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July 16, 2024

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

RE: MPSC Case No. U-21291

Dear Ms. Felice:

Attached please find the following document for e-filing:

- Reply Brief of Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan; and
- Proof of Service.

Thank you for your assistance in this matter.

Sincerely,

Digitally signed by Christopher Bzdok
DN: cn=Christopher Bzdok, o=Tropospshere Legal, email=chris@tropospherelegal.com, c=US
Date: 2024.07.31 15:45:26 -04'00'

Christopher M. Bzdok
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Cc: Parties to Case No. U-21291

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE GAS COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of natural gas, and for miscellaneous accounting authority.	Case No. U-21291

REPLY BRIEF OF

MICHIGAN ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND CITIZENS UTILITY BOARD OF MICHIGAN

July 31, 2024

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I. INTRODUCTION

In its initial brief, DTE Gas Company (DTE Gas or DTE) seeks to justify increasing revenues from customers by about 9% through various capital expenditures, increases in the Infrastructure Recovery Mechanism, and an increase in DTE's authorized Return on Equity (ROE).

Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and the Citizens Utility Board of Michigan (MNSC) submit that DTE has not carried its burden of proof regarding a number of proposed capital expenditures, increases in the IRM, and an increase in ROE.

In this brief, MNSC responds to arguments in DTE's initial brief as follows:

1) Standard of review: DTE has the burden of proof throughout this case.

2) Rate-setting legal rights: DTE mischaracterizes the Takings Clause of the Constitution.

3) Projected expenditures: test year and historical capital expenditures should be considered in scrutinizing DTE's projections.

4) IRM: DTE did not prove its projected increases in IRM spending are reasonable, prudent, or accurate.

5) ROE: DTE did not prove that its requested increase in ROE is reasonable.

6) Sales forecast: DTE did not prove its sales forecast is reasonable or accurate.

7) Demand response: DTE did not prove that the demand response pilots were ineffective.

8) RSG: DTE has not shown that its proposed spending on RSG benefits ratepayers.

9) Customer attachments and community expansion projects: DTE's responses to MSNC recommendations are unreasonable and unsupported by the record.

II. REPLY TO DTE REGARDING THE STANDARD OF REVIEW: THE COMPANY HAS THE BURDEN OF PROOF THROUGHOUT THIS CASE.

MNSC's initial brief explained that DTE bears the burden of proving that its proposals are just and reasonable.[1] MNSC also explained that "the burden is on the company to prove the accuracy of each and every test year projection."[2]

In its initial brief, DTE argues that it has only "the initial burden to prove its case by a preponderance of the evidence," at which point the burden shifts to parties challenging the company's position to demonstrate that their position is correct.[3] DTE relies on three Commission precedents for its position.[4]

DTE's position does not accurately reflect the current state of the law. When the burden of proving a fact falls on one party, the other party does not have the burden of proving the opposite fact.[5] More recent Commission precedents have stated that the utility has the burden to prove its case by a preponderance of the evidence, regardless of what evidence other parties submitted.

For example, in Case No. U-18014, the PFD stated that "[t]here is no legal presumption that findings of fact should be made in the utility's favor if there is conflicting evidence."[6] Rather, "the ALJ and the Commission must determine how the evidence preponderates to resolve the disputed issues."[7] In its Order in U-18014, the Commission adopted the ALJ's analysis.[8]

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[1] MNSC initial brief, pp. 4-5.

[2] *Id*., p. 9, citing Case No. U-20963, Order, December 22, 2021, p. 10.

[3] DTE initial brief, pp. 8-9.

[4] Case No. U-18224, Order dated October 25, 2017, pp. 14-15, which cited Case Nos. U-15768 and U-15751, Opinion and Order dated January 11, 2010, p. 38.

[5] *S C Gary, Inc v Ford Motor Co,* 92 Mich App 789, 803-804; 286 NW 2d 34 (1979).

[6] Case No. U-18014, PFD dated November 21, 2016, p. 45.

[7] *Id*.

[8] Case No. U-18014, Order dated January 31, 2017, p. 8; accord, Case No. U-20963, Order dated December 22, 2021, pp. 3-4.

Likewise in I&M's recent rate case, the Commission held: "it is settled that a utility has the burden of proof to provide evidence to support each element of its rate case application and a preponderance of the evidence is the standard by which that evidence is evaluated. The submission of evidence by the utility does not shift the burden of proof to the other parties to the case to disprove the utility's evidence."[9]

III. REPLY TO DTE REGARDING RATE-SETTING LEGAL REQUIREMENTS.

Under the heading of "rate-setting legal requirements," DTE makes assertions about its constitutional rights that are also not wholly accurate.

First, DTE asserts that it is entitled to the protections of the takings clause of the U.S. and Michigan constitutions in utility rate cases.[10] Similarly, DTE quotes the U.S. Supreme Court's decision from *In re Permian Basin Area Rate Cases* for the proposition that "the power to regulate is not a power to destroy," and that price control is unconstitutional if applied arbitrarily.[11] While there is a degree of truth in these statements, they also need to be placed in perspective.

First, the U.S. Supreme Court in *Permian* upheld area price regulation in that case, holding that rates applying the "just and reasonable" standard to balance investor and customer interests are constitutional:

> Nonetheless, the just and reasonable standard of the Natural Gas Act 'coincides' with the applicable constitutional standards, and any rate selected by the Commission from the broad zone of reasonableness permitted by the Act cannot properly be attacked as confiscatory. Accordingly, there can be no constitutional objection if the Commission, in its calculation of rates, takes fully into account the various interests which Congress has required it to reconcile. We do not suggest that maximum rates computed for a group or

[9] Case No. U-21461, Order dated July 2, 2024, p. 9.

[10] DTE initial brief, p. 11.

[11] DTE initial brief, p. 12, quoting *In re Permian Basin Area Rate Cases,* 390 US 747, 769–70 (1968).

> geographical area can never be confiscatory; we hold only that any such rates, determined in conformity with the Natural Gas Act, and intended to 'balance the investor and the consumer interests,' are constitutionally permissible.[12]

Second, decades after *Permian,* the U.S. Supreme Court held that with respect to takings claims by regulated utilities, "the guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so unjust as to be confiscatory."[13] A rate is "confiscatory" if it is "so unjust as to destroy the value of [the] property for all the purposes for which it was acquired," and thereby "practically deprive[s] the owner of property without due process of law."[14] A takings claim will fail where the "overall impact" of the utility commission's order is not confiscatory.[15] The Court set an appropriately high bar for regulatory takings in a utility context.

Next, DTE cites the Michigan Supreme Court's decision in *Michigan Consol. Gas Co. v. Michigan Pub. Serv. Comm'n* to argue that "creating rates that recognize reductions in certain costs, while ignoring the increase in other costs, violates the due process rights of utilities."[16] The Commission in I&M's recent rate case rejected this argument: "[r]elated to the replacement of removed projects in the test year, the ALJ agreed with the Staff and the Attorney General that the Commission is not required to replace removed projects with added projects, also pointing out that the 1973 case cited by I&M was decided before 'statutory authority for a projected test year existed.' … The Commission finds the ALJ's analyses on issues related to the projected test year

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[12] 390 US at 770.

[13] *Duquesne Light Co v Barasch*, 488 US 299, 307 (1989).

[14] *Id*.; see also *Covington & Lexington Turnpike Rd Co v Sandford,* 164 US 578, 597 (1896).

[15] *Duquesne Light Co*, 488 US at 312.

[16] DTE initial brief, p. 11, citing *Michigan Consol. Gas Co. v. Michigan Pub. Serv. Comm'n*, 389 Mich 624, 633 (1973).

and removed projects from the test year to be well-reasoned and supported in the record and, accordingly, adopts the ALJ's recommendations."[17]

Finally, DTE asserts that the MPSC "has an obligation to facilitate DTE Gas's financial health for the benefit of its customers and shareholders."[18] To the contrary, the Commission's obligation is to set just and reasonable rates. In I&M's just-concluded rate case, the Commission expressly rejected the same argument DTE makes here, stating: "the Commission does not have a duty to facilitate the financial health of a utility beyond ensuring that the rates of a utility are just and reasonable."[19]

IV. REPLY TO DTE REGARDING THE TEST YEAR AND HISTORICAL CAPITAL EXPENDITURES.

MNSC's initial brief explained that while DTE is authorized by statute to use a projected test year to estimate its revenue deficiency, the use of projected test years is driving ever-higher rate increases and so the Commission must carefully scrutinize DTE's spending projections.[20] MNSC supported this argument with a discussion of testimony by ABATE witness Jessica York and CUB witness Ram Veerapaneni.

In its initial brief, DTE addresses ABATE witness York's testimony in a section on the test year and CUB witness Veerapaneni's testimony in a section on Intervenor proposed changes to capital projects.[21] With respect to DTE's discussion of Ms. York's testimony, MNSC stand on the arguments in MNSC's initial brief.

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[17] Case No. U-21461, Order dated July 2, 2024, p. 15 (citations omitted).

[18] DTE initial brief, p. 12.

[19] Case No. U-21461, Order dated July 2, 2024, p. 9, citing MCL 460.557(4).

[20] MNSC's initial brief, pp. 5-10.

[21] DTE initial brief, pp. 14-16 and 46-47, respectively.

With respect to CUB witness Veerapaneni, DTE argues that "the capital expenditures estimated to be incurred through the end of the projected test year are required to ensure the continued safe and reliable service to DTE Gas's customers;" and that "[r]elying on historic figures alone fails to capture the known and measurable capital expenditures scheduled to support the Company's large capital projects in 2024 and 2025."[22]

While a utility "may rely on forecasted revenues and costs in developing its test year projection, if certain items within this projection are not adequately supported, other parties may use alternative means, including historical data, to arrive at a reasonable result."[23] One ALJ recently recognized that "[i]n accordance with this holding, the Commission has often rejected the company's projections and instead adopted historical amounts as the basis for specific cost items."[24] DTE's rate base continues to escalate, a number of the projected test year figures are unreliable, and other parties are free to substitute other methods including historical with adjustments – as Mr. Veerapaneni recommends.

V. REPLY TO DTE REGARDING THE IRM: DTE DID NOT PROVE ITS PROJECTED INCREASES IN IRM SPENDING ARE REASONABLE, PRUDENT, OR ACCURATE.

In its initial brief section regarding the Infrastructure Recovery Mechanism, DTE discusses a variety of sub-issues concerning the IRM.[25] MNSC replies on the contested sub-issues.

[22] *Id*. at 46-47, citing Kelly Fedele rebuttal.

[23] Case No. U-20963, Order dated December 22, 2021, pp. 9-10, quoting Case No. U-18322, Order dated March 29, 2018, p. 6.

[24] Case No. U-21389, PFD dated December 21, 2023, p. 28, adopted by the Commission, Order dated March 1, 2024, pp. 5-6.

[25] DTE initial brief, pp. 47-59.

In its initial brief, DTE outlines its request for approval of increased Gas Renewal Program (GRP) spending over and above the amounts approved in Case No. U-20940.[26] A few pages later, DTE argues against the recommendations by Attorney General witness Sebastian Coppola and MNSC witness Alice Napoleon to contain the spending increases in the IRM to recent historic levels.[27] DTE's arguments are unavailing because the company did not prove that its projected increases in IRM spending are reasonable, prudent, or even accurate.

First, DTE argues that it is not expanding the IRM too quickly because the Commission directed an expansion of the IRM in Case No. U-18999 and "[t]he impetus for expanding the IRM and accelerating its progress will not be resolved until it is complete;" and therefore, "[s]horting the funding to these programs to arbitrarily pause forward progress would de-stabilize the system and make it riskier to provide service."[28] These claims are overblown, to say the least. As MNSC explained in initial brief, the claimed cost increases are for the same number of main renewal units and a decreasing number of meter move-outs – not an acceleration of progress.[29] Further, the claimed drivers of the cost increases are unsupported, inaccurate, or both.[30] Finally, some of the cost increases are due to the proposed addition of a new program – cathodic protection – that has never been part of the IRM before.[31]

Next, DTE argues that MNSC witness Napoleon's testimony about escalating IRM costs is "untethered from the proven facts of the case."[32] In support of that brash characterization, DTE

[26] *Id*. at pp. 49-50.

[27] *Id*. at pp. 56-58.

[28] *Id*. at pp. 55-56.

[29] MNSC initial brief, p. 52.

[30] *Id*. at pp. 52-57.

[31] *Id*. at pp. 59-62.

[32] *Id*. at 57.

asserts that the GRP's "cost per legacy mile retired has remained within 7% of the 2020 cost."[33] But the basis for that assertion is wholly unclear. DTE cites the rebuttal testimony of IRM witness Edward Janness at 4 Tr 645. There, Mr. Janness cites Exhibit A-32 Schedule V2, line 9 for the claim. But the cited line of the cited exhibit plainly does not show costs per mile remaining within 7% of the 2020 costs:

Michigan Public Service Commission
DTE Gas Company
Investment Recovery Mechanism Expenditures History and Projections
For 2020-2029

Case No.: U-21291
Exhibit: A-32
Schedule: V2
Witness: E. D. Janness
Page: 1 of 1

Line No.	(a) Description	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)
		Actual						Projected Calendar Year (1)			
		2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029
9	$/Legacy Mile Retired - Total ($K)	$ 905	$ 1,088	$ 1,108	$ 1,124	$ 1,187	$ 1,182	$ 1,347	$ 1,330	$ 1,330	$ 1,330	$ 1,330	$ 1,330

The costs of $1,347 per mile in 2024 and $1,330 per mile for 2025 are more than 20% above the 2020 figure of $1,108 per mile. If Mr. Janness was making some other comparison to the 2020 costs, he did not explain it.

DTE also claims that "to recommend outright denial of the [IRM] scope and spending is tantamount to deprioritizing the safety of the system."[34] This statement is just over the top – there is no other way to characterize it. First, as explained in MNSC's initial brief, witness Napoleon did not recommend outright denial of the IRM – she recommended denying DTE's requests to *expand* the scope of the IRM and *increase* spending on it; and opening a proceeding to review it after 10 years of experience with it.[35] Second, opposing unsupported and exaggerated claims of cost increases is not the same as deprioritizing safety. Recall that MNSC's initial brief explained how:

[33] *Id*.

[34] *Id*.

[35] MNSC initial brief, pp. 67-68.

- DTE supported its claim of increased contractor costs by citing a third-party vendor's high-case estimate, without disclosing that the same vendor provided DTE with a medium-case estimate and a low-case estimate as well.[36]
- DTE claimed $25 to $35 million increases in construction costs, but admitted in cross that the actual increase was only $9 million.[37]
- DTE claimed cost increases for permit requirements, but has not quantified these increases or documented them, and had no evidence to supply regarding them except its annual City of Detroit ROW permit.[38]
- DTE claimed cost increases of 20 to 30% due to its new risk assessment tool, but had no evidence or documentation to back up that claim, either.[39]

Opposing projected cost increases that DTE has clearly exaggerated and failed to support with competent evidence is not tantamount to deprioritizing safety. Rather, it represents the prudent vetting of faulty requests for ever-more ratepayer dollars for this program.

DTE also argues against defining clearer guidelines for what spending programs are eligible for the IRM. DTE insists that the IRM can include any projects that "are long-term, strategic, and recurrent capital investments that are required under federal and state safety standards and are an integral part of the DTE Gas's overall effort to ensure the safety and reliability of its system."[40] But that could mean anything. Further, DTE's IRM witness Mr. Janness agreed

[36] *Id*. at 52-53.

[37] *Id*. at 53-55.

[38] *Id*. at 56.

[39] *Id*. at 56-57.

[40] DTE initial brief, p. 57.

that DTE should and would invest in programs with these criteria whether the programs are included in the IRM or not.[41]

DTE also argues against opening a proceeding to review the IRM after 10 years of experience and very large increases in spending.[42] MNSC stands on its initial brief with respect to this recommendation.[43]

DTE also argues for inclusion of cathodic protection in the IRM, mostly by re-stating its direct case on that point.[44] MNSC likewise stands on its initial brief with respect to adding cathodic protection to the IRM.[45]

VI. REPLY TO DTE REGARDING ROE.

MNSC's initial brief explained that DTE's request to increase its approved return on common equity from the current 9.90% to 10.25% is an untenable overreach, and that the results of DTE witness Bente Villadsen's analyses are an outlier compared to those of the other parties in this case.[46] MNSC replies here to arguments in DTE's initial brief that are specific to CUB witness Matt Bandyk's testimony.

First, DTE argues that with respect to the equity risk premium (ERP) used for the capital asset pricing model (CAPM), witness Bandyk's "criticism of Dr. Villadsen's use of historic data is inconsistent with his own data set, which is also derived from historic values."[47] But that is like saying a sheet of paper is equivalent to a two-by-four because both are derived from trees. DTE

[41] MNSC initial brief, pp. 61-62.

[42] DTE initial brief, pp. 57-58.

[43] MNSC initial brief, pp. 62-68.

[44] DTE initial brief, pp. 53-54.

[45] MNSC initial brief, pp. 59-62.

[46] *Id*. at 35-36.

[47] DTE initial brief, p. 71.

witness Villadsen's ERP is a historical average from 1926 to 2022.[48] Citing a respected NYU finance professor, CUB witness Bandyk explained that the use of a long-term average is sensitive to the time period selected and is subject to survivorship bias – where the returns included in the data set are from stocks that remain in the market rather than drop out.[49] To counter these problems, Mr. Bandyk used an average of three ERP estimates – one from an NYU finance professor, one from a business school survey, and one from the research firm Kroll's.[50] This average of three estimates is less sensitive to the problem of selecting the wrong time period and is not subject to survivorship bias; and the use of three sources mitigates the risk of error from any one source.[51] DTE witness Villadsen identified only one of these sources – Kroll's – as relying on historic information.[52]

DTE also asserts that "[s]everal data points used by witness Bandyk are outliers, based on unreliable sources, or use assumptions not shown to be representative of the forecasted time period in question in this case."[53] However, DTE provides no specifics and no citations to support this bare assertion – and so it should be disregarded.

Next, DTE argues that CUB witness Bandyk should not have rejected Dr. Villadsen's single-stage discounted cash flow (DCF) model and used only her multi-stage DCF analysis – claiming that using one DCF analysis but not the other is "selective" and "introduces model risk."[54] However, DTE never addresses Mr. Bandyk's testimony that the single-stage DCF model is flawed

[48] Villadsen direct, 4 Tr 2467.

[49] Bandyk direct, 4 Tr 959-960.

[50] *Id*. at 960.

[51] *Id*. at 961.

[52] Villadsen rebuttal, 4 Tr 2573.

[53] DTE initial brief, p. 71.

[54] *Id*. at 73.

because it assumes a "constant perpetual growth rate in which the utility would outrun the entire U.S. economy…"[55] Further, witness Bandyk mitigated model risk by using both the DCF model and the CAPM, which the MPSC has long relied on to evaluate ROEs. Adding a flawed variant of the DCF model with an indefensible premise would not reduce model risk – it would add risk.

Finally, DTE argues that ABATE witness Christopher Walters, CUB witness Bandyk, and Ann Arbor witness Missy Stults all make "misleading" claims about trends in approved ROEs for regulated utilities.[56] DTE asserts that average approved ROEs are actually up since 2020.[57] However, DTE again does not provide any specifics or citations with respect to Mr. Bandyk claiming that approved ROEs are trending downward. In fact, Mr. Bandyk never made this claim. In her rebuttal testimony, DTE witness Villadsen cited page 4 of Mr. Bandyk's pre-filed direct testimony, which corresponds to 4 Tr 953.[58] It is true that Mr. Bandyk provides a chart on that page with lines that show long-term decreases:

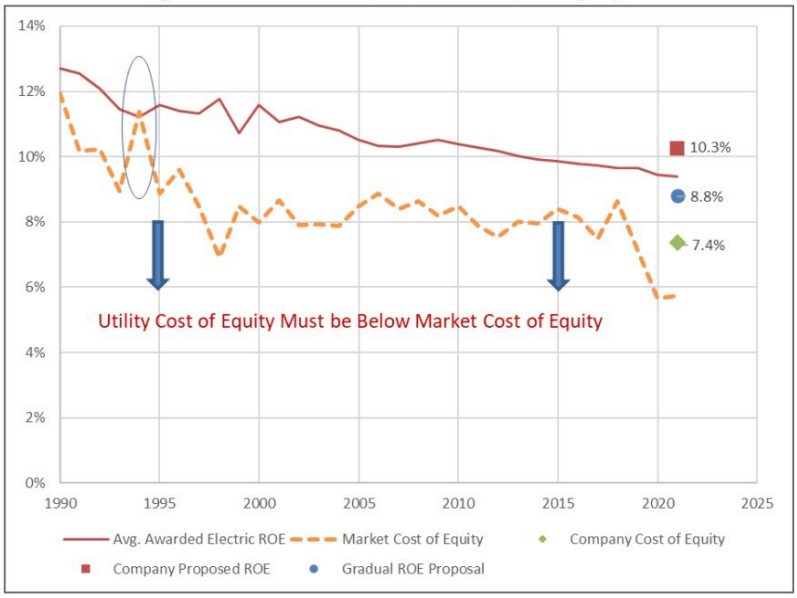
[55] MNSC initial brief, pp. 41-42, citing Bandyk direct, 4 Tr 962-963.

[56] DTE initial brief, p. 74.

[57] *Id*.

[58] Villadsen direct, 4 Tr 2588, fn. 175.

Figure 2: Awarded ROEs vs. Market Cost of Equity



However, Mr. Bandyk clearly explains on the same page of his testimony that the point of the chart is that "average awarded ROEs [for regulated utilities] have been consistently above the market-based ROEs by about two percentage points in almost every year for over three decades."[59] Nowhere does Bandyk claim that approved returns for regulated utilities have been decreasing since the year 2000. He makes no claim about that subject at all. His point is that approved returns by public utility commissions are unreliable indicators of the actual cost of equity – so the trendline of those decisions over a selected time frame is not relevant to his analysis.

In sum, DTE's requested increase in its approved ROE is still an overreach; the results of Dr. Villadsen's analyses are still outliers; and none of DTE's arguments directed at CUB's testimony change these fundamental conclusions.

[59] Bandyk direct, 4 Tr 953.

VII. REPLY TO DTE REGARDING SALES FORECAST.

MNSC's initial brief explained that DTE's assumption that customer usage will hold steady for the next 20 years is wholly unreasonable in light of recent trends indicating declining usage as well as credible future predictions indicating a transition away from gas towards electrification.[60] DTE asserts without record support that its sales forecasts are "sound and reasonable."[61] DTE unreasonably concludes that because the Commission has approved DTE's sales forecasts in the past that it should approve them today.[62] However, today, the facts on the ground are different: there is compelling evidence that DTE's sales forecasts are inaccurate, and that customer gas demand is falling.[63] DTE fails to rebut MNSC witness Hopkins' forecast methodology critiques, which show that sales per customer have in fact declined over past two decades.[64]

DTE dismisses MNSC witness Hopkins sales forecast critiques, claiming they are misleading because weather normalization has a "huge impact on residential gas consumption."[65] Such a response is insufficient to counter the 30 percent decline in sales per customer from 1997 to 2022 highlighted by witness Hopkins.[66] DTE's weather normalization argument also conveniently ignores testimony from DTE witness Chapel showing that weather-normalized consumption per customers declined consistently from 2002 to 2023, and that from August to August 2024, normalized consumption per customer declined by 2.7% on a dekatherm basis and

[60] *See generally*, MNSC initial brief, pp. 14-22.

[61] DTE initial brief at 81.

[62] *Id.*

[63] *See* MNSC initial brief, pp. 14 – 16.

[64] Hopkins direct, 4 Tr 858.

[65] DTE initial brief at 82.

[66] Hopkins direct, 4 Tr 858.

by 3.0% on a Mcf basis.[67] DTE further fails to contend with witness Chapel's admission that winter temperatures in Michigan have increased in the recent past, leading to a decrease in HDDs[68], as well as Chapel's subsequent admission that "the greater the HDDs, the greater the heating demand."[69]

DTE misinterprets witness Hopkins' critique of its forecasting methodology being too reliant on historical trends.[70] DTE responds by fixating on the fact that it only uses the past two full winter heating cycles to project sales.[71] This ignores two issues raised by witness Hopkins, which are that DTE a) fails to contend with the historical trend of declining gas sales per customer and b) fails to contend with policy changes and market trends weighing heavily in favor of future declining gas demand.[72] DTE admits that "there is not a specific climate change component or policy as part of the forecast" while attempting to dismiss Hopkins' critique by noting that its methodology captures long-term changes in weather.[73] DTE again misses the issue. As MNSC showed, data *already* indicates a shift away from gas: census data shows that Michigan households with electric space heating increased by 53 percent from 2013 to 2022 compared to a 3 percent increase in households with natural gas heating.[74] Electric heat pumps have been outselling gas furnaces nationally in recent years.[75] Federal and state policies such as the Inflation Reduction Act and Defense Production Act are placing a foot on the scale in favor of electrification and fuel

[67] MNSC initial brief at 15; Ex MEC-56, discovery response AGDG-4.60.; Chapel rebuttal, 2 Tr 234.

[68] Chapel direct, 2 Tr 274-76.

[69] Chapel direct, 2 Tr 206-207; Chapel cross, 2 Tr 252.

[70] DTE initial brief at 82.

[71] *Id.*

[72] *See* MNSC initial brief at 19.

[73] DTE initial brief at 84.

[74] MNSC initial brief at 19.

[75] *Id.*

switching away from gas appliances.[76] Indeed, DTE witness Decker admitted that electrification could lead to decreasing customer usage over the next 20 years.[77] DTE does not respond to any of this record evidence, instead insisting the Commission approve its unrealistic sales forecast despite substantial evidence that gas demand is declining and will decline more precipitously as electrification increases.

VIII. REPLY TO DTE REGARDING DEMAND RESPONSE PILOTS

MNSC's initial brief explained that DTE's proposal to not move forward with the demand response pilots, and in particular the Smart Savers pilot, is unreasonable in light of DTE's minimal efforts to tweak behavioral signals in the pilots and in light of the demonstrated success of the Smart Savers pilot.[78] In its initial brief, DTE makes unsupported assertions regarding the effectiveness of demand response to support closing the pilots.[79] As explained in MNSC's initial brief, DTE makes an assessment that demand response is ineffective based on an unexplained holistic assessment of three different pilots with different incentives and participants.[80] DTE ignores the demonstrated success of the Smart Savers pilot in reducing gas demand in each of the programs five peak demand events,[81] and it makes no attempt to cure snapback effects in the Smart Savers pilot nor limited participation in the other two pilots.[82]

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[76] *Id.*

[77] 4 Decker cross, 2 Tr 170-171.

[78] *See generally,* MNSC Initial Brief, pp. 69-75.

[79] DTE initial brief at 145.

[80] MNSC initial brief at 72.

[81] Napoleon direct, 4 Tr 933.

[82] *See* MNSC initial brief at 72.

DTE notes in its initial brief that it met with other utilities as well as with interested stakeholders before designing the DR pilots.[83] However, that merely demonstrates that DTE met the bare minimum in prudent program design. DTE fundamentally misunderstands the purpose of a pilot, which is to test different program designs. DTE does not provide evidence of any efforts made to increase the effectiveness of or participation in the pilots. Instead, it makes the incorrect assumption that because two of the three demand response pilots had poor program design, that demand response is not effective at all in DTE's service territory and should no longer be attempted.

Finally, DTE does not attempt to dispute MNSC witness Napoleon's findings that the Smart Savers pilot demonstrated success in reducing gas demand, instead conceding that it showed promise in terms of reducing gas consumption.[84] The Commission should not allow DTE to discontinue the Demand Response pilots without expending more effort into their successes. MNSC stands by its recommendations and arguments with regards to the pilots in its initial brief.

IX. REPLY TO DTE REGARDING RSG

MNSC's initial brief explained that DTE's proposed spending on responsibly sourced gas ("RSG") is unreasonable in light of its uncertain benefits accrued to customers and unexamined cost-effectiveness compared to other emissions reductions strategies. DTE counters that "[t]he benefits of RSG are clear" without addressing MNSC and other intervenors' concerns surrounding the lack of verifiability regarding RSG purchases. Instead of rebutting MSNC witness Napoleon's explanation that RSG provides negligible emissions reductions benefits to customers because there is no oversight over producers, DTE admits that it "is not imposing standards on producers." DTE

[83] DTE initial brief at 144.

[84] DTE initial brief at 143.

explains that it has "encouraged supplies to join in the journey" towards net zero emissions, as if that alleviates the fundamental issue with RSG, which is that its emissions reduction benefits cannot be credibly verified. Nor does DTE its own witness' admission that upstream supply is just five percent of gas emissions. Instead of justifying the cost-effectiveness of the RSG program, DTE states that the "Company has chosen to be proactive versus reactive." DTE cannot show, however, that its spending on RSG is prudent unless it compares RSG's cost-effectiveness to other proactive emissions reduction approaches, such as electrification. DTE fails to conduct any such analysis and has not met its burden in justifying RSG spending.

X. REPLY TO DTE REGARDING CUSTOMER ATTACHMENTS AND COMMUNITY EXPANSION PROJECTS.

MNSC's initial brief explained that DTE's customer attachment program (CAP) tariff, Rule C8, uses unreasonable assumptions to estimate the revenue generated by new customers for the purpose of calculating their required contributions in aid of construction (CIAC) – and as a result, existing customers subsidize the revenue requirements for projects necessary to attach new customers.[85] The flaws in DTE's assumptions regarding usage and IRM revenues affect individual customer attachments and community expansion projects (CEPs), and DTE's unrealistic assumptions about customer subscription levels to CEPs also impact those projects. MNSC recommended that the Commission should require DTE to revise Rule C8 to reflect more reasonable assumptions, shorten the time period over which CIAC revenue requirements are estimated, and sunset the program on or before 2034. MNSC also recommended that the Commission disallow inclusion in rate base of a portion of the costs of the Mesick-Buckley and Peach Ridge CEPs, representing the shortfalls in CIAC revenue expected from those projects.

[85] See generally, MNSC initial brief, pp. 10-33.

In its initial brief, DTE claims that there are "multiple problems" with MNSC witness Hopkins' testimony.[86] None of the company's arguments withstand scrutiny.

First, DTE asserts that existing homes will be "viable" beyond 2034.[87] MNSC's initial brief explained that whether the homes will be viable is not the issue. The issue is whether they will still be using the same amount of natural gas they use now – as DTE assumes in its revenue estimating model.[88]

Second, DTE asserts that its use of 20 years of revenue is "stated in the Commission's CAP and the same period used by the five other utilities in participating in the CAP."[89] However, what DTE calls "the Commission's CAP" is an order from a 1995 MichCon case approving a settlement.[90] DTE has since changed other terms of the tariff established in that 29-year-old settlement, and nothing would prevent the Commission or the company from changing additional terms in this case.[91]

Third, DTE claims that using 10 years of revenue to estimate the incremental net cost that must be covered by the customer contribution will impact home affordability.[92] There are a host of reasons why DTE's claim is exaggerated, and MNSC anticipated those and addressed those reasons fully in the initial brief.[93]

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[86] See generally, DTE initial brief, pp. 165-168.

[87] *Id*. at 166.

[88] MNSC initial brief, p. 21.

[89] DTE initial brief, p. 166.

[90] See MNSC initial brief, p. 28.

[91] *Id*.

[92] DTE initial brief, p. 166.

[93] MNSC initial brief, pp. 28-29.

As to CEPs, DTE argues that the Mesick-Buckley project is supported by a grant and will benefit those communities.[94] However, MNSC witness Hopkins did not recommend that the Mesick-Buckley project be canceled. He recommended a partial disallowance because DTE's projection of customer subscriptions is wildly exaggerated – at 100% of households in the project area signing on, plus 2% growth per year.[95]

DTE also pushes back against witness Hopkins' testimony that its projections of 100% participation in the CEPs are exaggerated. The company claims that only a few of the CEPs Dr. Hopkins examined have been in place for at least five years, which is necessary for an accurate representation of their full sign-ups.[96] MNSC fully addressed this issue in initial brief.[97] To recap, only six of the 96 CEPs that DTE has undertaken since 2016 have met their projected customer counts – and only two since 2019 have done so. And if DTE's data set is insufficient to precisely estimate subscriptions, the consequence of that uncertainty falls on DTE as the party with the burden of proving that its projected expenditures for Mesick-Buckley are reasonable, prudent, and accurate.

In sum, DTE's initial brief does not offer a sufficient defense of the unreasonable assumption the company uses for CAPs and CEPs, and the Commission should adopt MNSC's recommendations concerning these programs contained in MNSC's initial brief.

[94] DTE initial brief, p. 167.

[95] MNSC initial brief, p. 23 and pp. 32-33.

[96] DTE initial brief, p. 168.

[97] MNSC initial brief, pp. 22-24.

XI. CONCLUSION

For the reasons discussed above, MNSC stands on its arguments in its initial brief and respectfully requests the Commission to grant the relief requested in MNSC's initial brief.

Respectfully Submitted,

Dated: July 31, 2024

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE GAS COMPANY** for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of natural gas, and for miscellaneous accounting authority.	U-21291

PROOF OF SERVICE

On the date below, an electronic copy of **Reply Brief of Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan** was served on the following:

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

Date: July 31, 2024

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