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August 3, 2023

Ms. Lisa Felice  
Executive Secretary  
Michigan Public Service Commission  
7109 West Saginaw Highway  
Lansing, MI 48917

RE: In the matter of the Application of **DTE Gas Company** for approval of a Gas Cost Recovery Plan, 5-year Forecast and Monthly GCR Factor for the 12 months ending March 31, 2023  
MPSC Case No: U-21064

Dear Ms. Felice:

Attached for electronic filing in the above referenced matter is DTE Gas Company's Exception to the Proposal for Decision. Also attached is the Proof of Service.

Very truly yours,

Carlton D. Watson

CDW/cdm  
Enclosures

cc: Service List

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the Application of )  
**DTE GAS COMPANY** for approval of )  
Gas Cost Recovery Plan, 5-year Forecast )  
And Monthly GCR Factor for the 12 months )  
ending March 31, 2023 )

Case No. U-21064

**DTE GAS COMPANY'S EXCEPTION  
TO THE PROPOSAL FOR DECISION**

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## **I. INTRODUCTION**

On July 13, 2023, Administrative Law Judge Katherine E. Talbot (hereinafter referred to as “ALJ”) issued her Proposal for Decision (hereinafter referred to as “PFD”) for this proceeding. DTE Gas Company (hereinafter referred to as “DTE Gas” or the “Company”) respectfully files one exception to a single recommendation in the ALJ’s PFD. Specifically, the Company disagrees with the ALJ’s recommendation that the Michigan Public Service Commission, (hereinafter referred to as “MPSC” or “Commission”) issue a Section 7 warning, pursuant to MCL 460.6h(7), to DTE Gas that the premium amount of \$36,808 paid for RSG may not be recoverable in future reconciliation cases. (PFD p. 34). Otherwise, DTE Gas agrees with the PFD’s remaining recommendations, which the Commission should adopt in its final order for this proceeding.

## **II. THE COMMISSION MUST REJECT THE ALJ’S RECOMMENDATION FOR A SECTION 7 WARNING REGARDING THE PREMIUM AMOUNT OF \$36,808 PAID FOR RSG.**

### **A. APPLICABLE LAW**

Rule 435 of the Rules of Practice and Procedure before the Commission, R 792.10435, relevantly states:

(3) Exceptions and replies to exceptions shall be supported by reasoned discussion of the evidence and the law. Exceptions and replies to exceptions containing factual allegations claimed to be established by the evidence shall include a reference to the specific portions of the record where the evidence may be found. Materials incorporated by reference shall be attached.

(4) Exceptions shall clearly and concisely recite the specific findings of fact and conclusions of law to which exception is taken or the omission of, or imprecision in, specific findings of fact and conclusions of law to which the party accepts.

DTE Gas has the initial burden to prove its case by a preponderance of the evidence.<sup>1</sup> Other parties may challenge that evidence, but at that point the burden of proof shifts to the other parties. Thus, “once a utility has satisfied its initial burden of proof, another party ‘may challenge that evidence and present evidence of unreasonableness.’ However, at that point, the other party has the burden to demonstrate its position is correct.” (October 25, 2017 Order in Case No. U-18224, pp 14-15, quoting January 11, 2010 Opinion and Order in Case Nos. U-15768 and U-15751, p 38.)

**B. THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE REASONABLENESS OF DTE GAS’S DECISIONS REGARDING RSG.**

Initially, the PFD recognizes that the Company seeks to recover both the underlying commodity cost and the cost of the premium paid for certification; in doing so, the ALJ cites the testimony of DTE Witness Sherri Moore wherein she defined RSG:

RSG is a natural gas product which has undergone third party certification and regular monitoring to verify it has been produced in a way that meets the highest standards of responsibility with respect to air, water, land and community. In addition, a critical component of RSG for DTE will be focusing on RSG being a lower methane intensity natural gas product in comparison with other supply alternatives.

(PFD p. 27). The PFD goes on to acknowledge that the Company 1) is exploring RSG as part of its net zero commitment on gas supply strategy, 2) “agrees that [the above referenced] certification and auditing would be required for it to purchase RSG” and 3) involved itself in industry groups and collaboratives to focus on the reduction of methane emissions. (PFD p. 28).

The PFD then summarizes the AG’s assertions on this issue as follows:

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<sup>1</sup> See generally, *Aquilina v General Motors Corp*, 403 Mich 206, 210-211; 267 NW2d 923 (1978) (“The proof required in an administrative proceeding...is the same as that required in a civil judicial proceeding: a preponderance of the evidence”). The “preponderance of the evidence” standard is generally defined as follows:

“The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.” *Black’s Law Dictionary* 1301 (9<sup>th</sup> ed 2009). (Emphasis added).

The Company has not made a compelling and convincing case that purchasing RSG is in the best interest of customers or that it will make a significant difference in reducing greenhouse gas emissions. Furthermore, the payment of RSG premiums above the base cost of gas purchases is likely not recoverable under Act 304. (PFD p. 29).

Then, the PFD summarizes Staff’s assertions on this issue as follows:

Staff agrees and recommends the Commission issue a Section 7 warning to DTE Gas that the cost of the \$36,808 premium paid for RSG may not be recoverable. Based on the testimony of Mr. Ausum, Staff argues that Act 304, as currently written, does not provide for consideration of environmental attributes in the determination of whether or not a gas supply is reasonable and prudent. Staff contends that “because the RSG requires a premium in order to achieve certification, and is not a more reliable source of supply than gas that is not RSG certified, the RSG premium should not be deemed a reasonable or prudent source of supply under Act 304 as it is currently written.” (PFD p. 30).

In agreeing with the arguments put forth by the AG and Staff, the PFD concludes as follows:

DTE Gas argues that certification by a third-party is critical to the development of RSG but admits there is not uniformity within the certification process. Ms. Moore confirmed that the Company concluded that certification of RSG is still a developing industry. DTE Gas determined that a focus on methane reduction was most prudent. However, the Company did not establish what if any effect RSG will have on methane emissions and did not establish that the certification it received is based on reliable industry standards. The Attorney General correctly argues that DTE Gas’s RSG proposal is “premature given the current state of the issue within the natural gas industry.”

[...]

But more importantly, this PFD agrees with the argument made by both Staff and the Attorney General that Act 304 does not provide for an increase in the cost of gas due to potential environmental attributes in the determination of whether costs are reasonable and prudent.

[...]

Therefore, payment of a premium for the RSG designation fails to meet the reasonable and prudent standard because it is priced at a premium compared to gas without any such supply certification.

(PFD pp. 31-32).

There are several issues with the ALJ's analysis and conclusion. First, in agreeing with the arguments put forth by the AG, the ALJ is presumptively agreeing with the AG's assertion that "[t]he Company has not made a *compelling and convincing case* that purchasing RSG is in the best interest of customers or that it will make a significant difference in reducing greenhouse gas emissions." The AG's attempt to raise the Company's burden of proof to a "compelling and convincing" standard is improper and should have been rejected. It is not the Company's burden to "make a compelling and convincing case." Rather, as noted above, the Company is only required to establish that its actions were reasonable and prudent by a preponderance of the evidence, which it has done.

Next, the ALJ concludes that Act 304 "does not provide for an increase in the cost of gas due to potential environmental attributes in the determination of whether costs are reasonable and prudent." (PFD, p 31). The Company disagrees. The ALJ relies on a portion of MCL 460.6h, by noting that the Commission is required to evaluate "whether the utility has taken all appropriate legal and regulatory actions to minimize the cost of purchased gas," but does not reference the remaining part of the statute, which indicates that "other relevant factors" shall be considered in evaluating the decisions underlying the gas cost recovery plan. It is well established that "courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich. 142, 146 (2002). Therefore, we must not read Act 304 so narrowly that the phrase "other relevant factors" is mere surplusage.

The statute likely allows for recovery of these costs, or at the very least does not prohibit recovery of environmental costs, such as RSG premium. Ultimately, the question is whether DTE Gas was reasonable and prudent in purchasing RSG. The preponderance of the evidence in the

record supports the conclusion that DTE Gas was reasonable and prudent to purchase RSG. The 674,100 Dth of RSG was purchased to integrate RSG into the portfolio and to reduce methane emissions in accordance with the long term Netzero commitment. (2 T 35). The Company further referenced its 2020 public commitment to reduce greenhouse gas emissions to net zero by 2050 and to help reduce its customers' greenhouse emissions 35%. (2 T 92). Since then, the Company met with its industry peers and its suppliers to gain insight on RSG, the various certifications for RSG and product offerings that include RSG. (2 T 92).<sup>2</sup> The fact that this industry is developing does not make the Company's decision to reduce methane emissions unreasonable. To the contrary, it is very reasonable and prudent for the Company to research this emergent industry and for it to continue to make well informed decisions in this space.

In sum, the Company believes that payment of premiums for RSG is reasonable and prudent, just as it would be for other environmental costs (CO2 scrubbers at a power plant). (2 T 101-102).

### **III. CONCLUSION AND RELIEF REQUESTED**

DTE Gas Company respectfully requests that the Commission approve the Company's reasonable and prudent actions and proposals as set forth in its application, testimony, exhibits, Initial Brief, Reply Brief, and this Exception. Accordingly, DTE Gas Company requests that the Commission enter a final order in this case that:

1. Approves a maximum base gas cost recovery factor of \$5.07 per Mcf that can be adjusted to a new maximum GCR rate by the monthly NYMEX-based contingency factor matrix, to be reflected in DTE Gas's monthly gas customer billings beginning September 1, 2022, and

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<sup>2</sup> The Company is involved in the Natural Gas Supply Collaborative (NGSC), Downstream Natural Gas Initiative, Next Generation Gas Coalition, One Future Coalition and the Gas Technology Institute's Veritas Initiative (via the One Future membership). (2 T 96).



continuing through March 31, 2023, and further approves a SOLR Reservation Charge of an additional \$0.45 per Mcf that is billed to GCR customers while the Reservation Charge billed to GCC customers will be \$0.30 per Mcf;

2. Finds that DTE Gas's 5-Year (April 2022-March 2027) Forecast of Gas Requirements, Supplies and Costs, and Gas Supply Plan does not include any cost items that the Commission would be unlikely to permit DTE Gas to recover in the future;

3. Grants such other and further relief as it may find appropriate.

Respectfully submitted,

**DTE GAS COMPANY**

Dated: August 3, 2023

By: \_\_\_\_\_  
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**STATE OF MICHIGAN**

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Gas Cost Recovery Plan, 5-year Forecast )  
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\_\_\_\_\_ )

Case No. U-21064

**PROOF OF SERVICE**

CAITLIN D. MYERS states that on August 3, 2023, she served a copy of DTE Gas Company's Exception to the Proposal for Decision in the above-captioned matter, via electronic mail, upon the persons listed on the attached service list.

\_\_\_\_\_  
CAITLIN D. MYERS

**SERVICE LIST**  
MPSC Case No. U-21064

**ADMINISTRATIVE LAW JUDGE**

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