development; or
3. The provision of consulting services to any person whose duties include energy marketing and/or energy development.

A Reviewing Representative who meets any of the three criteria above is "Competitive Duty Personnel."

G. "Nondisclosure Certificate" means the certificate attached to this Protective Order as Attachment 1, which is signed by a Reviewing Representative who has been granted access to Protected Material and agreed to be bound by the terms of this Protective Order.

II. Access to and Use of Protected Material

A. This Protective Order governs the use of all Protected Material that is marked as required by Paragraph III.A and made available for review by the Disclosing Party to any Receiving Party or Reviewing Representative. This Protective Order protects: (i) the Protected Material; (ii) any copy or reproduction of the Protected Material made by any person; and (iii) any memorandum, handwritten notes, or any other form of information that copies, contains, or discloses Protected Material. All Protected Material in the possession of a Receiving Party shall be maintained in a secure place. Access to Protected Material shall be limited to persons

authorized to have access subject to the provisions of this Protective Order.

B. Protected Material shall be used and disclosed by the Receiving Party solely in accordance with the terms and conditions of this Protective Order. A Receiving Party may authorize access to, and use of, Protected Material by a Reviewing Representative identified by the Receiving Party, subject to Paragraphs III and V below, only as necessary to analyze the Protected Material; make or respond to discovery; present evidence; prepare testimony, argument, briefs, or other filings; prepare for cross-examination; consider strategy; and evaluate settlement. These individuals shall not release or disclose the content of Protected Material to any other person or use the information for any other purpose.

C. The Disclosing Party retains the right to object to any designated Reviewing Representative if the Disclosing Party has reason to believe that there is an unacceptable risk of misuse of confidential information. If a Disclosing Party objects to a Reviewing Representative, the Disclosing Party and the Receiving Party will attempt to reach an agreement to accommodate that Receiving Party's request to review Protected Material. If no agreement is reached, then either the Disclosing Party or the Receiving Party may submit the dispute to the presiding hearing officer. If the Disclosing Party notifies a Receiving Party of an objection to a Reviewing Representative, then the Protected Material shall not be provided to that Reviewing Representative until the objection is resolved by agreement or by the presiding hearing officer.

D. Before reviewing any Protected Material, including copies, reproductions, and copies of notes of Protected Material, a Receiving Party and Reviewing Representative shall sign a copy of the Nondisclosure Certificate (Attachment 1 to this Protective Order) agreeing to be bound by the terms of this Protective Order. The Reviewing Representative shall also provide a copy of the executed Nondisclosure Certificate to the Disclosing Party. If a Receiving Party seeks access to CEII as defined in 16 U.S.C § 824o-1(a)(3) and FERC rules, specifically 18 CFR

§ 388.113(c), the Receiving Party and Reviewing Representative shall also sign the CEII Nondisclosure Certificate (Attachment 2 to this Protective Order) and provide a copy of the executed CEII Nondisclosure Certificates to the Disclosing Party.

E. No person who is afforded access to any Protected Material by reason of this Order shall disclose the Protected Material to anyone not specifically authorized to receive such information pursuant to the terms of this Order. Nor shall such persons use the Protected Material in any manner inconsistent with this Order. All persons afforded access to Protected Material pursuant to this Order shall keep the Protected Material secure in accordance with the purposes and intent of this Order and shall adopt all reasonable precautions to assure continued confidentiality, including precautions against unauthorized copying, use, or disclosure thereof.

F. A party seeking or intending to disclose in or on the public record information taken directly from materials identified as Protected Material must – before actually disclosing the information – do one of the following: (a) contact DTE Electric’s counsel of record and obtain written permission to place the information in the public record, (b) take affirmative steps to confirm and actually confirm that the information is otherwise public information and within an exclusion in section 7 of this Order and comply with the notice provisions in section 7, or (c) challenge the confidential nature of the Protected Material and obtain a ruling under section 10 that the information is not confidential and may be disclosed in or on the public record

G. Even if no longer engaged in this proceeding, every person who has signed a Nondisclosure Certificate continues to be bound by the provisions of this Protective Order. The obligations under this Protective Order are not extinguished or nullified by entry of a final order in this case and are enforceable by the MPSC or a court of competent jurisdiction. To the extent Protected Material is not returned to a Disclosing Party, it remains subject to this Protective Order. Members of the Commission, Commission staff assigned to assist the Commission with

its deliberations, and the presiding hearing officer shall have access to all Protected Material that is submitted to the Commission under seal without the need to sign the Nondisclosure Certificate.

H. A Party retains the right to seek further restrictions on the dissemination of Protected Material to persons who have or may subsequently seek to intervene in this MPSC proceeding.

I. Nothing in this Protective Order precludes a Party from asserting a timely evidentiary objection to the proposed admission of Protected Material into the evidentiary record for this case.

III. Procedures

A. The Disclosing Party shall mark any information that it considers confidential as “CONFIDENTIAL: SUBJECT TO THE PROTECTIVE ORDER ISSUED IN CASE NO. U-21297.” Protected Material containing CEII protected from disclosure under 16 USC § 824o-1 shall also be marked as “CONFIDENTIAL CEII PROTECTED FROM DISCLOSURE UNDER 16 USC § 824o-1. Software executable files containing protected material may not be capable of being marked with the foregoing required protective language. The inability to mark software executable files containing protected material with such protective language shall not diminish the requirements of this Protective Order. It shall be sufficient if the medium used to deliver software executable files containing protected information is marked with the required protective language. However, any output from the software executable files containing protected material that is generated only as a reproducible document, whether electronic or non-electronic, that is capable of being marked with the required protective language, shall be marked by the party who generated the output with such protective language and subject to the requirements of this Protective Order. If the Receiving Party or a Reviewing Representative

makes copies of any Protected Material, they shall conspicuously mark the copies as Protected Material. Notes of Protected Material shall also be conspicuously marked as Protected Material by the person making the notes.

B. If a Receiving Party wants to quote, refer to, or otherwise use Protected Material in pleadings, pre-filed testimony, exhibits, cross-examination, briefs, oral argument, comments, or in some other form in this proceeding (including administrative or judicial appeals), the Receiving Party shall do so consistent with procedures that will maintain the confidentiality of the Protected Material. For purposes of this Protective Order, the following procedures apply:

1. Written submissions using Protected Material shall be filed in a sealed record to be maintained by the MPSC's Docket Section, or by a court of competent jurisdiction, in envelopes clearly marked on the outside, "CONFIDENTIAL – SUBJECT TO THE PROTECTIVE ORDER ISSUED IN CASE NO. U-21297." Simultaneously, identical documents and materials, with the Protected Material redacted, shall be filed and disclosed the same way that evidence or briefs are usually filed;
2. Oral testimony, examination of witnesses, or argument about Protected Material shall be conducted on a separate record to be maintained by the MPSC's Docket Section or by a court of competent jurisdiction. These separate record proceedings shall be closed to all persons except those furnishing the Protected Material and persons otherwise subject to this Protective Order. The Receiving Party presenting the Protected Material during the course of the proceeding shall give the presiding officer or court sufficient notice to allow the presiding officer or court an opportunity to take measures to protect the confidentiality of the Protected Material; and
3. Copies of the documents filed with the MPSC which contain Protected Material, including the portions of the exhibits, transcripts, or briefs that refer to Protected Material, shall be marked or identified as, "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN CASE NO. U-21297" and shall be maintained in a separate portion of the record under seal, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order.
4. Protected Materials containing CEII protected from disclosure under 16 USC § 824o-1 shall also be marked as "CONFIDENTIAL CEII PROTECTED FROM DISCLOSURE UNDER 16 USC § 824-01."

C. The Protected Material subject to this Order shall be shielded from disclosure to

the extent permitted by law. If any person files a Freedom of Information Act (“FOIA”) request with the Commission seeking access to documents subject to this Order, then the Commission’s Executive Secretary shall notify DTE Electric as soon as reasonably practicable and DTE Electric may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. If the Commission denies a claim of confidentiality, in whole or in part, then the Commission shall give notice to DTE Electric at least five (5) business days prior to the Commission’s contemplated disclosure in response to the request. The notice shall briefly explain why DTE Electric’s objections to disclosure were not sustained by the Commission. In the event that the FOIA requester commences suit against the Commission to compel disclosure of a document for which privilege is claimed, the Commission shall immediately notify DTE Electric of the suit.

IV. Termination of Protected Status

A. A Receiving Party reserves the right to challenge whether a document or information is Protected Material and whether this information can be withheld under this Protective Order. In response to a motion, the Commission or the presiding hearing officer in this case may revoke a document’s protected status after notice and hearing. If the presiding hearing officer revokes a document’s protected status, then the document loses its protected status after 14 days unless a Party files an application for leave to appeal the ruling to the Commission within that time period. Any Party opposing the application for leave to appeal shall file an answer with the Commission no more than 14 days after the filing and service of the appeal. If an application is filed, then the information will continue to be protected from disclosure until either the time for appeal of the Commission’s final order resolving the issue has expired under MCL 462.26 or, if the order is appealed, until judicial review is completed and the time to take further appeals has expired.

B. If a document's protected status is challenged under Paragraph IV.A, the Receiving

Party challenging the protected status of the document shall explicitly state its reason for challenging the confidential designation. The Disclosing Party bears the burden of proving that the document should continue to be protected from disclosure.

V. Retention of Documents

Protected Material remains the property of the Disclosing Party and only remains available to the Receiving Party until the time expires for petitions for rehearing of a final MPSC order in Case No. U-21297 or until the MPSC has ruled on all petitions for rehearing in this case (if any). Counsel for the Receiving Party or Parties may maintain a single confidential file of Protected Material subject to all other provisions in this Order; CEII shall be returned or disposed of as provided in the CEII Nondisclosure Certificate, not later than the conclusion of this case.

VI. Limitations and Disclosures

The provisions of this Protective Order do not apply to a particular document, or portion of a document, described in Paragraph II.A if a Receiving Party can demonstrate that it has been previously disclosed by the Disclosing Party on a non-confidential basis or meets the criteria set forth in Paragraphs I.B.1 through I.B.5. A Receiving Party intending to disclose information taken directly from materials identified as Protected Material must-before actually disclosing the information-do one of the following: (i) contact the Disclosing Party's counsel of record and obtain written permission to disclose the information, or (ii) challenge the confidential nature of the Protected Material and obtain a ruling under Paragraph IV that the information is not confidential and may be disclosed in or on the public record.

VII. Remedies

If a Receiving Party violates this Protective Order by improperly disclosing or using Protected Material, the Receiving Party shall take all necessary steps to remedy the improper disclosure or use. This includes immediately notifying the MPSC, the presiding hearing officer, and the Disclosing Party, in writing, of the identity of the person known or reasonably suspected to have obtained the Protected Material. A Party or person that violates this Protective Order remains subject to this paragraph regardless of whether the Disclosing Party could have discovered the violation earlier than it was discovered. This paragraph applies to both inadvertent and intentional violations. Nothing in this Protective Order limits the Disclosing Party's rights and remedies, at law or in equity, against a Party or person using Protected Material in a manner not authorized by this Protective Order, including the right to obtain injunctive relief in a court of competent jurisdiction to prevent violations of this Protective Order.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Administrative Law Judge

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE ELECTRIC COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.

U-21297

Attachment B

NONDISCLOSURE CERTIFICATE

By signing this Nondisclosure Certificate, I acknowledge that access to Protected Material is provided to me under the terms and restrictions of the Protective Order issued in Case No. U- 21297, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of the Protective Order. I understand that the substance of the Protected Material (as defined in the Protective Order), any notes from Protected Material, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential and shall not be disclosed to anyone other than in accordance with the Protective Order.

Reviewing Representative

Date: _____

Title: _____

Representing: _____

Printed Name

Email: _____

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE ELECTRIC COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.

U-21297

Attachment C

**NONDISCLOSURE AGREEMENT AND CERTIFICATE FOR CRITICAL ELECTRIC
INFRASTRUCTURE INFORMATION**

I hereby agree and certify my understanding that access to Critical Electric Infrastructure Information (“CEII”) as defined at 16 USC § 824o-1(a)(3) and 18 CFR § 388.113(c) is provided to me pursuant to the terms and restrictions of this CEII Nondisclosure Agreement and the Protective Order issued in Case No. U-21297, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by the terms of this CEII Nondisclosure Agreement and the Protective Order. I further agree that:

1. I will use CEII only for the purpose for which it was requested;
2. I will only discuss CEII with authorized recipients;
3. I will keep CEII in a secure place in a manner that prevents unauthorized access;
4. I will destroy CEII or return it to the disclosing party upon request;
5. I understand that CEII is not subject to release under the Freedom of Information Act;
6. I understand that I am obligated to protect CEII even after a designation as CEII has lapsed until a determination by the Administrative Law Judge that the information should no longer be designated as CEII; and
7. I will report all unauthorized disclosures of CEII to the disclosing party.

Reviewing Representative

Date: _____

Title: _____

Representing: _____

Printed Name

Email: _____

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE ELECTRIC COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority.

U-21297

PROOF OF SERVICE

On the date below, an electronic copy of **Objections by Michigan Environmental Council, Natural Resources Defense Council, and Citizens Utility Board of Michigan to Protective Order Submitted by DTE Electric Company** was served on the following:

Name/Party	E-mail Address
Administrative Law Judge Hon. Sharon Feldman	feldmans@michigan.gov
DTE Electric Company Jon P. Christinidis	mpscfilings@dteenergy.com jon.christindis@dteenergy.com
Michigan Attorney General Joel King Michael Moody	ag-enra-spec-lit@michigan.gov kingj38@michigan.gov moodym2@michigan.gov
Michigan Public Service Commission Staff Daniel Sonneveldt Monica M. Stephens	sonneveldtd@michigan.gov stephensml1@michigan.gov
Gerdau MacSteel, Inc. Jennifer U. Heston	jheston@fraserlawfirm.com
Soulardarity and We Want Green, Too Amanda Urban Mark Templeton	t-9aurba@lawclinic.uchicago.edu templeton@uchicago.edu
Michigan Cable Telecommunications Association Sean P. Gallagher Jordyn DuPuis	sgallagher@fraserlawfirm.com jdupuis@fraserlawfirm.com

[signature page to follow]

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

OLSON, BZDOK & HOWARD, P.C.
Counsel for MEC, NRDC, and CUB

Date: February 24, 2023

By: _____
Breanna Thomas, Legal Assistant
420 E. Front St.
Traverse City, MI 49686
Phone: 231/946-0044
Email: breanna@envlaw.com