



ENVIRONMENTAL LAW & POLICY CENTER

September 25, 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 Exceptions to the Proposed Final Decision 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
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cc: Service List, Case No. U-21291

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**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 gas, and for)
miscellaneous accounting authority.)

Case No. U-21291

**EXCEPTIONS TO THE PROPOSED FINAL DECISION OF THE ECOLOGY CENTER,
ENVIRONMENTAL LAW & POLICY CENTER, UNION OF CONCERNED
SCIENTISTS AND VOTE SOLAR**

September 25, 2024

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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 Exceptions to the Proposed Final Decision (“PFD”) 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 exceptions to the following issues: (1) the need for the Commission to provide additional detail regarding timing and expectations for the Company’s planning around electrification and the State’s emissions reduction goals; (2) the PFD’s decision to approve additional spending through the Infrastructure Recovery Mechanism (“IRM”); and (3) the PFD’s failure to recommend the Company undertake environmental justice and equity analysis.

I. Introduction

DTE Gas’ proposed rate increase is based on a flawed set of assumptions. The Company did not acknowledge its historic declining demand, or the inevitable threat to gas demand due to electrification and compliance with the State’s emissions reduction goals.

The PFD recognized the importance of proper consideration of these important trends as well as the need for examination of cost-effective alternatives to capital investment. In particular, the PFD found that “the Commission should direct DTE to continue offering the Smart Savers [demand response] pilot program,” because “DTE has not offered any contrary evidence nor offered any explanation for why its data does not support that significant amounts of gas usage were reduced.” PFD at 368. Similarly, the PFD recognized “that our society is undergoing a fundamental energy transition in which society is shifting away from fossil fuels and towards renewable forms of energy.” *Id.* at 409. The PFD recommended that “the Commission direct DTE to update its Gas Delivery Plan to include its assessment of how, when, and at what cost, the transition may occur.” *Id.*

Despite its findings, in several respects the PFD did not make recommendations which align with its important conclusions regarding the energy transition. First, while the PFD correctly identified DTE's failure to consider the energy transition, the relief it ordered did not include a clear process or adequate detail on how the Company should remedy this issue. Second, the PFD approved the Infrastructure Recovery Mechanism ("IRM") at a time when the Commission must apply more, not less scrutiny to the Company's investment proposals. Third, the PFD relegated environmental justice and equity issues to other proceedings and workgroups rather than recommending that the Company incorporate these important considerations into its decision-making process. The CEO take exception to the PFD on each of these issues.

II. The PFD Correctly Identified DTE's Failure To Consider The Energy Transition But Fell Short of Recommending an Adequate Remedy

In testimony and in briefing, the CEO and other Intervenors critiqued the Company's rate case application and associated spending proposals for failing to properly consider and incorporate the impacts of electrification and compliance with the State's emissions reduction goals. CEO Opening Br. at 4-14; FLO Opening Br. at 28-38; MNSC Opening Br. at 85-86; City of Ann Arbor Opening Br. at 10-11. In addition, the CEO questioned the prudence of the Company's proposed significant increase in spending as the Company's demand has declined over time. CEO Opening Br. at 5-7. Ultimately, the CEO recommended that the Company use its Gas Delivery Plan to explore "the potential impact of electrification on its demand through scenario and sensitivity analysis." CEO Opening Br. at 13; Cebulko Refiled Direct, 4 TR 735. The CEO also urged the Commission to "order DTE to refile its rate case with proper consideration" of electrification and compliance with the State's emissions reduction goals, before approving the proposed spending in this case. CEO Opening Br. at 13.

The PFD correctly recognized that “our society is undergoing a fundamental energy transition in which society is shifting away from fossil fuels and towards renewable forms of energy.” PFD at 409. The PFD also found that “this energy transition may result [in] substantial reductions in the amount of gas delivered.” *Id.* The PFD recommended that “the Commission direct DTE to update its Gas Delivery Plan to include its assessment of how, when, and at what cost, the [energy] transition may occur.” *Id.* The PFD concluded that the Gas Delivery Plan is “a good avenue to set forth [DTE’s] preliminary assessment of how it expects the transition to take place and what the resultant changes or ramifications may be for the utility and the ratepayers.” *Id.*

The CEO commend the ALJ for making these important, necessary findings. However, the Commission must take a step further and provide additional detail to the recommendations in order to give the proper effect.

The CEO take exception to the PFD in its treatment of the energy transition in two respects. First, the PFD failed to identify the timeframe at which it expects the Company to modify its Gas Delivery Plan to account for the energy transition and the State’s emissions reduction goals. The CEO again recommend that the Commission order DTE to revise its Gas Delivery Plan *before* it approves any of the Company’s spending. CEO Opening Br. at 32. The Company failed to properly consider the impacts of declining demand, compliance with the State’s emissions reduction goals and the impact of electrification in proposing the spending in this case. Tellingly, the Company *did* recognize the risks associated with electrification and compliance with the State’s goals in terms of their own return on equity, but did not adjust its investment strategy to reflect this risk. CEO Reply Br. at 2-3. In particular, in its brief, the Company argued that it deserved higher return on equity due to risks associated with meeting the

State's goals, but did not undertake an analysis as it relates to its system. DTE Opening Br. at 75. The Commission should not find the Company's spending just and reasonable without consideration of these trends which will impact the viability of its capital investments in the future. Accordingly, the Commission should order the Company to revise and reconsider its Gas Delivery Plan and its spending in this case after proper consideration of these important issues.

Second, the PFD did not provide adequate detail about the type of planning the Company must do. The PFD only recommended that the Company "update its Gas Delivery Plan to include its assessment of how, when, and at what cost, the transition may occur." PFD at 408. However, the CEO proposed a much more comprehensive vision of the type of planning required. Although the trends are clear, exactly how the energy transition will unfold is uncertain. The Company must explore the potential impacts of electrification and compliance with the State's goals through scenario and sensitivity analysis. CEO Opening Br. at 13. The Company must also conduct this analysis with extensive input from stakeholders. The Commission should build off of the important findings made by the PFD and add important detail about the timing and extent of the analysis required by the Company to adequately show it appropriately considered the energy transition before seeking a rate increase.

III. The Commission Should Not Reauthorize the Infrastructure Recovery Mechanism

The CEO's opposition to the Infrastructure Recovery Mechanism ("IRM") ties directly back to the Company's failure to plan for the shifting energy landscape. In rebuttal testimony, CEO Witness Brad Cebulko supported the testimony of MNSC Witness Napoleon which raised several critical issues with the IRM. Napoleon Direct, 4 TR 905. Specifically, Witness Napoleon argued that the IRM disincentivizes DTE from minimizing costs, and that, once authorized, the IRM "lacks meaningful external review and opportunity for contestation." *Id.* Witness Napoleon also highlighted that "[o]ver three-quarters of the proposed IRM expenditures is for replacing old

pipes (which may or may not be leak prone).” *Id.* Instead of reflexively replacing old pipe, DTE must seriously entertain pipeline repair and other alternatives to contain costs and prepare for a future where its customers use less gas.

The PFD found DTE’s IRM proposal well supported. PFD at 92. Instead of adopting MNSC’s recommendations intended to limit the scope of the IRM and encourage analysis of alternatives, the PFD found DTE’s rebuttal persuasive without going into detail. *Id.*

In order to continue to maintain the gas system as demand declines due to electrification and compliance with the State’s emissions reduction goals, the Company must limit capital investment and comprehensively explore alternatives in order to keep costs down. The IRM is antithetical to that critical path forward. The IRM allows DTE to spend with certainty of cost recovery at a time where the Commission must more closely scrutinize investment. That is why the CEO recommended that “[t]he Commission should deny future approval for the IRM which has too little oversight, delivers the Company too great a degree of certainty, and ensures significant capital investment where the Company should be carefully reviewing alternatives.” CEO Opening Br. at 16. The PFD too quickly dismissed Intervenors’ important concerns about the IRM. The IRM delivers the Company cost certainty with little scrutiny of its investments at a time where careful scrutiny is called for and the Commission should not approve the continuation of the IRM.

IV. The PFD Failed to Order Sufficient Relief Regarding Equity and Energy Justice Analyses

In testimony and in briefing, the CEO and other Intervenors discussed the importance of comprehensive consideration of EJ communities as the Company creates its spending proposals and programs. CEO Opening Br. at 23-28; FLO Opening Br. at 12-17. In particular, CEO Witness Cebulko discussed the importance of utilizing the MiEJScreen Tool to understand the

interaction between the Company's investment decisions and its most vulnerable communities. CEO Opening Br. at 26-27; Cebulko Refiled Direct, 4 TR 757. In addition, the CEO suggested six additional metrics DTE could employ to help understand the impact of its policies on EJ communities, including analysis of average energy burden, disconnection rates, and participation in a variety of Company programs. CEO Opening Br. at 27; Cebulko Refiled Direct, 4 TR 758-59. The CEO further noted in briefing that DTE Electric utilizes the MiEJScreen Tool as part of the process in formulating its investment decisions. CEO Opening Br. at 28.

The PFD discussed the CEO's advocacy related to the MiEJScreen Tool and the importance of better metrics to understand the lived experience of vulnerable ratepayers, but ultimately failed to discuss or act on the CEO's recommendations. *See, e.g.*, PFD at 393. Instead, the PFD combined these considerations with broader concerns about energy assistance and found that it was not "appropriate to address these issues on this record in this rate case." PFD at 394. The PFD identified the Energy Access and Affordability Council ("EAAC") as the proper forum for such issues. *Id.*

The CEO take exception to the PFD's failure to properly adopt the detailed recommendations made around equity and energy justice. The PFD improperly treated all issues related to environmental and energy justice as the same, and determined EAAC should address them outside of the rate case process. However, the CEO's brief provided several examples of the Commission ordering DTE Electric in rate cases to more thoroughly incorporate EJ considerations into its planning process. CEO Opening Br. at 23-25. While EAAC is working to define key terms surrounding equity, the utility must carry the burden of ensuring its proposals are "just and reasonable," which inherently includes equity and consideration of all of its customers. *Id.*

The Commission should correct the PFD's failure to properly address equity by ordering DTE Gas to utilize the MiEJScreen Tool in its next case, and to adopt analyses of the metrics recommended by the CEO in briefing and testimony.

V. Conclusion

The CEO except to the Proposed Final Decision as outlined above and request that the Commission adopt these recommendations in reaching its final decision.

Respectfully submitted,



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Dated: September 25, 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 *Exceptions to the Proposed Final Decision by 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, September 25, 2024.

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

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