

**STATE OF MICHIGAN
MICHIGAN PUBLIC SERVICE COMMISSION**

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In the matter of the Application of DTE)
ELECTRIC COMPANY for authority to)
increase its rates, amend its rate schedules) Case No. U-21297
and rules governing the distribution and)
supply of electric energy, and for)
miscellaneous accounting authority.

**Opening Brief of the Ecology Center, Environmental Law & Policy Center,
Union of Concerned Scientists and Vote Solar**

August 15, 2023

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The Ecology Center, the Environmental Law & Policy Center (“ELPC”), and Vote Solar (collectively, the Clean Energy Organizations (“CEO”)), hereby files its Opening Brief in the above-captioned DTE Energy Company (“DTE” or the “Company”) contested rate case. While the DTE rate case encompasses myriad complex issues, the focus of the CEO is limited to the following issues: (1) the Company’s Environmental Justice (“EJ”)/Reliability Analysis; (2) the Company’s failure to address the Commission’s prior directive to include equity in its Global Prioritization Model (“GPM”); (3) the Company’s proposed Distribution Infrastructure Recovery Mechanism (“IRM”); (4) future Commission guidance on performance metrics; and (5) the Company’s proposed eFleet program.

I. INTRODUCTION

DTE controls the timing of its rate cases. The Company chooses when to file, what to file, how much revenue requirement to request, and how to support that request with testimony and exhibits. The Company filed the present case a mere eighty-four days after its last rate case, sandwiched between the Company’s integrated resource plan and its distribution grid plan. As a result, the Company did not and could not have possibly implemented the Commission’s order in the last rate case in time for this case. Specifically, the Commission found that “the company’s GPM [strategic distribution investment prioritization model] does not adequately incorporate equity and environmental justice considerations.” Case No. U-20836, Final Order at 458 (Nov. 18, 2022). The Company did not fix this issue in the present case. As a result, the Company’s distribution investment proposals in this case fail to properly target vulnerable communities.

In a similar vein, in the Company’s haste to file this case, it requests \$621 million just weeks before it is due to file a critical distribution grid plan on September 29, 2023. The Company asks for significant rate increases and strategic investments tied to its two-year-old grid plan, when the new grid plan, with a set of updated information, goals, and priorities should

be the guidepost for the Company's ongoing spending efforts. Instead, the Company proposes to spend first and plan later, thereby blunting the importance of grid planning. As explained in detail in this brief, the Company's customers endure differential reliability experiences based on several demographic subsets including race, income and population density. Before the Company embarks on such an extensive spending program, it must properly reckon with these disparities in order to mitigate them.

Under these circumstances, the Company's decision to come in for such a large rate increase at this time is not just and reasonable. The Commission should pause all non-essential spending and projects until after the Company's next distribution grid plan. Likewise, any future spending through the Company's prioritization model must include equity as an impact dimension alongside other important factors in accordance with the Commission's findings in the Company's last rate case. The Company's reliance on an outdated grid plan and an investment prioritization model that spurns equity against direct Commission directive is not just and reasonable and must be rejected. The Commission should "hit the pause button" until the Company has adequately incorporated the Commission's feedback from the last case, and completed its distribution planning process before approving such drastic spending programs which will have significant impacts on customer rates.

II. LEGAL STANDARD

DTE has the burden of proof to establish that its proposals in this proceeding are just and reasonable. *See Consumers Energy*, Case No. U-18322, Order at 6 (Mar. 29, 2018). MCL 460.6a requires a utility seeking to increase its rates or to alter, change or amend any rate or rate schedules to place in evidence facts it relies on to support the justness and reasonableness of the proposals in its application. MCL 460.6a. That evidence must be "thorough, detailed, and meaningful" in order for the Commission to approve DTE's application. *See Consumers Energy*, Case No. U-16794,

Order at 13 (June 7, 2014) (“in the absence of thorough, detailed, and meaningful evidence, the Commission’s hands are tied.”).

“[I]n matters before the Commission where statutory law is silent regarding the correct quantum of proof needed to review a utility’s costs, the Commission assesses those costs using the preponderance of the evidence standard adopted in civil cases.” *Residential Ratepayer Consortium v. Pub. Serv. Comm’n*, 497 N.W.2d 558, 561 (Mich. Ct. App., Feb. 1, 1993). Preponderance of the evidence means “such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.” *People v. Pugh*, 210 N.W.2d 376, 378 (Mich. Ct. App., June 28, 1973). According to the Michigan Supreme Court, preponderance of the evidence means “[n]o essential issue may be left to surmise, guess, or conjecture.” See Case No. U-18224, Order at 14 (Oct. 25, 2017) (quoting *Dillon v. Lapeer State Home & Training Sch.*, 364 Mich. 1, 8 (1961) (quotation marks and citation omitted)). Where the utility fails to provide thorough, detailed, and meaningful evidence demonstrating that its proposals are just and reasonable by a preponderance of the evidence, therefore, the Commission should reject the utility’s application or the proposals in it.

In pursuit of “just and reasonable rates” the Commission “may, in the exercise of its discretion, determine what factors are relevant in a particular case.” *In Re Consumers*, 278 Mich.App. 547, 563 (2008) citing *Attorney General v. Public Service Comm.*, 231 Mich.App. 76, 79 (1998); *Attorney General v. Public Service Comm. #1*, 133 Mich.App. 719, 725-26 (1984). Further, the Commission is “not bound by any particular ratemaking method and can make pragmatic adjustments in order to respond to particular circumstances of any given case.” *Id.* The Michigan Supreme Court in *Michigan Bell Telephone*, wrote that “[b]etween the point where a rate may be said to so low as to be confiscatory and the point where it must be said so

high as to be oppressive upon the public...the Commission may operate without judicial interference. *Michigan Bell Telephone Co. v. Public Service Comm.*, 332 Mich. 7, 26 (1952). “Court[s] do[] not weigh the economic and public policy factors that underlie the actions taken by the PSC.” *Attorney General v. Public Service Comm.*, 262 Mich.App. 649, 655 (Mich. Ct. App. 2004) citing *Consumer Power Co. v. Public Service Comm.*, 460 Mich. 148, 156 (1999).

Moreover, the Commission’s authority in this case is not limited to approving or rejecting DTE’s application or the proposals in it. While the Commission does not have the authority to make management decisions for utilities, *Union Carbide Corp. v. Pub. Serv. Comm’n*, 431 Mich. 135, 148-150 (1988), the Commission has broad authority to regulate rates under chapter 460 of the Michigan Compiled Laws. *In re Consumers Energy Co.*, 913 N.W.2d 406, 413 (Mich. Ct. App., Dec. 28, 2017). The Commission has exercised that authority to, for example, require the amendment of a tariff provision (*see DTE Electric Co.*, Case No. U-20162, Order at 105-106 (May 2, 2019)); require the applicant utility to work with stakeholders to carry out an investigation or study (*see Ind. Mich. Power Co.*, Case No. U-18404, 2019 WL 2448491 at *7, Order (June 7, 2019)); and direct the applicant utility to provide the Commission with reports, information or analysis (MCL 460.55; *see DTE Electric Co.*, Case No. U-18014, Order at 40 (Jan. 31, 2017)).

III. ARGUMENT

A. Grid Equity and Energy Justice are Essential Components of Just and Reasonable Rates¹

The Commission’s public interest-based authority to set just and reasonable rates inherently includes the power to consider public health, affordability, and equity. *See* Ex. CEO-3.

¹ The CEO believe that the following portions of the record are relevant to this section:

- Kenworthy Direct, 6 TR 3842-3861
- Pereira Direct, 6 TR 3884-3915
- Koepfel Direct, 6 TR 3957-4056

Environmental justice, energy justice, and grid equity update these bedrock foundational principles to match current understanding of inequality. As the Commission has previously recognized, the Company’s proposed distribution system spending should include consideration of grid equity and energy justice alongside other important factors such as safety and reliability. Case No. U-20836, Final Order at Final Order at 458 (Nov. 18, 2022).

CEO Witness Guillermo Pereira defined several key terms related to energy justice and, along with CEO Witness William Kenworthy, explained their importance in the context of this rate case. Witness Pereira defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.” Pereira Direct, 6 TR 3886. Witness Pereira noted that the Michigan Department of Environment, Great Lakes and Energy’s definition includes a shared set of elements. *Id.*

The CEO use the term “energy justice” to refer to a subset of environmental justice that applies to energy systems. The Initiative for Energy Justice defines energy justice as “the goal of achieving equity in both the social and economic participation in the energy system, while also remediating social, economic, and health burdens on those historically harmed by the energy system (‘frontline communities’).” *Id.*; *see also* Ex. CEO-3 at 7. Energy justice encompasses equity in reliability, affordability, public health, and access to clean energy among other issues. CEO Witness Pereira highlighted four dimensions of energy justice which include (1) procedural justice, (2) distributive justice, (3) recognition justice, and (4) restorative justice. *Id.* at 3887. “Procedural justice focuses on fairness of how decisions are made and aims to promote representation of impacted communities in decision making.” *Id.* “Recognition justice aims to recognize how unethical practices have contributed to burdens to specific communities.” *Id.* at

3888. “Distributive justice centers on how outcomes are distributed and on the equitable allocation of benefits and burdens.” Pereira Direct, 6 TR 3887. Finally, restorative justice focuses on mitigating past and present burdens and repairing harms to impacted communities.” *Id.* Each of these dimensions addresses different aspects of historic, present, and future harm to marginalized communities. True equality comes from a balance of all four of these dimensions of justice.

These important terms and the principles they embody are central to rate cases, spending proposals and ultimately the rates which customers pay for electric service. Regulators and utilities must deliberately focus on principles of energy justice in rate cases to mitigate disparities in the quality of electric service. As explained by CEO Witness Kenworthy, “rate cases are where the Commission approves spending and investments for cost recovery, and therefore rate cases are where decisions driving grid equity outcomes are made. Rates cannot be ‘just and reasonable’ if they are not designed to recover investments that are just.” Kenworthy Direct, 6 TR 3843.

CEO Witness Kenworthy attached a law review article by Professors Gabriel Chan and Alexandra Klass to his testimony, which helps explain the role of equity in the regulatory process. Ex. CEO-3. Professors Chan and Klass note that the existence of regulatory discretion “implies that rate setting is social policy.” Ex. CEO-3 at 39. The Professors note that cross subsidization is impossible to eliminate in the ratemaking context, and it is often used to incent business growth, a valid social policy goal. The Professors go on to argue that, “residential customers, particularly low-income and marginalized residential customers, have not historically had the regulatory and technical sophistication to navigate regulatory rate-setting

processes...And therefore, there is a historic backlog of decisions never considered that have put low-income residential customers at a disadvantage.” *Id.* at 41.

Michigan case law aligns with the view of Professors Chan and Klass. Michigan courts have given the MPSC ample room to consider “public policy factors” such as equity in adjudicating a rate case. *Attorney General v. Public Service Comm.*, 262 Mich.App. 649, 655 (Mich. Ct. App. 2004) *citing Consumer Power Co. v. Public Service Comm.*, 460 Mich. 148, 156 (1999). “Court[s] do[] not weigh the economic and public policy factors that underlie the actions taken by the PSC.” *Attorney General v. Public Service Comm.*, 262 Mich.App. 649, 655 (Mich. Ct. App. 2004) *citing Consumer Power Co. v. Public Service Comm.*, 460 Mich. 148, 156 (1999). Other Midwest states have reached similar conclusions. *In re Xcel Energy*, Docket No. E-002/GR-21-630, Final Order at 139, Minnesota Public Utilities Commission, (July 17, 2023). (explicitly finding that energy justice is relevant to setting rates); 220 ILCS 5/16-105.17 (recognizing the role of energy justice within grid planning and rate cases in Illinois). The Commission must continue to build off its past rate case decisions which recognize the importance of equity in the utility planning process.

B. DTE’s Global Prioritization Model Remains Flawed Because It Does Not Include Energy Justice²

The Company prioritizes distribution grid investments using its “global prioritization model” or “GPM.” Kryscynski Direct, 3 TR 385. The GPM ranks projects by “evaluating and weighting impact dimensions (projects benefits) for each project and program.” *Id.* The

² The CEO believe the following portions of the record are relevant to the Global Prioritization Model Issue:

- Kryscynski Direct, 3 TR 385-395
- Kryscynski Rebuttal, 6 TR 425-426
- Alvarez Direct, 6 TR 3551-3552
- Kenworthy Direct, 6 TR 3849-3853
- Koepfel Rebuttal, 6 TR 4067
- Wang Direct, 7 TR 4777-4780

Company evaluates projects on seven impact dimensions that align with three planning objectives. *Id.* at 386-387. The three planning objectives are “safe,” “reliable & resilient” and “affordable,” and the seven impact dimensions are: (1) safety; (2) load relief; (3) regulatory compliance; (4) major event risk; (5) reliability; (6) O&M cost avoidance; and (7) reactive capital avoidance. *Id.* The GPM performs a “benefit-cost score for each impact dimension” which “is indexed to a base range of 0-100.” *Id.* at 389. The Company then uses those scores to inform its distribution infrastructure strategic investment plan. *Id.* at 390. Essentially, the GPM informs the Company’s proposed distribution spending in this rate case.

The Company’s GPM remains flawed because it does not include energy justice as an impact dimension. The CEO argued “in the Company’s last rate case (U-20836)...that the Company should have included a grid equity analysis to support its distribution system investments.” Kenworthy Direct, 6 TR 3850. The CEO additionally requested that “the Commission should clarify that future ‘considerations of the prudence of distribution investment and operations spending will include whether the Company’s approach to prioritization ensures equitable access to safe, reliable, clean, and affordable electric service.’” *Id.*

In its final order in the Company’s last rate case, the Commission “clearly established the importance of including equity and environmental justice in distribution system planning decision-making processes.” Case No. U-20836, Final Order at 458 (Nov. 18, 2022). Specifically, the Commissions stated that it “agrees that the company’s GPM does not adequately incorporate equity and environmental justice considerations.” Case No. U-20836, Final Order at 458 (Nov. 18, 2022).

The Company’s GPM and associated proposals in this case fail to “adequately incorporate equity and environmental justice considerations” as directed by the Commission.

DTE controlled the timing of this rate case, and chose to file without taking the time to incorporate Commission directives from the last case. Therefore, the Commission should not approve DTE's proposed distribution spending *until* DTE complies with the Commission's directives regarding the GPM from the last rate case. The CEO are not opposed to any particular projects the Company propose, however the entire framework the Company relied on remains flawed because it fails to include equity as directed by the Commission. The Commission must not allow the Company to prioritize expediency over the need for an equitable just grid. The Company must revise its GPM to include equity, re-run it, and then come back for approval of its projects.

The Company does commit to "update the GPM in support of EJ considerations" in the next distribution grid plan, but that does not relate to the \$621 million requested rate increase in this case. Kryscynski Direct, 3 TR 420. As mentioned above, the Company retains control of when and how it files its rate cases. DTE could have waited to file until its GPM could properly incorporate EJ considerations, but it chose not to. In doing so, the Company flaunted a clear Commission directive. The Commission should order the Company to "hit the pause button" on all non-essential spending until it has complied with the Commission's order in the last rate case regarding inclusion of equity in the GPM.

C. The Company's Environmental Justice and Reliability Analysis Provides Important Detail, but Fails to Fully Examine the Scope of the Problem, and is not Properly Incorporated into the Company's Decision-Making Process³

³ The CEO believe the following portions of the record are relevant to the EJ/Reliability Analysis issue:

- Kryscynski Direct, 3 TR 400-420
- Kryscynski Rebuttal, 3 TR 428-447
- Kenworthy Direct, 6 TR 3853-3858
- Pereira Direct, 6 TR 3885-3915
- Tan Direct, 6 TR 3921-3938
- Wang Direct, 7 TR 4729-4792

1. *DTE Made Significant Progress in the Detailed Scope of its Environmental Justice and Reliability Analysis, but More Work is Necessary to Understand the Scope of the Problem*

DTE’s current environmental justice and reliability analysis began to take shape with its 2021 Distribution Grid Plan. In its plan, the Company explained that one of its goals was “to incorporate more equity considerations in our grid modernization and clean energy efforts.” DTE Ex. A-23 Sch. M7 at 34. The Company also stated its intention to “focus on energy justice as it relates to the long-term planning of the grid to meet the evolving needs of all of our customers equitably.” *Id.*

In its order in the Company’s last rate case, the Commission acknowledged the Company’s inclusion of environmental justice and equity in its grid plan but acknowledged that “more work is necessary,” on the topic. Case No. U-20836, Final Order at 458 (Nov. 18, 2022). The Commission also highlighted that “only thorough analyses of the results [of spending in vulnerable communities] can determine whether it truly yields equitable results.” *Id.* In its final order, the Commission also directed DTE, in its next rate case, to “include future analyses, like overlay maps, charts, graphs, and other displays, that provide a visual- or data-informed understanding of more holistic impacts of electric infrastructure investments on customer communities.” *Id.* at 462. As summarized by CEO Witness Kenworthy, going into this rate case the Commission ordered “the Company to conduct and file an analysis of distribution-related environmental justice plan based upon the MiEJScreen Tool and to develop a plan to ‘address the most impacted communities who also experience lower reliability.’” Kenworthy Direct, 6 TR 3848.

DTE Witness Kryscynski presented the Company’s environmental justice and reliability analysis in this case. The Company analyzed its data by census tract. Kryscynski Direct, 3 TR 404. The Company used the MiEJScreen Tool to identify vulnerable communities and assess

reliability in those locations. *Id.* at 402. The MiEJScreen Tool “combines environmental conditions and population characteristics to highlight, by census tract, where the most vulnerable communities in Michigan are located.” *Id.* at 401. The Company defined “vulnerable communities” as “census tracts with a MiEJScreen composite score at or above the 80th percentile.” *Id.* at 402. This means that “census tracts with a MiEJScreen composite score at or above the 80th percentile are considered vulnerable communities for the purpose of this testimony and associated analysis.” *Id.* The composite score factors in four categories: environmental exposure, environmental effects, sensitive populations, and socio-economic factors, with twenty-six “indicators” under those categories to create a final composite score. *See* Kryscynski Direct, 3 TR 403, Figure 2.

In this first step, the Company identified 483 census tracts that meet the vulnerable community threshold, with a MiEJScreen composite score in the top quintile. *Id.* at 410. These 483 tracts represent “29% of the total census tracts in DTE Electric’s service area and account for approximately 550,000 residential customers.” *Id.* Once the Company identified vulnerable communities it “developed reliability data for SAIDI⁴ and SAIFI⁵ by census tract and grouped the data into DTE Electric reliability quartiles, with first quartile customers...experiencing the best reliability and fourth quartile customers...experiencing the worst reliability.” *Id.* at 404. At the heart of its EJ and Reliability analysis, the Company compared annual SAIDI and SAIFI for all-weather days and non-MED⁶ in vulnerable communities against the same metrics across the system average. Kryscynski Direct, 3 TR 412; Table 5.

⁴ SAIDI = System Average Interruption Duration Index-calculated by dividing total number of customer outage minutes by total number of customers. *See* Tan Direct, 6 TR 3922

⁵ SAIFI = System Average Interruption Frequency Index- calculated by dividing total number of customer interruptions by total number of customers. *See* Tan Direct, 6 TR 3922.

⁶ MED = Major Event Days. MED is defined as a day where the daily SAIDI exceeds a threshold value. The Company refers to SAIFI with MED as ‘All Weather SAIFI’ and SAIDI with MED as ‘All-Weather SAIDI. Tan Direct, 6 TR 3922.

After designing the analysis, Witness Kryscynski interpreted the data and drew conclusions about EJ reliability in DTE's territory. Witness Kryscynski concluded that "[w]hen compared to the remainder of the service territory, these 483 census tracts collectively have above average reliability performance in years 2020 through 2022 for SAIDI and SAIFI metrics excluding MEDs and All-Weather SAIFI compared to the systemwide levels." *Id.* at 411. To state this differently, the Company concluded that the vulnerable communities in its territory experience less frequent outages which on average last for a shorter duration than the system average when major weather events are excluded, and also less frequent outages compared to system average when including major weather events. *See* Kryscynski Direct, 3 TR 412, Table 5.

Company Witness Kryscynski also examined how historic Company investment in the distribution grid could help explain the reliability performance in vulnerable communities. Witness Kryscynski looked specifically at the impacts of three DTE distribution investment programs, hardening, tree trimming, and conversions, to determine their impact on vulnerable communities. *Id.* at 417. Witness Kryscynski concluded that 75% of hardening, 93% of tree trimming and 30% of conversions occurred in vulnerable communities. *Id.* at 418. In looking ahead, Witness Kryscynski also previewed that in the Company's next distribution grid plan (to be filed this fall), the Company "intends to update the [global prioritization model]⁷ in support of EJ considerations in investment decisions." Kryscynski Direct, 3 TR 420.

⁷ The Company prioritizes distribution grid investments using its "global prioritization model" or "GPM." Kryscynski Direct, 3 TR 385. The GPM ranks projects by "evaluating and weighting impact dimensions (project benefits) for each project and program." *Id.*

2. *The CEO Identified Several Flaws in the Company's EJ and Reliability Analysis Which Mask Important Distinctions in Reliability Performance Within Their Territory*

The Company's EJ and Reliability analysis represents a welcome step forward in the Company's treatment of vulnerable communities, particularly the breadth of data the Company provided, however two sets of flaws limit the analysis. First, the Company's analysis suffers from an artificially limited scope which prevents the Company from gathering further learnings. Second, the Company's analysis is methodologically flawed which masks important distinctions in reliability performance within the Company's territory.

The scope of the Company's EJ and Reliability Analysis limited any conclusions that can be drawn from the Company's work. As described above, the Company based its definition of vulnerable communities on the MiEJScreen Tool composite score and the 80% threshold. Kryscynski Direct, 3 TR 402. This means that the Company established a cutoff between "vulnerable communities" and "non-vulnerable communities" at 80% and higher and 79% and lower of the population based on the MiEJScreen Tool, respectively. The CEO have consistently advocated for the Company to use a 75% threshold in all of its EJ analysis because it captures a larger proportion of DTE customers that require increased investment and support. *See* Pereira Direct, 6 TR 3896, n. 49, n. 50. In this case, CEO Witness Pereira argued that the Company should adjust its definition to the 75% threshold. *Id.* The Company based its use of 80% on EPA guidance, however, CEO Witness Pereira noted that the EPA's guidance identified 80% as a "starting point," which "recognizes the opportunity to set thresholds that are more inclusive." *Id.* Witness Periera also noted that the CalEnviroScreen, upon which the MiEJScreen Tool is modeled, uses the 75% threshold. *Id.* By using the higher value, DTE fails to gather data on a critical subset of vulnerable customers. Conversely, the lower threshold allows for greater inclusivity of areas that may warrant further consideration.

Alternatively, CEO Witness Pereira suggested that rather than only focus on one MiEJScreen threshold, the Company use the MiEJScreen Tool data base to “slice” the data on several different thresholds. For instance, the Company could split data by the “75th, 80th, and 90th percentiles, and report on differences in findings, as it continues to develop its method and understanding of how to assess equity in its grid.” *Id.* at 3897. Importantly, all of this data is at the Company’s fingertips through the MiEJScreen Tool. By comparing different cross-sections of vulnerable communities and their differential reliability experiences, the Company could better understand its customers and how they experience the electrical system. Witness Pereira noted that Puget Sound Energy, a Washington state utility considers three tiers of vulnerability in assessing impacted communities. Pereira Direct, 6 TR 3897. Witness Pereira urged the Company to take this approach because examination of the 90th percentile or “exceptionally burdened communities” could provide particularly important learnings and “ensure any inequities in electric service are identified and mitigated.” *Id.*

Relatedly, Staff Witness Joy Wang recommended that the Company provide a similar analysis for the Company’s “least vulnerable community customers” as a point of reference to compare against the most vulnerable customers. *See* Wang Direct, 7 TR 4788. The CEO support this recommendation.

In addition to recommendations regarding the thresholds of the MiEJScreen Tool, Witness Pereira also critiqued the Company’s approach for its reliance solely on the MiEJScreen composite score rather than the underlying sociodemographic factors which inform the composite score. Pereira Direct, 6 TR 3897. As discussed above, the MiEJScreen Tool reaches a composite score based on four factors and twenty-six indicators. One of the MiEJScreen Tool categories is “socioeconomic factors,” which gives scores based on proportional population of:

low-income population, BIPOC population, educational attainment, linguistic isolation, population under age five and over age sixty-four, unemployment and housing burden. Kryscynski Direct, 3 TR 403, Figure 2. As explained by Witness Pereira, by only utilizing the composite score, “the Company may miss the opportunity to identify inequities related to sociodemographic characteristics in a given census tract and its residents.” Pereira Direct, 6 TR 3898, *see also* n. 56. Witness Pereira highlighted the DAAO arguments on this topic which demonstrate that “high energy burdens are disproportionate, impacting ‘communities of color, especially black households.’” *Id.*, *see also* n. 57. Other CEO witnesses also advocated for this approach to sociodemographic disparity as discussed in more detail in Section III.C.4.

These two flaws in the scope of the Company’s EJ/Reliability analysis, only looking at vulnerable communities above 80% on the MiEJScreen composite score and failing to isolate sociodemographic indicators, limited the value of the Company’s analysis and possibly led to erroneous conclusions regarding reliability. As discussed below, when the CEO analyzed the Company’s reliability data based on sociodemographic factors such as race, the CEO found connections between black population and reliability metrics as well as income levels and reliability metrics. Likewise, if the Company had used different MiEJScreen thresholds, it might have learned more about the reliability experience of its extremely-vulnerable communities and how that differs from a larger subset of vulnerable communities. All of this data is available through the MiEJScreen Tool, and the Company’s narrow scope limits the conclusions and trends that can be gathered from the analysis.

Beyond the flaws in scope of the Company’s analysis, the Company’s approach was methodologically unsound because it compared reliability in EJ communities to the average reliability of DTE’s entire service territory (including those same EJ communities), rather than

comparing EJ communities to non-EJ communities. This approach “does not allow for a clear understanding of equity considerations between EJ and non-EJ communities in the Company’s service territory.” Pereira Direct, 6 TR 3899. This approach risks “masking discrepancies in SAIFI and SAIDI.” *Id.*

CEO Witness Kenworthy also testified regarding the Company’s flawed comparison, and suggested that in the future, the Company should “compar[e] the reliability experience of customers in similar communities, i.e. comparing urban-to-urban and rural-to-rural.” This approach recognizes that different system profiles have different levels of reliability. Therefore, it is important to compare customer experiences within similar circuits to each other, rather than to inapposite, and unlike circuits. This approach is discussed in more detail in Section III.C.4.b. The Commission’s analysis, while based on a comprehensive dataset, is incomplete. In order to meaningfully address disparities in reliability experiences, the Company must properly understand those disparities. The analysis provided by the Company fails to provide a complete picture and does not carry the Company’s burden of proof. *See Consumers Energy*, Case No. U-18322, Order at 6 (Mar. 29, 2018).

3. *The Commission Should Require DTE to Use its EJ/Reliability Analysis to Inform Its Investment Decisions*

In addition to the flawed design and scope of the Company’s EJ and Reliability analysis, the Company does not use its analysis to inform the investment decisions it proposes in this case. Company Witness Kryscynski argued in testimony that DTE’s historical investments sufficiently targeted vulnerable communities. Kryscynski Direct, 3 TR 417-18. For example, the Company claims that 93% of hardening investments between 2018 and 2022 occurred in vulnerable communities. *Id.* However, because the Company did not plan these historical investments with EJ in mind, it is improper for DTE to take credit for their impact, given the relative randomness

with which EJ communities were targeted. The Company improperly relies on an after-the-fact justification to attempt to demonstrate how its prior investments impacted vulnerable communities. As discussed in more detail in Section III.B, the Company's global prioritization model must include environmental and energy justice as a decisional criteria, akin to safety, reliability and other factors, in order to be reasonable and prudent. The Company's attempt to superimpose its previous spending onto an EJ analysis is not sufficient.

As CEO Witness Pereira argued, the link between DTE's reliability analysis and its study of past investments "lack an explanation on how they relate and support one another." Pereira Direct, 6 TR 3900. This unclear connection makes it "difficult to assess if the past and future investments presented are the result of investment decision making that considers energy justice, or if these results from business-as-usual system needs that happen to be occurring in communities identified as vulnerable communities and therefore not the result of a formal process to incorporate, prioritize and advance energy justice." *Id.*

Staff Witness Joy Wang also critiqued the Company's failure to properly incorporate its equity analysis into its investment decisions, while also scrutinizing the Company's backward-looking analysis of investments in vulnerable communities. Staff Witness Wang demonstrated that despite DTE's claims that investments target vulnerable communities, a deeper dive into the numbers reveals disparate treatment. For example, "even though nearly 73% of the Company's vulnerable community customers are served by the 4.8kV system, only 46% of the circuits converted in the 4.8 kV Conversion program from 2018 to 2022 were in vulnerable communities." Wang Direct, 7 TR 4772. This inequitable process could be corrected by proper inclusion of energy justice into the Company's decision-making processes.

Equity lies at the foundation of the Commission’s public interest-based regulatory authority. In order for the Company’s investments in this case to be just and reasonable, they must properly weigh equity amongst the critical factors. *In Re Consumers*, 278 Mich.App. 547, 563 (2008) citing *Attorney General v. Public Service Comm.*, 231 Mich.App. 76, 79 (1998); *Attorney General v. Public Service Comm. #1*, 133 Mich.App. 719, 725-26 (1984). The Company’s EJ and Reliability analysis in this case represents a positive step forward, which provides an industry-leading data set for review. However, this positive step is just the first step. As discussed in more detail in Section III.B, the Company based its strategic distribution investment proposals on the flawed foundation of the global prioritization model. The Commission found that the Company’s GPM “does not adequately incorporate equity and environmental justice considerations.” Case No. U-20836, Final Order at 458 (Nov. 18, 2022). Rather than address this fundamental error before filing another rate case, the Company stood pat, and requested a drastic rate increase. The Commission should “hit the pause button” and order the Company to comply with its prior rate case order to incorporate energy justice into its global prioritization model before coming in for another rate case.

4. *The Commission Should Order the Company to Adopt More Sophisticated Tools to Analyze Disparities in Reliability.*

In testimony, the CEO presented two different methods to analyze disparities in reliability performance, which both bring more sophisticated techniques to bear in assessing reliability in vulnerable communities. First, CEO Witness Boratha Tan conducted regression analyses to highlight the effect of several demographic independent variables on reliability-based dependent variables, SAIDI, SAIFI, and CAIDI.⁸ Second, CEO Witness William Kenworthy

⁸ CAIDI = Customer Average Interruption Duration Index. CAIDI represents the average outage duration any given customer would experience. See Tan Direct, 6 TR 3922.

attempted to isolate different “grid topologies” and compare them against each other, to further evaluate grid performance in vulnerable communities against similar circuits. Both of these methods provide deeper dives into the state of reliability in DTE’s territory than the rudimentary comparisons the Company performed. DTE bears the burden of proving that its investments and subsequent rates are just and reasonable, and by improperly analyzing the differential reliability experiences of its customers, the Company failed to carry this burden. *See Consumers Energy*, Case No. U-18322, Order at 6 (Mar. 29, 2018). The Company’s EJ/Reliability analysis is not the best evidence in the record nor is it “thorough, detailed, and meaningful” for the Commission to properly evaluate differential reliability and therefore to approve investments aimed to target reliability issues. *See Consumers Energy*, Case No. U-16794, Order at 13 (June 7, 2014). Instead, the CEO reliability analyses provide a far more complete picture of differential reliability in the Company’s territory. Rather than building upon or suggesting improvements to CEO methods, the Company dismissed the value of these advanced techniques altogether.

a) *CEO Witness Tan’s Regression Analysis*

CEO Witness Boratha Tan conducted a regression analysis to better understand differential reliability experiences in DTE’s territory based on different sociodemographic factors. Witness Tan defined a regression analysis as a “statistical model/method used to examine the relationship between a ‘dependent variable’ and one or more ‘independent variables.’” Tan Direct, 3 TR 3923. Regression analyses are used to “understand how these independent variables can predict (or influence) the outcome of the dependent variable.” *Id.* at 3926. Regression analyses are beneficial because they help “researchers and policymakers understand the relationship between variables; understanding these relationships helps identify social and structural predictors that influence outcomes.” *Id.* at 3927. Further, as part of the

analysis, regression models demonstrate the fit of the model, in other words, whether “certain independent variables are statistically significant enough to be correlated to the dependent variable.” *Id.* Unlike the Company’s “simplistic” analysis, which can be skewed by extreme or clustered data points, regression analysis is more sensitive to both small and large deviations in a data set, which can isolate key variables and trends in data to provide a more complete picture. *Id.* at 3927-28. This allows the regression analyst to properly examine how marginal changes in the independent variable will impact the dependent variables. In this case, the regression analysis served to demonstrate how small changes in demographics like income, effect the frequency and duration of outages.

CEO Witness Boratha Tan conducted several regression analyses that built off of the Company’s EJ and Reliability analysis and highlighted important relationships between race and reliability, as well as income and reliability, and population density and reliability. Tan Direct, 6 TR 3929-3935. Witness Tan selected the following independent variables from the Census Bureau’s American Community Survey: population density, income, poverty, race-nonwhite or Black, Indigenous, and People of Color (“BIPOC”), race-black, and age. *Id.* at 3928-29. The dependent variables measured against this selection of demographic data were: SAIDI, SAIFI, and CAIDI.⁹ *Id.* at 3926.

After running the analyses, Witness Tan drew conclusions from his work, particularly regarding the strong relationship between outage duration and poverty, as well as the impact of population density on all reliability metrics. First, Witness Tan concluded that “the SAIDI data demonstrates that census tracts with more people in poverty experience longer outage durations. This suggests that those least able to adapt to an outage are those most likely to experience the

⁹ See supra n. 3,4, 7 for definitions of SAIDI, SAIFI, and CAIDI.

longest outages.” *Id.* at 3935. Second, Tan observed that across all reliability metrics, population density is significant. *Id.* Witness Tan linked this conclusion to the work of CEO Witness Kenworthy on grid characteristics which will be discussed below.

Overall, the CEO view Witness Tan’s work as an important, first step in fully understanding the disparate reliability impacts on different sociodemographic groups. The CEO intend these analyses to be a jumping off point for future work on the topic. In concluding, Witness Tan suggested that “[t]hese results indicate that more granular analysis of the Company’s reliability data would provide a deeper and more accurate picture of customer reliability experience that goes beyond the systemwide average data that the Company included in its Rate Case.” Tan Direct, 6 TR 3938. Ultimately, Witness Tan recommended that the Company “adopt regression analysis to process and interpret its reliability data at the census tract level.” *Id.*

The Company’s rebuttal to Witness Tan’s testimony attempted to point out flaws in Tan’s methodology, and also caution about the dangers of misinterpreting regression analysis. The Company employed “one of its in-house data scientists, Dr. Joseph Naiman, [to] review Tan’s testimony and attachments.” Kryscynski Rebuttal, 3 TR 435. The Company and its in-house expert identified six purported flaws in Witness Tan’s regression analysis, with a particular focus on Tan’s failure to consider the “four base assumptions required for linear regression models to be considered valid and statistically significant.” *Id.* at 436. Importantly, despite identifying these six flaws, the Company did not dispute the underlying connection between these demographic variables and reliability. Instead, the Company fixated on methodological disagreements, which obscure the purpose of the exercise. Ultimately, the Company concluded not only that Witness

Tan's analysis was flawed, but that regression analyses writ large should not be utilized because they are "very technical, highly complex, and subject to misinterpretation." *Id.* at 438-439.

The Company's attack on Witness Tan's methods and conclusions largely misses the point of the exercise. Witness Tan's and Witness Kenworthy's analyses simply scratch the surface of what's possible, and were not intended to be the definitive "last word," on reliability in DTE's territory. Kenworthy Direct, 6 TR 3857. As highlighted by CEO Witness Kenworthy in introducing and explaining these analyses, "there is additional work to be done. There may be other variables and regression techniques (perhaps spatial regression) that could control for factors discussed above (such as grid topology). But the fact remains that there is a significant statistical relationship between reliability and demographic characteristics related to important EJ screening dimensions." *Id.*

The CEO regression analysis was not used to attempt to disallow expenses or critique the Company in any way. Instead the CEO framed this analysis as the first step in highlighting important relationships between critical demographics like race, age, population density, and income and reliability. Regression analysis is the right tool for this analysis because it looks at the data holistically, in an attempt to understand systematic relationships. Regression models can incorporate many different factors to understand the relationships between the chosen independent and dependent variables. Once the relationships between these variables are identified, it is up to the Company to determine how best to address these disparities.

The CEO believe it is also important to properly frame the regression analysis and Witness Tan's findings. The CEO do not claim that the disparities revealed in Witness Tan's regression analysis imply discriminatory intent. Correlation is not causation, and there are many deep-rooted historical and socioeconomic factors that contribute to inequity in electric service.

Once these disparities are highlighted, grid planning and investment can be a tool to begin mitigating inequitable outcomes and building towards a more equitable grid. Witness Tan's analysis answers the threshold question: there exists relationships between differential reliability experiences and certain demographic characteristics including black population, poverty, and population density.

Rather than accept the very basic premises which the CEO attempted to prove, the Company attempted to entirely discredit both Witness Tan's conclusions and regression analysis as a valuable tool. In discovery, the Company would not even agree to several simple propositions upon which the CEO attempted to find common ground. Ex. CEO-23. For instance, the Company would not agree that there is a statistically significant correlation between race and reliability, or income and reliability. *Id.* It should not be controversial for the parties to agree that there exists differential reliability based on race or income. The CEO would welcome DTE's constructive ideas for how to improve upon Witness Tan's initial analysis. But the Company did not provide any in this record.

Unlike the Company, Commission Staff understands the potential value of a properly run regression analysis as well as the intention of the CEO's work. Staff provided relevant and constructive feedback on Witness Tan's testimony. Isakson Rebuttal, 7 TR 4490. However, after identifying areas of concern, Staff concluded that:

While Staff contends that there is potential for improvement on the analysis provided by CEO witness Tan it does not preclude the Commission from approving that such an analysis be conducted in future proceedings. In fact, Staff recommends that the Commission direct the Company to engage with Staff and intervenors on further analyses regarding reliability for vulnerable communities and those that have been historically and currently are disadvantaged.

Isakson Rebuttal, 7 TR 4495. Unlike the Company, Staff properly understood the intent of the CEO analysis as a first step that highlights the need for deeper analysis in the future.

Overall, DTE’s critique of the CEO methodology misses the mark. Rather than attempting to discredit the CEO approach, the Company could acknowledge its value and take additional steps to improve upon it in the future. The CEO introduced this evidence in an effort to collaborate with the Company on the best practice uses for the wealth of data it collected. If DTE believes it has a better way to run regression analyses, then the Commission should order the Company to perform one in the next case.

b) *CEO Witness Kenworthy’s Grid Topologies Analysis*

CEO Witness Kenworthy provided complementary analysis which attempted to shed light on differential reliability in DTE’s territory beyond the Company’s analysis. Witness Kenworthy started with the hypothesis that “it is important to understand equitable reliability not only on a systemwide basis, but rather by comparing the reliability experience of customers in similar communities, i.e. comparing urban-to-urban and rural-to-rural.” Kenworthy Direct, 6 TR 3853.

To test his hypothesis, Witness Kenworthy compared reliability metrics in Wayne County between vulnerable and non-vulnerable communities as well as DTE customers outside of Wayne County based on vulnerable and non-vulnerable communities. *Id.* at 3854. Kenworthy’s analysis demonstrated a “significant difference between Wayne County (which includes Detroit) and tracts in other counties in DTE’s Service Territory for both” SAIDI and SAIFI:

| | Average of Three Year Blue Sky SAIFI | Average of Three Year Blue Sky SAIDI |
|------------------|---|---|
| Not Wayne | 1.08 | 158.9 |
| Wayne | 0.75 | 115.2 |

Id. Likewise, when Witness Kenworthy isolated Wayne County and looked at vulnerable communities versus non-vulnerable communities, he discovered an interesting split.

| Row Labels | Average of Three Year Blue Sky SAIFI | Average of Three Year Blue Sky SAIDI |
|------------|--------------------------------------|--------------------------------------|
| EJ_80 | 0.72 | 120.72 |
| Not EJ_80 | 0.77 | 108.83 |

Id. Witness Kenworthy’s results show that while vulnerable communities in Wayne County experience slightly less frequent outages, the duration of those outages is prolonged as compared to other customers in Wayne County. From these two data splits, CEO Witness Kenworthy gained two important insights into reliability performance in DTE’s service territory. First, “that reliability in [] Wayne county is uniformly better than reliability in all other parts of DTE’s service territory.” Kenworthy Direct, 6 TR 3855. Witness Kenworthy argues that “this difference is likely explained by differences in the physical attributes of the grid, especially grid topology.”

Id. Second, that “in Wayne County, SAIDI is notably worse in EJ communities.” *Id.* Witness Kenworthy’s analysis demonstrates the importance of comparing similar grid characteristics to one another. While the Company’s analysis seemed to show that the Company’s reliability performance in vulnerable communities outperformed system average, this could be attributed to the fact that more vulnerable communities exist in Wayne County and other dense population centers which perform better on average.

The Company did not respond to Witness Kenworthy’s analysis in rebuttal. The CEO believe that these data splits exemplify the “thorough, detailed, meaningful” evidence that the Commission should require from the Company going forward. *See Consumers Energy, Case No. U-16794, Order at 13 (June 7, 2014).* The Company’s EJ/Reliability analysis scratches the surface, but the Company has a long way to go toward clearly understanding the differential

reliability experiences of its customers. The CEO analyses provide a roadmap towards a more thorough analysis.

5. *The Company's EJ Analysis Must Continue to Evolve Beyond Reliability*

In addition to the recommendations on augmenting the Company's EJ and Reliability analysis, the CEO believe that the Company must expand the scope of its environmental justice analysis beyond simply reliability. Pereira Direct, 6 TR 3903. CEO Witness Pereira describes how energy justice encompasses far more than just reliability. Dr. Pereira surveyed other jurisdictions and how energy justice is incorporated into utility decisions. *Id.* Witness Pereira identified three distinct approaches to quantifying and tracking energy justice metrics which include (1) affordability and energy burden reduction, (2) community reliability and resilience, and (3) access and participation to clean energy programs. *Id.*

Witness Pereira highlighted the energy justice work currently conducted in California, Oregon, and Washington. In California, the California Energy Commission:

follow[s] nine metrics focused on energy equity to be used to track progress" including (1) high energy bills, (2) energy efficiency savings, investments, and customers served, (3) rooftop solar systems, (4) zero-emission vehicles, (5) abatement of health and safety issues, (6) energy resilience, (7) clean energy jobs, (8) small business contracts, and (9) the amount invested in innovation.

Pereira Direct, 6 TR 3904; *see also* Ex. CEO-12. In Oregon, the Public Utility Commission identified four equity themes, and associated metrics, including access to support for communities, access to information, energy burden reduction, and community reliability and resilience. Pereira Direct, 6 TR 3906; *see also* Ex. CEO-14. In Washington, utilities must file Clean Energy Plans which include equity considerations such as: improved affordability of clean energy, increase in culturally-and linguistically accessible program communication for named communities, improved community health, decrease frequency and duration of outages. Pereira Direct, 6 TR 3910; *see also* Ex. CEO-16; Ex. CEO-17. These programs "provide examples of

important elements for the company to consider in strengthening its EJ analysis.” Pereira Direct, 6 TR 3911.

Each of these examples demonstrates the breadth of energy justice “sub-topics” that extend beyond simply reliability. In order to have a more complete picture of how its customers experience the grid, the Commission should direct the Company to identify, track, and mitigate disparity along these different lines identified by Witness Pereira including (1) affordability and energy burden reduction, (2) community reliability and resilience, and (3) access and participation in clean energy programs. *Id.* By expanding its EJ analysis beyond reliability, the Company can better understand the lived experience in vulnerable communities and actively work to mitigate disparity and seek a more equitable grid.

D. The Commission Should Not Approve DTE’s Significant Rate Increase Until After DTE’s Next Distribution Grid Plan to Allow for Optimal Planning

In an April 12, 2018 order, the Commission initiated the current distribution grid planning process, ordering DTE and other utilities to “develop and submit draft five-year investment and maintenance distribution plans.” Case No. U-20147, Final Order at 1 (April 12, 2018). The Company has subsequently filed two grid plans, one in 2018, which informed investments in two DTE rate cases, U-20162 and U-20561, and then a 2021 grid plan which informed the Company’s last case U-20836. *See* Kenworthy Direct, 6 TR 3844. The Commission ordered the Company to file its next grid plan by September 29, 2023. *See* Case No. U-20147, Final Order at 77 (Sept. 8, 2022).

Company Witness Robinson explained how the 2021 grid plan aligns with DTE’s proposals in this case, stating that the grid plan “was developed as a plan that both determined the near-term investment priorities to support a safer, more reliable grid, and also developed a 10 to 15-year vision for the grid including capacity needed for electrification, and advances in

technology to support both reliability and incorporation of distributed energy resources.”

Robinson Direct, 5 TR 2692-93.

The CEO have serious concerns about the Company’s proposal to significantly increase spending based on the outdated 2021 distribution grid plan, when the next plan is imminent. Indeed, DTE is due to file its 2023 grid plan before the Commission is scheduled to issue its Final Order in this case. As mentioned above, the Company controls the timing of its rate cases, and filing this case sandwiched between a rate case, an integrated resource plan, and the upcoming distribution grid plan flaunts the planning process.

The Company relies on the 2021 distribution grid plan to support its investments in this case, but not only has the grid changed in that timeframe, but so have market conditions. For example, DTE’s 2021 grid plan focuses on a strategy of “hardening.” *See* DTE Ex. A-23 Sch. M7 at 219. Hardening involves upgrades involves upgrades to the existing 4.8 kV system to improve resiliency. *Id.* However, CEO Witness Kenworthy noticed that, in this rate case, the Company has shifted its investment priorities away from hardening and towards conversion, meaning upgrading the aging 4.8 kV system to a 13.2 kV system. Kenworthy Direct, 6 TR 3860-3861. This shift in thinking would be best explained and litigated in the context of a grid plan, not introduced without clear explanation in this rate case.

The CEO highlighted deficiencies in the Company’s rate case proposal all tie back to a disjointed process which results from DTE’s decision to file this rate case before its next grid plan. The Company’s Grid Prioritization Model fails to include equity, thereby calling into question the Company’s spending in this case. The Company asserts that its GPM will be updated in the next grid plan. Likewise, the equity metrics advocated for by CEO Witness Pereira would be best developed in the context of a grid plan. For instance, the Company should

be tracking differential access to renewable technology and hosting capacity. This could be done in the context of a grid plan, and then the Company could mitigate such disparity in subsequent rate cases. By forcing this rate case in before the grid plan, the Company sends the message to its vulnerable communities that their needs can wait.

Importantly, the CEO do not take a position on particular spending proposals the Company has offered in this case. Rather, it is the disjointed process that puts spending before planning that the CEO find objectionable.

The Commission must provide the solution to this out-of-order process. The Commission must clearly state the importance of proper planning by ordering the Company to “hit the pause button” on all non-essential spending until it completes its grid plan. The Commission created the grid planning process in order to “increase visibility into the system needs and facilitate review by the Staff, other parties, and the Commission outside the contested rate case process.” Case No. U-18014, Final Order at 41 (Jan. 31, 2017). As detailed extensively by MNSC Witness Alvarez, despite the Commission’s best intentions, the current process is broken. Alvarez Direct, 6 TR 3319. In particular, “[s]takeholders have had no procedural opportunity to investigate and challenge the utilities’ distribution investment plans in a way that might enable an informed counter proposal.” *Id.* A fundamental fix is necessary. The Commission has the inherent authority to set the procedures and requirements for the grid planning process which it initiated. *See e.g.* MCL 460.55. The next grid plan must come in a contested case in order to allow Staff and interested Stakeholders the opportunity to properly vet the Company’s proposals on the record. There is too much money at stake to allow the grid plan to proceed in an uncontested case. The oncoming wave of electrification gives DTE one chance to spend this money properly, and the expertise of Staff and Intervenors is essential to ensure prudent spending. Because the

Company filed this case prematurely, ignoring the Commission directive to update the GPM, the Commission should “limit investments in the distribution system to what is affordable and focus on providing incentives for DTE Electric and its staff to improve reliability, while awaiting DTE Electric’s upcoming distribution system investment plan and the Commission’s audit of DTE Electric’s distribution system before accelerating investments that will drive up rates.” Jester Direct, 6 TR 3474.

E. Investment Recovery Mechanism¹⁰

As part of its case, the Company proposes a “Distribution Infrastructure Recovery Mechanism (Distribution “IRM” or “IRM) focused on strategic capital programs related to customer safety and reliability. Foley Direct, 2 TR 61. Company Witness Foley identified five categories of distribution system operations spending to be authorized for IRM treatment including (1) conversions; (2) subtransmission redesign & rebuild; (3) breaker replacement programs; (4) URD replacement program; and (5) 4.8 kV circuit automation. Foley Direct, 2 TR 64. The Company’s proposal would invest \$65 million in year 1, \$293 million in year 2, and \$532.7 million in year 3. *Id.* at 66. “The IRM would use a surcharge to recover investments between rate cases before the balance is rolled into the rate base during the next rate case.” *Id.* at 70. Company witness Foley recommended that prudence review of IRM expenditures be limited to MPSC Staff. *See* Foley Direct, 2 TR 54; Ex. CEO-4.

¹⁰ The CEO believe the following portions of the record are relevant to the Investment Recovery Mechanism issue:

- Foley Direct, 2 TR 51-80
- Foley Rebuttal, 2 TR 83-95
- Alvarez Direct, 6 TR 3340
- Jester Direct, 6 TR 3424, 3454, 3459
- Kenworthy Direct, 6 TR 3862-3867
- Koepfel Direct, 6 TR 4042
- Koepfel Rebuttal, 6 TR 4067-4070
- Bieber Direct, 6 TR 4276-4280

The CEO have serious concerns about the magnitude of the IRM as well as the limited opportunity for review. Ultimately, these concerns lead the CEO to recommend that the Commission reject the IRM in its entirety. This is the position endorsed by a number of parties including: MNSC, the Attorney General, DAAO, and Kroger. Alvarez Direct, 6 TR 3341; Koeppel Rebuttal, 6 TR 4068; Bieber Direct, 6 TR 4275. Approving the IRM will take away an important regulatory check on utility spending. Additionally, the specific mechanism the Company has proposed far exceeds what the Commission requested. Therefore, the Commission should reject the IRM.

Despite the CEO opposition to the IRM, if the Commission were to approve it, the CEO believe that there must be a set of procedural safeguards that promote transparency and participation in the IRM recovery process. As explained by CEO Witness Kenworthy, “[s]hifting so much of the oversight of capital investment and planning away from the Commission’s current cost approval process (rate cases) is problematic from both a procedural and a recognition justice perspective.” Kenworthy Direct, 6 TR 3865. The Company’s suggestion to work only with Staff on IRM prudence “shuts out stakeholder[s] and vulnerable communities, who are often the most impacted by inequitable spending and grid performance.” *Id.* In addition, the CEO recognize that the Commission requested that the Company propose an IRM, but “the benefits of increasing predictably and driving investment in desirable project must be balanced against the downside of riders that reduce transparency and scope of control.” *Id.* at 3866.

CEO Witness Kenworthy’s experience in other Midwest jurisdictions demonstrates why the commission should approach expansive approval of an IRM with limited oversight. In Indiana, similar riders “have become a crutch whereby utilities are able to avoid rate cases by making needed investments in transmission and distribution infrastructure through the

Transmission, Distribution and Storage System Improvement Charge. This leads to piecemeal decision-making and reduced accountability.” *Id.* With these concerns in mind, Witness

Kenworthy recommended that:

the Commission proceed with caution if it chooses to approve the IRM by establishing guardrails around the types of projects that can be initiated through it and the process for including them....Ideally, any strategic investments approved for inclusion in the IRM should be supported in the DGP and should score high in the GPM. In addition, and importantly stakeholders and communities should be consulted and given the opportunity for feedback on IRM investment plans along with the Staff.

Id. at 3867.

As stated above, the CEO oppose the IRM because it limits DTE’s accountability for its distribution spending and exceeds the scope of what the Commission requested. However, if the Commission were to approve the IRM, it should adopt the procedural safeguards proposed by CEO Witness Kenworthy including limiting the types of projects which qualify for the IRM, creating a transparent, participatory process around the IRM, and ensuring that IRM projects align with the distribution grid plan and the Company’s DGP.

F. Performance Metrics¹¹

DTE did not propose performance-based metrics in this rate case. *See* Foley Direct, 2 TR 60-70. Company witness Foley explained that the Commission expects to issue an order in docket U-20147 by the end of the year which will shed more light on the performance-based metrics. *Id.*

¹¹ The CEO believe the following portions of the record are relevant to the Performance Metrics issue:

- Foley Direct, 2 TR 59-61
- Foley Rebuttal, 2 TR 94-104
- Coppola Direct, 6 TR 3795-3804
- Kenworthy Direct, 6 TR 3867-3875
- Koepfel Direct, 6 TR 3896-3897
- Bieber Direct, 6 TR 4278-4282.

The CEO understand the rationale behind the Company’s decision not to propose performance-based metrics. *See* Kenworthy Direct, 6 TR 3871. At the same time, CEO Witness Kenworthy filed testimony about ways that performance-based metrics can be used in the future to ensure an equitable and clean system. In particular, Witness Kenworthy advocated for a granular analysis of “grid access” through hosting capacity which “refers to the maximum amount of electricity that a given electric grid or specific part of the grid can accommodate without causing operational issues or compromising system reliability.” *Id.* at 3872. Witness Kenworthy suggests that the Company “evaluate if differences in hosting capacity disproportionately impact EJ communities and then use the information to inform its distribution grid plan and subsequent iterations of the GPM.” *Id.* at 3873. Witness Kenworthy also identified several other dimensions of performance which could be conducive to metrics including: safety, reliability, affordability, power quality, and customer service. *Id.* When the Commission does provide guidance on performance metrics, the CEO hope that the guidance will include two critical pieces, first, a focus on equitable access to the grid for vulnerable communities, and second, an acknowledgment that the Company’s current ROE is very high nationally, and therefore that any incentives must come first with a reduction in ROE. *See* Coppola Direct, 6 TR 3754 (demonstrating that the average ROE in the Great Lakes Region based on 2022 decisions is 9.25% compared to 9.9% for DTE).

G. The CEO Support the Company’s eFleet Battery Support Program¹²

In DTE’s last rate case, the Commission approved a pilot program called the transit batteries/eBus batteries pilot program which authorized the Company to finance electric bus

¹² The CEO believe the following portions of the record are relevant to the eFleet Battery Support Program issue:

- Peterson Direct, 4 TR 725-728
- Peterson Rebuttal, 4 TR 800-

batteries for transit authorities, who would repay the utility in a “pay as you save” model. Case No. U-20836, Final Order at 340 (Nov. 18, 2022). The CEO, through testimony filed by witness Dr. Margarita Parra, supported the Company’s transit battery pilot. The Commission also “encourage[d] DTE Electric to submit, in its next rate a case, a proposal for the expansion of the transit battery/eBus batteries pilot that provides an opportunity for school districts to utilize this program to expand electrified school bus fleets. *Id.* at 340-41.

The Company fulfilled the Commission order by filing an updated, permanent eFleet Battery Support program, sponsored by Company Witness Peterson. *See* Peterson Direct, 4 TR 711. The Company proposes to spend \$2 million and \$3 million on the eFleets program in the bridge and test years respectively. *Id.* at 728. In accordance with the Commission directive, the Company proposes to expand the program to school buses. *Id.* at 726. The Company also proposes to expand the eFleet Battery Support program to include any vehicle registered to a business customer of the Company as long as the vehicle battery is greater than 150 kWh in accordance with the Commission direction in U-20836. *Id.* at 726-27. Importantly, the program is also revenue neutral, as participants will pay the company back for the upfront costs of purchasing the batteries under Rider 21. *Id.* at 727.

Just like the Company’s proposal in the last rate case, the CEO, through Witness Margarita Parra, support the Company’s eFleet programs in this case. As highlighted by Witness Parra, expanding the program helps support Michigan’s decarbonization goals and unlocks operational savings for businesses and municipalities. Parra Direct, 6 TR 3945. Witness Parra

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- Parra Direct, 6 TR 3943-3953
 - Freeman Direct, 7 TR 4427-4428
 - Revere Rebuttal, 7 TR 4628

also noted that the proposal is in line with the Company's EV program guiding principles in the short and long term and is cost effective. *Id.*

Witness Parra also made several suggestions to improve the Company's eFleet program. First, the Company should center equity in the implementation of the school bus program, targeting vulnerable communities. *Id.* at 3951. Second, Witness Parra suggested that the Company engage in data sharing so that public institutions, like ongoing research at the University of Michigan, can determine the efficacy of the incentives and the performance of the electric buses. *Id.* Additionally, Witness Parra suggested that the Company should investigate the benefits of vehicle-to-grid ("V2G") incentives in the context of school buses that participate in the eFleet program. *Id.* Witness Parra noted that "[e]lectric school buses are uniquely positioned to benefit from V2G given the amount of time they spend idle in the summer and during the day." *Id.* Finally, Witness Parra recommended that in addition to financing the electric battery, DTE could also wrap bi-directional chargers into the financing mechanism, which would give transit authorities and school districts better access. Parra Direct, 6 TR 3953. It appears that the Company and Staff interpreted this recommendation to mean additional funding to provide charging infrastructure to school districts and transit authorities. Peterson Rebuttal, 4 TR 800; Revere Rebuttal, 7 TR 4628. However, that was not the CEO intention. Rather, the recommendation reflected the fact that bi-directional charger also require significant capital investment, and the existing financing mechanism used for electric batteries could be extended to the chargers as well.

IV. CONCLUSION AND REQUEST FOR RELIEF

The CEO respectfully request that:

1. The Commission order the Company to include in its next EJ/Reliability analysis a 75%, 80%, and 90% MiEJScreen Tool threshold analysis in its next rate case;

2. The Commission order the Company to conduct more extensive environmental justice & reliability analysis in future cases including regression analyses and an examination of similar “grid topologies” as recommended by CEO Witnesses Tan and Kenworthy;
3. The Commission direct the Company to identify, track, and mitigate disparity along the different categories identified by CEO Witness Pereira including: (1) affordability and energy burden reduction, (2) community reliability and resilience, and (3) access and participation to clean energy programs in its next rate case;
4. The Commission order the Company to file its upcoming Distribution Grid Plan in a contested case proceeding;
5. The Commission should limit investments in the distribution system to what is affordable while awaiting DTE Electric’s upcoming distribution system investment plan and the Commission’s audit of DTE Electric’s distribution system before accelerating investments that will drive up rates;
6. The Commission should reiterate the importance of including equity as an impact dimension in the Company’s Global Prioritization Model;
7. The Commission reject the IRM and, in the alternative, if the Commission adopts the IRM, adopt the procedural safeguards advocated for by CEO Witness Kenworthy;
8. The Commission approve the Company’s permanent eFleet program, but order the Company to:
 - a. Target program adoption in vulnerable communities;
 - b. Share program data with the University of Michigan Initiative for School Bus Data Analytics Program;

- c. Allow participating transit authorities and school districts to finance bi-directional chargers under the same mechanism as the electric battery;
- d. Examine the benefits and present a plan in the next rate case regarding vehicle-to-grid incentives in the context of school buses that participate in the eFleet program.

Respectfully submitted,



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Dated: August 15, 2023

**STATE OF MICHIGAN
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.)
)

Case No. U-21297

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing *Opening Brief by The Environmental Law & Policy Center, Ecology Center, The Union of Concerned Scientists, and Vote Solar* was served by electronic mail upon the following Parties of Record, this Tuesday, August 15, 2023.

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