



ENVIRONMENTAL LAW & POLICY CENTER

July 31, 2024

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

RE: MPSC Case No. U-21291

Dear Ms. Felice:

Please find enclosed the Reply Brief of The Ecology Center, The Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (collectively, the Clean Energy Organizations (“CEO”)) which was filed electronically in this matter.

Sincerely,

Daniel Abrams
Environmental Law & Policy Center
dabrams@elpc.org

cc: Service List, Case No. U-21291

HQ: 35 East Wacker Drive | Suite 1600 | Chicago, IL 60601
ELPC.org | (312) 673-6500

Manny Flores, Chair | Howard A. Learner, Executive Director

Illinois | Indiana | Iowa | Michigan | Minnesota | North Dakota | Ohio | South Dakota | Wisconsin | Washington D.C.



**STATE OF MICHIGAN
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, and for miscellaneous)
accounting authority.)

Case No. U-21291

**REPLY BRIEF OF THE ECOLOGY CENTER,
ENVIRONMENTAL LAW & POLICY CENTER, UNION OF CONCERNED
SCIENTISTS AND VOTE SOLAR**

July 31, 2024

Table of Contents

I.	INTRODUCTION.....	1
II.	THE COMPANY’S OPENING BRIEF ACKNOWLEDGES THE STATE’S DECARBONIZATION GOALS ONLY IN THE CONTEXT OF ITS REQUEST FOR HIGHER RETURN ON EQUITY.....	2
III.	THE COMPANY PREMATURELY WROTE OFF ITS DEMAND RESPONSE PROGRAMS AND SHOULD REVISE AND REOFFER THEM GOING FORWARD.....	3
IV.	THE COMPANY MUST FOLLOW THROUGH AND ACT ON ITS COMMITMENT TO “EXPLORE” USING THE MIEJSCREEN TOOL	5
V.	CONCLUSION	5

The Ecology Center, the Environmental Law & Policy Center (“ELPC”), Union of Concerned Scientists (“UCS”), and Vote Solar (collectively, the Clean Energy Organizations (“CEO”)), file its Reply Brief in the above-captioned DTE Gas Company (“DTE” or the “Company”) contested rate case. While the DTE rate case encompasses myriad complex issues, the CEO limits its focus on reply to the following issues: (1) the Company’s failure to consider electrification and compliance with the State’s emissions reduction goals in its rate application or brief; (2) the Company’s decision to discontinue its demand response programs; and (3) the Company’s use of energy justice in its planning processes in future rate cases.

I. Introduction

DTE Gas knows it must adjust to a changing energy landscape. In its opening brief, the Company acknowledges the State of Michigan’s recently passed climate goals, identifying the state’s “established goals for carbon neutrality by 2050, with interim emissions reductions by 2025 and 2030.” DTE Opening Br. at 75–76. However, in this case, the Company has not carried its burden to show that it properly considered compliance with the State’s emission goals. Its brief only discusses the State’s decarbonization goals in the context of its return on equity and does not mention the word “electrification” once. *Id.* at 75.

The CEO acknowledge the Company’s mandate to operate a safe and reliable gas system, but the Company has not explored proven alternatives to capital investment like pipeline repair. CEO Opening Br. at 13–15. The Company also too quickly cast aside demand response. *Id.* at 17–23. The Company does its customers a disservice by failing to analyze the impacts of electrification and compliance with climate goals on the system; and also equally importantly, failing to examine proven methods to contain costs.

In addition to prudent capital spending, the CEO discussed the importance of energy justice in utility decision-making, CEO Opening Br. at 23–25, and we were encouraged by the discussion of this issue in DTE’s opening brief. The Company committed to “explore how the MiEJScreen tool can be incorporated into the Company’s existing planning process.” DTE Opening Br. at 158. The CEO are pleased with the Company’s first step, but the Company must continue to explore ways to ensure equitable service to all of its customers.

The Commission should adjudge this rate case through these two lenses. Will the Company’s capital spending on the gas system be used and useful in thirty years? Is the Company’s proposed spending equitable? The Company’s business-as-usual approach introduces unnecessary risk to its customers and fails to examine proven methods to contain costs. Because the Company admittedly failed to consider electrification, and neglected to model or analyze compliance with the State’s emissions reduction goals, the Commission should order the Company to revise and refile this rate case.

II. The Company’s Opening Brief Acknowledges the State’s Decarbonization Goals Only in the Context of Its Request for Higher Return on Equity

In testimony and in our opening brief, the CEO critiqued the Company’s forecasting, planning, and spending proposals for a failure to consider already declining demand, the impacts of electrification and compliance with the State’s emissions reduction goals. CEO Opening Br. at 4–15. In turn, the Company did not discuss these important trends in its opening brief. Instead, the Company only acknowledged the State’s decarbonization goals where it suited it. DTE Opening Br. at 75–76. According to the Company, compliance with the State’s emissions reduction goals will introduce risk to the Company that justifies additional basis points of return on equity, but the Company entirely failed to factor that risk into its planning around its future investments.

The CEO, MNSC and FLO all framed large portions of their case around the impacts of electrification on the Company’s demand forecast and the viability of its spending plans. CEO Opening Br. at 9–15, MNSC Opening Br. at 83–86; FLO Opening Br. at 28–39. However, DTE did not mention the word “electrification” once in its opening brief. In fact, the Company conceded that its analysis supporting this case did not consider the “impacts of building electrification.” Ex. CEO-3; CEO Opening Br. at 9.

Relatedly, the Company’s opening brief did not address the Company’s plan to comply with the State’s emissions reduction goals when developing this rate case. *See* CEO Opening Br. at 7–9; Exs. CEO-12–CEO-15. But, the Company *did* consider compliance with the State’s decarbonization goals in one area. In its brief, the Company requests an increased return on common equity, from 9.9% to 10.25%, and justifies that increase, in part, on the “increasing risk and costs from state decarbonization policies.” DTE Opening Br. at 75. Essentially, the Company has no plan to meet the State’s goals and no interim goals for emissions reduction, but it does request an increase in its return on equity. Exs. CEO-12–CEO-15; Ex. CEO-23; 2 TR 184; CEO Opening Br. at 7–9. The Company cannot have it both ways—compliance with the State’s goals cannot be a lever to increase profitability but neglected in the Company’s forecasts and spending proposals.

III. The Company Prematurely Wrote Off Its Demand Response Programs and Should Revise and Reoffer Them Going Forward

Demand response (“DR”) programs are proven to reduce costs by shaving peak on the coldest days, which allows the Company to forego capital spending aimed at sizing the system to meet such demand. The Company must embrace demand response and similar non-pipeline alternatives going forward in order to contain costs and continue to reliably and safely serve its customers as demand declines.

As detailed in the CEO's opening brief, DTE conducted three demand response pilots in 2022 and 2023, two residential and one commercial. CEO Opening Br. at 17–18. At the conclusion of the pilot period, the Company “made the decision not to continue with any gas DR pilots or programs.” DTE Opening Br. at 144. The Company concluded that the programs “were not effective” and that “it would not be reasonable or prudent to propose additional DR programs.” *Id.* at 145.

As CEO witness Cebulko detailed, the Company misinterpreted the results of its pilots, and the Commission should order the Company to work with stakeholders to revise and reoffer them going forward. Cebulko Revised Direct, 4 TR 739–752; CEO Opening Br. at 18–23; *see also* MNSC Opening Br. at 71. First, the Company's Smart Savers program actually delivered reduced gas consumption in four out of five events. Decker Direct, 2 TR 113. The Company wrote off the program because of “snapback,” which is “an increase in consumption after a pilot event ends, and results in an increase in usage as customers try to return to normal levels.” DTE Opening Br. at 142. However, if snapback results in less gas consumption overall, a demand response program still serves its purpose. Further, the CEO proposed several well-known strategies for mitigating snapback, none of which the Company considered or studied as part of the pilot. CEO Opening Br. at 21.

Second, the Company decided to discontinue its commercial pilot without adequate data to draw a conclusion from. The pilot included two high schools and the Company called two events. The high schools were a poor choice for this pilot, because they lack backup heat options, and as essential facilities, cannot simply shut off their heating systems. Cebulko Refiled Direct, 4 TR 748. As witness Cebulko concluded “two events for two similarly situated customers” is not “a robust data set for which it is reasonable to draw conclusions about a customer class as large

and diverse a[s] the commercial customer class.” Cebulko Refiled Direct, 4 TR 748; CEO Opening Br. at 20.

Contrary to the Company’s assertion, it was not “reasonable and prudent” to discontinue these programs. DTE Opening Br. at 145. Instead, the Company improperly cast aside a proven solution to shave peak demand and limit capital costs without sufficient evaluation. The Commission must reaffirm the importance of demand response and order the Company to revise and reoffer these programs going forward.

IV. The Company Must Follow Through and Act On Its Commitment to “Explore” Using the MiEJScreen Tool

In testimony and in our opening brief, the CEO discussed the importance of incorporating energy justice into the Company’s programs and spending proposals. CEO Opening Br. at 23–25. The CEO also identified several metrics the Company could begin to track to mitigate inequality in the energy system. CEO Opening Br. at 27. The Company responded by stating that it “intends to explore how the MiEJScreen tool can be incorporated into the Company’s existing planning process.” DTE Opening Br. at 158. The CEO are encouraged by the Company’s intention to better incorporate equity into its planning processes. The Company must follow through on its commitment and actually incorporate equity into its planning processes. As the Commission has recognized in a prior DTE Electric rate case, “more work is necessary” to continue the project of ensuring equitable gas service. *In re DTE Electric*, Case No. U-20836, Final Order at 459 (Nov. 18, 2022).

V. Conclusion

The CEO raised a broader set of issues in our opening brief, but our primary concern remains the Company’s business-as-usual approach to planning and spending. The Company failed to consider the State’s emissions reduction goals and the impacts of electrification on its

plan. The Commission must reject DTE's proposed capital spending until the Company completes the necessary analysis showing how that spending fits in with its plan to reduce carbon emissions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Abrams", is written over a horizontal line.

Daniel Abrams
Environmental Law & Policy Center
35 E. Wacker Dr, Suite 1600
Chicago, IL 60601
T: (773) 726-8701
dabrams@elpc.org

Dated: July 31, 2024

**STATE OF MICHIGAN
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) Docket No. U-21291
governing the distribution and supply of)
natural gas, and for miscellaneous accounting)
authority)

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing *Reply Brief of the Ecology Center, the Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar* was served by electronic mail upon the following Parties of Record, this Wednesday, July 31, 2024.

Administrative Law Judge thoitsj@michigan.gov
Hon. Johnathan Thoits

MPSC Staff
Michael J. Orris orrism@michigan.gov
Heather MS. Durian durianh@michigan.gov
Lori Mayabb mayabbl@michigan.gov
Monica Stephens Stephensm11@michigan.gov
Anna Stirling Stirlinga1@michigan.gov
Alena Clark clarka55@michigan.gov

DTE Gas Company
Carlton D. Watson carlton.watson@dteenergy.com
Paula Johnson-Bacon Paula.bacon@dteenergy.com
MSPC Filings mpscfilings@dteenergy.com
Andrea E. Hayden Andrea.hayden@dteenergy.com

Attorney General
Joel B. King kingj38@michigan.gov
 ag-enra-spec-lit@michigan.gov

Aaron Walden Waldena1@michigan.gov

**Michigan Environmental
Council,
Citizens Utility Board of
Michigan, Sierra Club,
NRDC**

Christopher M. Bzdok
Holly L. Hillyer
Breanna Thomas

chris@tropospherelegal.com
holly@tropospherelegal.com
breanna@tropospherelegal.com

City of Ann Arbor

Valerie Brader
Valerie Jackson

valerie@rivenoaklaw.com
vjackson@a2gov.org
ecf@rivenoaklaw.com

**Retail Energy Supply
Association,
Michigan Power Limited
Partnership**

Jennifer U. Heston

jheston@fraserlawfirm.com

**The Ecology Center, The
Environmental Law & Policy
Center, Union of Concerned
Scientists, and Vote Solar**

Nicholas Wallace
Daniel Abrams
Carolyn Boyce
Alondra Estrada
Shubha Harris
Robert Kelter

nwallace@elpc.org
dabrams@elpc.org
cboyce@elpc.org
aestrada@elpc.org
Shubha.m.harris@gmail.com
rkelter@elpc.org

**Urban Core Collective,
Soulardarity, and We Want
Green, Too**

Amanda Urban
Mark Templeton
Jacob Schuhardt
Sam Heppell
Madison Wilson

t-9aurba@lawclinic.uchicago.edu
templeton@uchicago.edu
jschuhardt@uchicago.edu
Heppell@uchicago.edu
madisonswilson@uchicago.edu
aelc_mpsc@lawclinic.uchicago.edu

**Association of Businesses
Advocating Tariff Equity
(ABATE)**

Michael J. Pattwell
Steven A. Campbell
Jim Dauphinais

mpattwell@clarkhill.com
scampbell@clarkhill.com
jdauphinais@consultbai.com

**Dearborn Industrial
Generation, LLC**
Sean P. Gallagher

sgallagher@fraserlawfirm.com

**Billerud Americas
Corporation**
Timothy Lundgren
Justin K. Ooms

tlundgren@potomaclaw.com
jooms@potomaclaw.com

A handwritten signature in black ink, appearing to read "Dan Abrams", is written over a horizontal line.

Daniel Abrams
Environmental Law & Policy Center
dabrams@elpc.org