

Potomac LAW GROUP

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April 16, 2024

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

Re: **MPSC Case No. U-21534**

Dear Ms. Felice:

Attached for electronic filing in the above-referenced matter, please find the Petition for Leave to Intervene of Energy Michigan, Inc., together with the Proof of Service. Thank you for your assistance in this matter.

Very truly yours,

Timothy J. Lundgren

TJL/srd

Enclosure

c. All parties of record.

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.)

Case No. U-21534

PETITION FOR LEAVE TO INTERVENE
OF
ENERGY MICHIGAN, INC.

Energy Michigan, Inc. (“Energy Michigan”), by its attorneys Potomac Law Group, PLLC, (“Potomac”) hereby files this Petition with the Michigan Public Service Commission (“Commission”) for leave to intervene in and become a party to the above-titled proceedings pursuant to R 792.10410 (Rule 410) of the Commission's Rules of Practice and Procedure, and the Michigan Administrative Procedures Act, MCL § 24.101 *et seq.*¹ In support of this Petition, Energy Michigan states as follows:

1. Energy Michigan is a Michigan nonprofit corporation which was originally formed to protect and promote the interests of producers and users of independent power and now serves as the trade association for alternative and independent power supply, cogeneration and advanced energy industries and their customers in Michigan. Its membership includes independent power producers and suppliers, large customers of electricity and gas, project developers, those interested in cogeneration, local units of government, institutions, and private businesses, including those who are customers in the DTE Electric Company (“DTE Electric”) service territory.

¹ The comments expressed in this filing represent the position of Energy Michigan as an organization but may not represent the views of any particular member of Energy Michigan.

2. Over its history, Energy Michigan has taken, and continues to take, an active interest in utility rate and rate design issues. Energy Michigan has participated in a number of recent DTE general rate cases, including U-20836 and U-21297 in which the current rates and charges were approved.

3. On March 28, 2024, DTE Electric filed an application proposing revised rate structures, cost allocations, and new rates and tariff changes that affect all of its customer classes.

4. In its filed Application and supporting testimony and exhibits, DTE Electric proposes increases in rates and changes in terms of service that will affect Energy Michigan members, including its proposed State Reliability Mechanism (“SRM”) charge.

5. Energy Michigan expects to represent the interests of its members by examining the underlying costs and charges, as well as proposed terms of service presented by DTE Electric and ensuring that such costs, charges and terms of services are reasonable, prudent, and cost-based. Energy Michigan reserves the right to take other positions and/or seek other relief based on a review of the Applicant’s and other parties’ filings, the responses to discovery, or positions taken in briefs.

6. Energy Michigan intends to participate in these proceedings to the extent necessary to protect the interests of its members and address the issues set forth herein. The interests of Energy Michigan and its members in this proceeding cannot be adequately represented or protected by any other party.

7. This Commission applies a two-prong test for standing as of right, as set forth in *Association of Data Processing Service Organizations, Inc v Camp*, 397 US 150 (1970) (“*Data Processing*”), which has been applied to utility matters in *Drake v The Detroit Edison Co*, 453 F Supp 1123 (WD Mich 1978). As set forth in *Data Processing* and applied by the Commission,

the two-prong test requires a party to show that: (1) it would likely suffer injury in fact (*i.e.*, its interests are endangered or at issue); and (2) its interests that are allegedly endangered are within the zone of interests to be protected or regulated by the statute under consideration. See, *e.g.*, *In Re Michigan Consolidated Gas Co*, Case No. U-9138 (November 10, 1988).

8. Energy Michigan meets the “injury in fact” test because some of its members are customers of DTE Electric who will be directly affected by the charges and terms of service approved in this proceeding. These members, as customers of DTE, are within the zone of interest protected by the statutes under which this case has been brought. Additionally, some Energy Michigan members are suppliers under DTE’s retail open access tariffs and will be affected by any changes to those, including any changes to the State Reliability Mechanism (“SRM”).

9. Energy Michigan is therefore entitled to intervene because the issues to be addressed in this proceeding will have a direct and substantial impact upon Energy Michigan and its members, and Energy Michigan meets the Commission’s two-pronged test.

10. Even if Energy Michigan’s members did not satisfy the test for intervention as of right, Energy Michigan should be permitted to intervene under the Commission's permissive intervention standards. As the Commission has noted,

[T]he Commission's discretion to grant leave to intervene is broader than the two-prong test. As recognized in prior Commission orders, the requirements for standing before the Commission are not as strict as those applied by the courts. Unlike a court of law, an administrative agency can allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation.

In re Michigan Consolidated Gas Co, Case No. U-10150, at 5 (December 8, 1992) (finding that discretionary intervention was appropriate, and “a detailed discussion of the two-prong test is unnecessary”). Furthermore, the Commission has stated that “[t]he granting of permissive

intervention without satisfying the two-pronged test is a long-established Commission practice.”
In re DTE Gas Co, Case No. U-17332, at 4 (May 13, 2014).

11. The Commission has said that “permissive intervention is appropriate where the intervenor's participation will provide a benefit that outweighs any resulting delay or expense. Permissive intervention has also been granted where a proceeding ‘raises novel questions and important issues of policy’ and the intervenor will ‘bring a unique perspective’ to the case.” *In re the application of DTE Electric Co*, Case No. U-17319 (March 6, 2014), at 10. Furthermore, the Commission has granted permissive intervention in a rate case “to an association that represents the interests of its members, where the members generally meet the zone of interests test.” *Id.*

12. As noted above, Energy Michigan’s members meet the zone of interest test, and Energy Michigan, as an association with a long history of involvement in Michigan’s utility rate cases, working groups, and legislative processes, brings a unique perspective and is uniquely situated to provide information to this Tribunal and the Commission.

13. Energy Michigan reserves the right to take other positions and/or seek other relief based on a review of the various filings, the responses to discovery, or positions taken by DTE Electric or other parties in this proceeding.

14. WHEREFORE, Energy Michigan respectfully requests that the Commission:

- a. Grant Energy Michigan's Petition for Leave to Intervene; and
- b. Grant such other and further relief as is deemed lawful and appropriate.

Respectfully submitted,

Potomac Law Group, PLLC
Attorneys for Energy Michigan, Inc.

April 16, 2024

By: _____
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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
DTE ELECTRIC COMPANY)
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-21534

PROOF OF SERVICE

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

Summer R. Dukes, the undersigned, being first duly sworn, deposes and says that she is a Paralegal at Potomac Law Group PLLC and that on the 16th day of April, 2024 she served the Petition for Leave to Intervene of Energy Michigan, Inc., via email, upon those individuals listed on the attached Service List.

Summer R. Dukes

Administrative Law Judge

Honorable Sally L. Wallace
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The City of Ann Arbor

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Michigan Energy Innovation Business Council

Institute for Energy Innovation

Advanced Energy United

The Foundry Association of Michigan

Energy Michigan, Inc.

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