

# Potomac LAW GROUP

Potomac Law Group PLLC

1300 Pennsylvania Avenue N.W., Suite 700 | Washington, D.C. 20004  
T 202.204.3005 | F 202.318.7707 | www.potomaclaw.com

October 3, 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 Initial Brief of Energy Michigan, 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**

**INITIAL BRIEF  
OF  
ENERGY MICHIGAN**

Timothy J. Lundgren  
Justin K. Ooms  
Potomac Law Group PLLC  
Attorneys for  
Energy Michigan  
Lansing, MI 48933  
(708) 743-7173

Table of Contents

I. INTRODUCTION..... 1

II. ARGUMENT..... 1

A. **In setting the SRM Capacity Charge, DTE's purchase power costs of \$260,787 (000) should not be used in the determination of the SRM offsets..... 1**

1. The source of the \$260,787 (000) non-fuel purchased power costs. .... 3

2. The source of DTE’s offset revenues and true associated fuel costs. .... 5

3. The source of "fuel costs" that DTE uses for net offsets. .... 5

4. Correct number for offsets in the calculation of the SRM Capacity Charge. .... 6

5. DTE’s Rebuttal fails to establish a basis for these costs to be treated as fuel ..... 7

B. **Because of the Recent MISO Seasonal Capacity Obligation, the Present Method of Calculating the SRM Capacity Charge Should Be Revised to Meet Both the SRM Statute and the Cost-of-Service Statute..... 9**

1. DTE’s rebuttal fails to engage with Energy Michigan’s proposal and so can be disregarded. .... 11

2. Staff Rebuttal fails to adequately address Energy Michigan’s concerns.. 13

C. **Staff's Proposal to Include a "True-Up" to the SRM Capacity Charge in a Subsequent Year Even if No Customer Has Paid the SRM Capacity Charge Should be Rejected..... 14**

D. **The Staff Proposal to Set the SRM Capacity Charge at the Annual Cost of New Entry ("CONE") Should be Modified to Set the SRM Capacity Charge at the MISO Zonal Capacity Charge for the Season..... 17**

III. CONCLUSIONS AND PRAYER FOR RELIEF..... 20

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

INITIAL BRIEF  
OF  
ENERGY MICHIGAN

I. INTRODUCTION

This Initial Brief is filed on behalf of Energy Michigan (“Energy Michigan”)<sup>1</sup> by its attorneys, Potomac Law Group, PLLC. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

II. ARGUMENT

**A. In setting the SRM Capacity Charge, DTE's purchase power costs of \$260,787 (000) should not be used in the determination of the SRM offsets.**

[References in the Record:

- Energy Michigan witness Mr. Zakem, 6 (Part 2 revised) Tr 4163-4186 and 4187-4210. Exhibits EM-2, EM-3, EM-4, EM-5, EM6.
- DTE witness Mr. Burgdorf, 6 (Part 1) Tr 2348–2349. Exhibit A-16, Schedule F1.5 revised, page 1.
- Staff witness Mr. Pung, 6 (Part 3 revised) Tr 4939-4951.
- Staff witness Mr. Revere, 6 (Part 3 revised) Tr 4953-4965 and 4967-4984.]

<sup>1</sup> The positions expressed in this Initial Brief represent those of Energy Michigan as an organization and not necessarily the views of individual members of the organization with respect to any particular issue.

Under Section 6w of Public Act 341 of 2016, MCL 460.6w, the Michigan Public Service Commission (“MPSC” or the “Commission”) is required to calculate a State Reliability Mechanism capacity charge (referred to herein as the “SRM Capacity Charge”).<sup>2</sup> In order to include only capacity-related costs in the SRM Capacity Charge, the statute directs the Commission to exclude certain specified non-capacity-related costs:

(3)(b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:

- (i) all energy market sales.
- (ii) off-system energy sales.
- (iii) ancillary services sales.
- (iv) energy sales under unit-specific bilateral contracts.<sup>3</sup>

In the terminology of the SRM calculation, "projected revenues net of projected fuel costs" are commonly called "offsets." In the calculation of the offsets for the SRM Capacity Charge, DTE has included \$260,787 (000) of imputed cost of energy from certain purchased power contracts by (a) labeling such non-fuel costs as "fuel related" and then (b) using the costs as if they were actually fuel costs as specified in the SRM statute. As discussed more fully below, these “fuel related” costs are not fuel, and so \$260,787 (000) should be eliminated from the SRM calculation of offsets.<sup>4</sup>

It is worth remembering that DTE has a history before the Commission of attempting to inflate the fuel costs portion of its SRM calculations by inclusion of other non-fuel costs as “fuel-related.” In the Commission’s Order in DTE’s last electric rate case, U-21297, the Commission examined DTE’s attempts in that case to add “fuel-related” costs to fuel and upheld the Proposal

---

<sup>2</sup> See MCL 460.6w(3).

<sup>3</sup> Direct testimony of Mr. Alexander J. Zakem, 6 (Part 2 revised) Tr 4168; MCL 460.6w(3)(b) (emphasis added).

<sup>4</sup> Mr. Zakem, direct, 6 (Part 2 revised) Tr 4166, lines 14-18.

for Decision, which agreed with Energy Michigan's objections.<sup>5</sup> In doing so, the Commission noted that in the preceding case, No. U.-20836, and the one preceding that, U-20561, DTE had attempted to alter the Commission's requirement that the utility include only the statutorily approved fuel costs, and rejected all DTE's arguments seeking to expand the category of fuel. Here too the Commission should once again reject DTE's attempts to expand what costs are included as "fuel". DTE's attempts are a transparent effort to make the SRM "offsets" lower than they should be, so that the SRM Capacity Charge that would be applied to AESs and their customers is higher than it should be.

**1. The source of the \$260,787 (000) non-fuel purchased power costs.**

The concept and implementation of offsets are straightforward -- revenues net of fuel. Yet the tracking of how \$260,787 (000) of non-fuel purchased power costs ended up labeled as "fuel" by DTE required kind of a forensic audit of DTE's exhibits by Energy Michigan witness Mr. Alexander J. Zakem in his direct testimony. Mr. Zakem prepared five one-page exhibits that show the source of the \$260,787 (000) non-fuel purchased power costs and track how it ended up as a subtraction as fuel from offsets. This brief will summarize the path of this cost from its transformation from a non-fuel purchased power cost into a purported "fuel" cost used in the offsets.

An important distinction to note -- which will be addressed later in explaining DTE's rebuttal -- is that in the calculation of the SRM Capacity Charge there are two places where fuel is a factor, although they are not the same fuel costs. The first place is the cost of fuel that is contained within DTE's Net Production Costs, which is the starting point of the SRM calculation. This fuel number of \$914,888 (000) is subtracted out correctly on DTE's calculation on Exhibit A-16,

---

<sup>5</sup> See Order on 12/1/2023 in Case No. U-21297, U-21297-0649 pp. 300-303.

Schedule F1.5 Revised,<sup>6</sup> page 1 of 6, line 2. This number comes from the cost of service in this case, as Mr. Zakem shows on Exhibit EM-2. The second place where fuel is a factor is the projected fuel cost associated with the projected energy sales revenue in the calculation of the offsets.

Also to be noted is a subtraction from Net Production Costs also on A-16 / F1.5 Revised, page 1, line 5, entitled "Less Other Energy in PP (WP A16 F1 page 29, Line 8)." This number is also \$260,787 (000). Mr. Zakem's Exhibit EM-3 shows the source of this number, which is the sum of two purchased power costs, \$2,925 (000) and \$257,862,000, from two of DTE's exhibits<sup>7</sup> which footnoted that these costs are:

- (for the \$2,925) "Fuel Related Generation Cost based on the difference of total projected PURPA PSCR Cost and the Capacity Related Generation Cost," and
- (for the \$257,862) "Fuel Related Generation Cost based on the difference of total projected PA 295 PSCR Cost and the Capacity Related Generation Cost."

In simple terms, these two costs are neither capacity costs, having been excluded from that category by DTE, nor fuel costs. These costs are merely non-capacity costs left over when DTE subtracted the total costs of the purchased power from the amount that DTE designated as capacity costs, as DTE explains in footnotes to Exhibit A-26, Schedules P1 and P2. The total of the two costs (\$2,925 + \$257,862) equals \$260,787 and is a non-capacity cost that DTE labels "fuel related" but that is not fuel. Ultimately, the fact that the source of the \$260,787 (000) DTE wants to add to its "fuel" offset is nothing more than the cost of purchased power less the amount that DTE has deemed capacity costs is damning to DTE's claims that these are genuine fuel costs. See Exhibit EM-3.

---

<sup>6</sup> All citations to Exhibit A-16, Schedule F1.5 are to the revised version that DTE issued.

<sup>7</sup> Exhibit A-26, Schedule P1, page 1 line 12, column (f); and Exhibit A-26, Schedule P2, line 40, column (j).

**2. The source of DTE's offset revenues and true associated fuel costs.**

In direct testimony, DTE states that the projected revenues for the offsets are taken from a different case, Case No. U-21425, the 2024 PSCR Plan, for the projected year 2025. Mr. Zakem explains this and cites the DTE sources in his direct testimony for the projected revenue number for the offsets of \$2,184,379 (000).<sup>8</sup> Energy Michigan does not take issue with DTE's projected revenues number.

The true fuel cost associated with the projected revenue number for the offsets is also taken from the same 2024 PSCR Plan case, U-21425. Energy Michigan Exhibit EM-4 displays a copy of Exhibit A-14 from the 2024 PSCR Plan case which shows a true fuel number of \$940,245 (000) on line 39, column (c) for the projected year 2025.

**3. The source of "fuel costs" that DTE uses for net offsets.**

For netting projected fuel from the projected revenues in the determination of the net offsets, DTE does not use only the true fuel cost of \$940,245 (000) from the 2024 PSCR Plan case, which is the same case the projected revenues come from. Instead, DTE adds to the true fuel cost the non-capacity portion of the purchased power contracts, which as explained above total \$260,787 (000), to get a sum of \$1,201,032 (000), which is the number that DTE argues should be the projected "fuel" to be subtracted from the projected revenues to get the net offsets. Energy Michigan Exhibit EM-5 shows how the \$1,201,032 (000) was determined. DTE's determination of project fuel costs is simply wrong, because it combines the true projected fuel costs associated with projected revenues from the 2024 PSCR Plan case with non-fuel costs from purchased power in this proceeding, thus overstating the "fuel" costs that are used in calculating the offsets.

---

<sup>8</sup> Mr. Zakem, direct, 6 (Part 2 revised) Tr 4171-4172.

As Mr. Zakem explains, merely labeling something "fuel-related" -- as DTE does in its exhibits -- does not turn a non-fuel cost into fuel and does not follow the clear language of the SRM statute:

The plain language of the SRM statute states "net of projected fuel costs." It does not say "net of projected imputed fuel costs," or "net of projected PPA costs less capacity costs," or "net of all variable costs," or "net of projected fuel-related costs," or "net of all costs required to make the sale," or any other netted cost except fuel. The SRM statutory language is clear.<sup>9</sup>

DTE made no effort to establish record evidence that the costs from its power purchase agreements which it labeled "fuel related" are actually fuel costs.<sup>10</sup> Therefore, the Commission should find that the "fuel cost" that DTE uses in netting the offsets for the SRM Capacity Charge is improperly calculated, as it is the sum of (a) true fuel costs of \$940,245 (000) from the 2025 projections in the 2024 PSCR Plan case plus (b) the \$260,787 (000) non-capacity portion of purchased power costs in this proceeding, U-21534. That sum is \$1,201,032 (000). See Exhibit EM-5.

#### **4. Correct number for offsets in the calculation of the SRM Capacity Charge.**

Net offsets consist of projected revenues less projected fuel costs that are associated with the projected revenues. MCL 460.6w(3)(b). Therefore, the greater the projected fuel costs, the lower the net offsets.

As discussed above, DTE uses a "projected fuel cost" number of \$1,201,032 (000) -- which includes non-fuel purchased power costs of \$260,787 (000) -- instead of the true associated fuel cost of \$940,245 (000), thus overstating the "fuel cost" by \$260,787 (000). Consequently, the calculated net offsets are too low by \$260,787 (000) in the determination of the SRM Capacity

---

<sup>9</sup> Mr. Zakem, direct, 6 (Part 2 revised) Tr 4174, lines 19-23.

<sup>10</sup> DTE has PPAs with hydro, solar, and wind-based generating facilities for instance, none of which include "fuel" costs as part of their operations, as their "fuel" is effectively free. DTE provides no indication that it has attempted to account for this in its calculation of "fuel related" costs in its PPAs.

Charge in DTE's Exhibit A-16, Schedule F1.5 revised, page 1, column (a). This error -- caused by a misuse of the "fuel" label -- has to be corrected.

Energy Michigan Exhibit EM-6 shows the correction to DTE's proposed SRM Capacity Charge. Lines 1 through 9c are the same as proposed by DTE. Lines 9d and 9e in column (b) show DTE's imputed "fuel-related" costs from the power purchases -- \$2,925 on line 9d and \$257,862 -- which total the \$260,787 (000) explained previously. The result is that DTE's Projected 2025 Energy Sales Revenue Net of Fuel in column (b) on line 9 is a negative \$983,347 (000). This is incorrect.

Lines 9d and 9e in column (c) show the correction Energy Michigan has made by removing the imputed "fuel-related" costs and setting them to zero. The subsequent lines in column (c) simply recalculate the SRM Capacity Charge using the corrected value for projected fuel in the projected revenues. Energy Michigan's proposed revision to the offset results in a Projected 2025 Energy Sales Revenue Net of Fuel in column (c) line 9 of a negative \$1,244,134 (000), the corrected value. This is a larger number -- in the negative direction for the purpose of subtraction -- than DTE's proposed value.

The result of this correction is that DTE's proposed SRM Capacity Charge on line 17 of \$217.30 per MW-day is revised to \$159.10 per MW-day.

Energy Michigan recommends that the Commission adopt as the correct number for projected revenue net of projected fuel the value of \$1,244,134 (000) as shown on Exhibit EM-6, column (c), line 9. This would result in the Commission setting the associated correct SRM Capacity Charge at \$159.10 per MW-day.

**5. DTE's Rebuttal fails to establish a basis for these costs to be treated as fuel**

DTE's rebuttal appears to not express a thorough understanding of the SRM Capacity Charge calculation, and fails to provide evidence that the "fuel-related costs" are either capacity

or actual fuel costs. Thus, in response to Energy Michigan's testimony and analysis of DTE's exhibits showing that the \$260,787 (000) is merely a cost left over when capacity and fuel are removed, DTE offers no explanation or evidence to establish that the \$260,787 (000) is actually fuel. Instead, DTE states that "If the \$260.787 million is not considered "fuel", then this amount would be considered a capacity related cost."<sup>11</sup> This argument is not logical, as there are costs associated with PPA pricing that are neither a capacity cost nor a fuel cost, that is, simply non-capacity costs that are not fuel. This is the basic error that DTE has made that is the focus of Energy Michigan's testimony. The Commission should note that DTE itself specified the capacity portion of its purchased power contracts, so it cannot now lightly revise those values in rebuttal and particularly not in the absence of some evidence that those additional costs really are capacity. Just because the remaining portion is not fuel does not automatically turn that remaining portion into "capacity." As simple assertion that these costs are fuel is insufficient; nor is a simple assertion that these costs are capacity sufficient. DTE pretends that there is some logical impossibility to these costs being something other than fuel or capacity, but it has not demonstrated that PPA costs must be one or the other. Merely changing a label is not enough for DTE to be able to turn non-capacity costs into fuel costs if they are not, in fact, fuel, and likewise it cannot turn non-capacity into capacity if it is not, in fact, capacity.

Further, DTE has already determined and admitted in its exhibits (see Exhibit EM-3) that the \$260,787 (000) is not capacity, because it subtracts that amount from production costs on A-16 / F1.5 page 1, line 5. DTE's rebuttal fails to address the fuel definition and should therefore be given no weight.

---

<sup>11</sup> Rebuttal testimony of Mr. Shaun D. Burgdorf, 6 (Part 1) Tr 2348, lines 21-22. [Emphasis added.]

DTE's \$260,787 (000) in “fuel-related” costs are merely the remaining purchased power costs when DTE has removed the capacity costs. As such, that value should be removed from "projected fuel costs" in the determination of the offsets, as Energy Michigan has shown.

**B. Because of the Recent MISO Seasonal Capacity Obligation, the Present Method of Calculating the SRM Capacity Charge Should Be Revised to Meet Both the SRM Statute and the Cost-of-Service Statute.**

*[References in the Record:*

- *Energy Michigan witness Mr. Zakem, 6 (Part 2 revised) Tr 4163-4186.*
- *DTE witness Mr. Burgdorf, 6 (Part 1) Tr 2346-2352.*
- *Staff witness Mr. Revere, 6 (Part 3 revised) Tr 4967-4984.]*

The Midwest Independent System Operator ("MISO") sets the capacity obligations for all suppliers, whether regulated utilities or Alternative Electric Suppliers ("AESs"). Beginning in Planning Year 2023-2024 (starting June 1, 2023), MISO changed its capacity obligations from a single annual value to four varying seasonal values. As Mr. Zakem explained, "Virtually every relevant factor -- such as load forecasts, Planning Reserve Margin %, PRMR, Local Clearing Requirements, Auction Clearing Prices, accredited capacity values of resources, etc. -- are now evaluated and expressed by four seasonal values, not by one annual value."<sup>12</sup>

In simple terms, the SRM process was intended to accomplish the following: if an AES does not demonstrate that it will meet its capacity obligation to MISO, then the AES will pay the SRM Capacity Charge to the local utility, and the local utility will take on the responsibility for meeting the AES's capacity obligation to MISO. The taking on of that responsibility is a service that the utility provides to the AES. That service has a cost, and that cost now varies by season. Yet the current method of determining the cost of the SRM Capacity Charge results in an annual charge. Consequently, the Cost-of-Service statute (MCL 460.11(1)) comes into play.

---

<sup>12</sup> Mr. Zakem, direct, 6 (Part 2 revised) Tr 4178 line 20 to 4179 line 2.

Energy Michigan witness Mr. Zakem explains that an annual SRM Capacity Charge results in quite a different cost to the AES for the service it receives from the utility, compared to the seasonal cost of satisfying MISO's seasonal capacity obligation, and gives an example using current values.<sup>13</sup> To be consistent with cost-of-service principles, Mr. Zakem recommends that the SRM Capacity Charge be set at the MISO seasonal price of capacity, which is the seasonal Auction price:

A workable and fair solution would be to set the SRM Capacity Charge at the MISO seasonal Auction Clearing Price and apply that charge to the MW value of the deficiency, for the days of the season that an LSE is deficient. This would comport exactly with the cost of providing the service -- the service of satisfying the MISO capacity obligation -- that the LSE/customer receives. This option is exactly consistent with the plain words of the Cost-of-Service statute.<sup>14</sup>

Mr. Zakem explains that the following benefits would flow out of implementation of this recommendation:

- Paying the MISO price reimburses the utility exactly the cost of providing service, and therefore it is consistent with the Cost-of-Service statute.
- It does not harm the utility's full-service customers.
- It does not create a subsidy to either the utility's full-service customers or the AES's electric choice customers.
- It does not provide electric choice customers with "temporary capacity."
- It keeps the local utility neutral if the utility has to satisfy another AES's capacity obligations under the SRM statute.
- It allows the Commission to maintain its capacity demonstration requirements, which are now by season.

---

<sup>13</sup> Mr. Zakem, direct, 6 (Part 2 revised) Tr 4181-4182.

<sup>14</sup> Mr. Zakem, direct, 6 (Part 2 revised) Tr 4182 lines 16-23.

- It maintains the function of the SRM statute that the local utility must satisfy the capacity obligation to MISO for any load serving entity ("LSE" -- which includes AESs) under the capacity demonstration process.

Energy Michigan sees that setting the SRM Capacity Charge at the MISO seasonal Auction price is reasonably consistent with the SRM statute and can be implemented by the Commission as a blend of (a) following the Cost-of-Service statute and (b) following the SRM statute. The wording of the SRM statute does not envision anything other than an annual charge. Yet because MISO has changed to seasonal capacity obligations, an annual charge now creates a conflict with the Cost-of-Service statute.

Energy Michigan's recommendation reimburses the utility exactly the cost of the service it provides, does not harm any party, and allows the Commission to continue its capacity demonstration process, which the Commission has already changed to a seasonal demonstration process.

**1. DTE's rebuttal fails to engage with Energy Michigan's proposal and so can be disregarded.**

In its rebuttal testimony, DTE opposes Energy Michigan's recommendation to set the SRM Capacity Charge seasonally, based on the MISO seasonal Auction price. DTE's rationale is the increase in work load for DTE. Some examples in DTE's rebuttal:

- "will create [an] unnecessary additional burden"
- "believes that an annual allocation is sufficient"
- "will substantially increase the time required to break out the costs by season as there is currently no breakdown by season"
- "the annual rate combined with the reconciliation recovers the same costs as rates for all four seasons, thus the extra effort to create seasonal rates would not be beneficial."<sup>15</sup>

---

<sup>15</sup> Mr. Burgdorf rebuttal, 6 (Part 1) Tr 2349-2350.

DTE's rationale is correct **IF** the solution being proposed were to do the current annual analysis four times per year, once for each season. However, this is not what Energy Michigan is proposing. It appears that DTE has misinterpreted Energy Michigan's proposal, which is to set the SRM Capacity Charge at an existing, visible, cost-based price that MISO sets by season, the MISO seasonal Auction price, and bill the charge directly by MW rather than include the charge in the design of each rate as is done presently. The amount of analytical effort to accomplish this is virtually zero, because the price is determined by MISO.

Energy Michigan's proposal is not to repeat the existing annual method by season and thus create four times as much work and four rate designs. Further, under Energy Michigan's proposal, no reconciliation would have to be done, because the charge paid by the customer for receiving the service would be exactly equal to the cost to the utility for providing the service -- which is the point of our proposal, along with multiple other benefits that have been explained previously. Energy Michigan's proposal would in fact decrease the amount of work that DTE currently invests in determining and gaining regulatory approval for an annual SRM Capacity Charge, let alone billing and reconciling that charge if it were ever applied.

Energy Michigan has explained that given the present MISO capacity obligations by season, an SRM Capacity Charge determined by annual analysis does not and cannot fit with the Cost-of-Service statute. We cannot recommend or support a method that would make the Commission violate the Cost-of-Service statute. Using the MISO seasonal Auction price is much more effective, efficient, and consistent with cost-of-service.

Since DTE's rebuttal does not address Energy Michigan's actual proposal, the rebuttal should be disregarded.

DTE also objects to Energy Michigan's recommendation because of DTE's assessment of MISO's resource adequacy process as not ensuring long-term resource adequacy.<sup>16</sup> There certainly have been a variety of perspectives over the last 10 to 12 years on the effectiveness of the MISO process, and DTE is entitled to its opinions. Likewise, in Energy Michigan's view, the current SRM Capacity Charge process arguably has no effect on resource adequacy, either. Nevertheless, the process is in the statutes and the Commission must do its best to implement it in a reasonable manner, considering all statutory requirements.

If DTE wants to argue for a change that is not being currently implemented by the Commission, then the avenue is to propose a change to the Commission in a contested case proceeding, as Energy Michigan is doing in this proceeding. If DTE believes that the MISO resource adequacy process is not effective, then the avenue is to communicate its concerns to MISO.

**2. Staff Rebuttal fails to adequately address Energy Michigan's concerns.**

The Staff does not agree with Energy Michigan's proposal to set the SRM Capacity Charge at the MISO seasonal Auction price. This appears to be based on three beliefs about MISO's resource adequacy framework:

1. MISO nets out the amount charged to an LSE and paid to the LSE and charges only for the amount the LSE is short.
2. The cost of an LSE satisfying the MISO capacity requirement is the cost to the LSE of obtaining Zonal Resource Credits ahead of the Auction.
3. The cost to meet MISO's capacity obligations is really the cost in a retail customer's rate after the SRM Capacity Charge is allocated across retail rates.<sup>17</sup>

---

<sup>16</sup> Mr. Burgdorf rebuttal, 6(Part 1) Tr 2350-2351. [Emphasis added.]

<sup>17</sup> See rebuttal testimony of Mr. Nicholas M. Revere, 6 (Part 3 revised) Tr 4968-4970.

Numbers 1 and 2 are opinions, and Staff does not provide and supporting evidence nor cite to applicable MISO tariff provisions in support of them. Mr. Zakem has long experience in MISO, including working under the tariff provisions at issue here. This experience gives him an understanding of and expertise in the MISO tariff. Energy Michigan believes that the Staff has misinterpreted some of the language in the MISO tariff, perhaps due to a lack of understanding of the background of that language and a misapprehension of the distinction between engineering jargon and literal meaning.

Further, regarding number 3, the "cost" that is relevant to the service to an AES of the utility satisfying the AES's capacity obligation to MISO is the cost to the utility, not the cost to the customer. Energy Michigan makes this clear in its recommendation and explanation. The focus is the cost to the utility of providing the service of satisfying an AES's capacity obligation to MISO. If the cost to the utility of providing a service and the charge to the customer for receiving the service are not the same, then there arises the possibility of conflict between the cost-of-service statute and the capacity charge requirement.

For these reasons, the Staff rebuttal should be disregarded by the Commission when evaluating Energy Michigan's recommendation.

**C. Staff's Proposal to Include a "True-Up" to the SRM Capacity Charge in a Subsequent Year Even if No Customer Has Paid the SRM Capacity Charge Should be Rejected.**

*[References in the Record:*

- *Energy Michigan witness Mr. Zakem, 6 (Part 2 revised) Tr 4187-4210*
- *DTE witness Mr. Burgdorf, 6 (Part 1) Tr 2333-2345*
- *Staff witness Mr. Pung, 6 (Part 3 revised) Tr 4939-4951.]*

The SRM statute provides for a true-up in the calculation of the SRM Capacity Charge.

The commission shall provide for a true-up mechanism that results in a utility charge or credit for the difference between the projected net revenues described in subsection (3) and the actual net revenues reflected in the capacity charge. The true-up shall be reflected in the capacity charge in the

subsequent year. The methodology used to set the capacity charge shall be the same methodology used in the true-up for the applicable planning year.<sup>18</sup>

The purpose of the true-up is this: The SRM Capacity Charges includes projected revenues and projected fuel. Both the utility and the AES/customer should be protected from mere errors in forecasting. So, at some point the offsets that were determined from projected numbers should be true-up to actual numbers when the future time arrives, and the difference is to be put back into the next SRM Capacity Charge. True-up amounts have the potential to be quite large.

The intent of the statute might be rational, but the guide for practical implementation does not make much sense. DTE appears to recognize the dilemma. In its calculation of the SRM Capacity Charge, DTE did not include a reconciliation or "true-up" of previous charges. DTE explains:

The Company currently has no electric choice customers being assessed a capacity charge, thus no reconciliation with any customers has been previously done. The Company files a reconciliation exhibit in the annual PSCR Reconciliation case that would be used for any reconciliation adjustment if a customer were to be charged the SRM.<sup>19</sup>

If no customers have been assessed an SRM Capacity Charge, there is nothing to reconcile or true-up. Energy Michigan agrees that this makes practical sense.

The Staff, however, propose to add a true-up from a previous SRM Capacity Charge to the calculation in this case, whether or not anyone has paid the SRM Capacity Charge:

Staff interprets this section as requiring that a reconciliation be performed and included in the capacity charge calculation each year, regardless of whether a charge was administered in that year or not.<sup>20</sup>

The Staff's true-up amount is \$168.1 million -- a significant amount of money to include in a charge to reconcile a previous charge that no one has paid.

---

<sup>18</sup> MCL 460.6w(4).

<sup>19</sup> Mr. Burgdorf, direct, 6(Part 1) Tr 2344 line 23 to 2345 line 2.

<sup>20</sup> Direct testimony of Mr. Mark J. Pung, 6 (Part 3 revised) Tr 4947, lines 5-7.

In his rebuttal testimony, Mr. Zakem notes: "The SRM statute was a negotiated deal, not a cooperative problem-solving effort. As such, it has a number of flaws that are obstacles to a fair and accurate implementation."<sup>21</sup> The basic flaw in the true-up is a mis-match of timing:

The main operational flaw is that the true-up is supposed to be "reflected in the capacity charge in the subsequent year." This does not make sense if the intent is to adjust the SRM capacity charge already paid by a customer for the current year.<sup>22</sup>

Mr. Zakem provides a couple of examples -- which we will not repeat in this brief -- in straightforward arithmetic that illustrate that no matter how long or when a customer pays the SRM Capacity Charge, the true up is always in error, concluding:

. . . under the present method of implementing a true-up, (a) the first year that a customer pays the SRM capacity charge, the charge is always in error and (b) the last year -- in a sequence of years -- that a customer pays the SRM capacity charge, the charge always is in error. Further, and consequently, if a customer pays the SRM capacity charge for only one year, then the customer is subject to both errors.<sup>23</sup>

The true-up process presumably exists to protect both the customer and the utility from errors in forecasting energy market revenues and fuel costs. The Commission can use the cost-of-service statute to implement the true up process in a fair and accurate way that works for both customer and utility. Energy Michigan recommends that the Staff's proposed true-up amount of \$168.1 million be eliminated, to be replaced by a method based on three principles that better reflect the actual cost of service:

- a. ***True up only if charged*** -- True-up to energy sales and fuel if and only if a customer actually pays the SRM Capacity Charge.

---

<sup>21</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4190 lines 3-5.

<sup>22</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4190 lines 8-10.

<sup>23</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4192, lines 8-12. (Emphasis added.)

- b. ***Apply the SRM Capacity Charge the same way it is determined, by MW*** -- apply the SRM Capacity Charge directly to the MW of deficiency, rather than spread to rate classes in rates and collected over energy and demand.
- c. ***True up the same way the SRM Capacity Charge is applied, by MW*** -- the true-up should be paid or collected using the same MW number for which the customer paid the SRM Capacity Charge. If the customer was assessed 1 MW of SRM, then the customer gets 1 MW of true-up.<sup>24</sup>
- D. The Staff Proposal to Set the SRM Capacity Charge at the Annual Cost of New Entry ("CONE") Should be Modified to Set the SRM Capacity Charge at the MISO Zonal Capacity Charge for the Season.**

[References in the Record:

- Energy Michigan witness Mr. Zakem, 6 (Part 2 revised) Tr 4187-4210
- Staff witness Mr. Revere, 6 (Part 3 revised) Tr 4953-4965 and 4967-4984.]

In its direct testimony, the Staff recommends that the Commission consider setting the SRM Capacity Charge to the cost of new entry ("CONE").<sup>25</sup> CONE is an economic term meaning the minimum cost for a new supplier to enter a market. In the electric industry, and in this discussion, the term refers to the minimum cost to provide MISO with only "capacity," meaning without any additional costs that would provide some other benefits such as low priced energy or ancillary services, and without any running costs.<sup>26</sup> Capacity and capacity obligations is the subject of the SRM statute. Staff lists several issues with the current method of determining the SRM Capacity Charge.<sup>27</sup> Energy Michigan agrees with these issues, and Mr. Zakem listed several additional problematic issues in his rebuttal testimony,<sup>28</sup> concluding:

---

<sup>24</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised), Tr 4195-4196

<sup>25</sup> Direct testimony of Mr. Nicholas M. Revere, 6 (Part 3 revised) Tr 4961-4965.

<sup>26</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4197 lines 12-16.

<sup>27</sup> Mr. Revere, direct, 6 (Part 3 revised) Tr 4962 lines 1-11.

<sup>28</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4200-4201

Current implementation methods are sinking the SRM implementation under its own weight, so to speak, from the complexities of compensating for the flaws in the statute.

It is time for the Commission to take a fresh look at the implementation of the SRM statute and create a fair and workable implementation method based on the cost-of-service statute, MCL 460.11(1).<sup>29</sup>

The Staff and Energy Michigan appear to agree on the diagnosis. The optimal remedy is to be determined. The Staff's proposal is tied to cost allocation principles, proposing concepts it believes are workable, although not anchored only to the CONE idea. The Staff is offering an alternative method to the Commission, presenting a general idea of how it would work -- a potential remedy, rather than a single prescription, with room for adjustments by the Commission:

Costs currently allocated using the production cost allocator and other capacity-related costs would be the starting point for this determination. Then the percentage applied to determine which of those costs are capacity-related would be set at the percentage necessary to make the resulting amount equal to CONE or some other measure of the value of capacity, as determined by the Commission. This would treat all costs in excess of CONE (or the Commission's chosen value of capacity) as non-capacity-related costs.<sup>30</sup>

Some type of energy offset is also part of the Staff's concept:

. . . the revenue produced from energy sales into the market resulting from plants producing above the use of the Company's customers should be included as an offset to the cost of the capacity used to produce that energy. In fact, Section 6w(3)(b) of Act 341 expressly requires revenue from "all energy market sales" be included as an offset to the cost of capacity.<sup>31</sup>

Energy Michigan understands that the Staff's proposal here is in an early stage, more a potential improvement than a final, implementable prescription. There is no mention of fuel costs

---

<sup>29</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4201 lines 8-14.

<sup>30</sup> Mr. Revere, rebuttal, 6 (Part 3 revised) Tr 4964 lines 2-7.

<sup>31</sup> Mr. Revere, rebuttal, 6 (Part 3 revised) Tr 4964 lines 18-22.

associated with energy sales offsets, and the Staff did not carry its proposal to the point of calculating an SRM Capacity Charge consistent with its proposal.<sup>32</sup>

Using the CONE as an SRM Capacity Charge has been proposed previously, in some of the original SRM cases. The context now is different from the context then. Primarily, MISO switched to a seasonal resource adequacy construct in 2023. This rendered an annual "cost of new entry" obsolete with respect to MISO's seasonal capacity obligations. Further, the SRM statute assumes annual obligations and annual cost calculations. Finally, the issue of allowing a utility to satisfy an AES's capacity obligations by paying MISO money while at the same time barring the AES from paying the same money to MISO in its capacity demonstration is still unresolved.

As Mr. Zakem noted, and as quoted earlier, the SRM statute was a negotiation outcome and has a number of flaws. Circumstances have changed since the initial SRM cases. There are four complexities that are created by implementing an annual CONE for the SRM Capacity charge,<sup>33</sup> summarized as follows:

1. A demonstration of capacity sufficiency under the SRM statute now can be done only by season.
2. A single annualized CONE does not fit a utility's cost of satisfying an AES's capacity obligation to MISO.
3. The annual Auction price used to have a cap of annual CONE, but now with the seasonal auctions, the seasonal auction prices could be CONE, or 1-1/3 times CONE, or two times CONE, or four times CONE.
4. MISO continues to develop and change its capacity obligations structure. A recently approved "Reliability Based Demand Curve" will result in Auction prices

---

<sup>32</sup> Mr. Revere, rebuttal, 7 (Part 3 revised) Tr 4965 lines 9-11.

<sup>33</sup> See Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4025-4026.

higher than the highest priced capacity needed to meet the MISO region requirement, plus raise the total capacity obligation higher than the greatest amount of capacity needed to meet the MISO reliability standard.<sup>34</sup>

Applying an annualized CONE value to MISO capacity obligations now determined, valued, and paid by season does not reflect cost-of-service principles and may conflict with the cost-of-service statute MCL 460.11(1). The Staff's concept of an SRM Capacity Charge based on an annual CONE value cannot be seen to work under present circumstances.

In its rebuttal testimony, Energy Michigan reiterated the merits of setting the SRM Capacity Charge to the seasonal Auction price. Doing so would result in seven specific benefits<sup>35</sup> and would be a superior solution to setting the SRM Capacity Charge to CONE under present circumstances. Therefore, the Staff's proposal to set the SRM Capacity Charge to CONE should be denied.

### **III. CONCLUSIONS AND PRAYER FOR RELIEF**

WHEREFORE, Energy Michigan respectfully requests that the Commission:

- (a) Eliminate DTE's inclusion of \$260,787 (000) of purchased power costs from the calculation of the SRM Capacity Charge;
- (b) Set the SRM Capacity Charge at the MISO seasonal Auction price;
- (c) Deny the Staff's proposal to add a true-up amount of \$168.1 million into the calculation of the SRM Capacity Charge, and instead incorporate Energy Michigan's proposal for implementing a true-up.
- (d) Deny the Staff's proposal to set the SRM Capacity Charge at the cost of new entry ("CONE").

---

<sup>34</sup> Federal Energy Regulatory Commission, docket ER23-2977, order June 27, 2024.

<sup>35</sup> Mr. Zakem, rebuttal, 6 (Part 2 revised) Tr 4208-4209.

Respectfully submitted,

Potomac Law Group PLLC  
Attorneys for Energy Michigan

October 3, 2024

By: \_\_\_\_\_  
Timothy J. Lundgren (P62807)  
Justin K. Ooms (P82065)  
Potomac Law Group, PLLC  
120 N. Washington Square, Ste. 300  
Lansing, MI 48933  
(616) 915-3726

**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 3<sup>rd</sup> day of October, 2024 she served a copy of the Initial Brief of Energy Michigan, via email, upon those individuals listed on the attached Service List via email.

\_\_\_\_\_  
Summer R. Dukes

<p><b><u>Administrative Law Judge</u></b>  Honorable Sally L. Wallace  <a href="mailto:Wallaces2@michigan.gov">Wallaces2@michigan.gov</a></p> <p><b><u>The City of Ann Arbor</u></b>  Valerie Jackson  Valerie J.M. Brader  <a href="mailto:vjackson@a2gov.org">vjackson@a2gov.org</a>  <a href="mailto:valerie@rivenoaklaw.com">valerie@rivenoaklaw.com</a></p> <p><b><u>Attorney General Dana Nessel</u></b>  Joel B. King  <a href="mailto:Kingj38@michigan.gov">Kingj38@michigan.gov</a>  <a href="mailto:ag-enra-spec-lit@michigan.gov">ag-enra-spec-lit@michigan.gov</a></p> <p><b><u>DTE Electric Company</u></b>  Jon P. Christinidis  Andrea E. Hayden  Paula Johnson-Bacon  John A. Janiszewski  Breanne K. Reitzel  <a href="mailto:Jon.christinidis@dteenergy.com">Jon.christinidis@dteenergy.com</a>  <a href="mailto:Andrea.hayden@dteenergy.com">Andrea.hayden@dteenergy.com</a>  <a href="mailto:Paula.bacon@dteenergy.com">Paula.bacon@dteenergy.com</a>  <a href="mailto:John.janiszewski@dteenergy.com">John.janiszewski@dteenergy.com</a>  <a href="mailto:Breanne.reitzel@dteenergy.com">Breanne.reitzel@dteenergy.com</a>  <a href="mailto:mpscfilings@dteenergy.com">mpscfilings@dteenergy.com</a></p> <p><b><u>Michigan Environmental Council (MEC)</u></b>  <b><u>Natural Resources Defense Council (NRDC)</u></b>  Christopher M. Bzdok  Tracy Jane Andrews  <a href="mailto:chris@tropospherelegal.com">chris@tropospherelegal.com</a>  <a href="mailto:tjandrews@tropospherelegal.com">tjandrews@tropospherelegal.com</a></p> <p><b><u>Great Lakes Renewable Energy Association</u></b>  Don L. Keskey  Brian W. Coyer  <a href="mailto:donkeskey@publiclawresourcecenter.com">donkeskey@publiclawresourcecenter.com</a>  <a href="mailto:bwcoyer@publiclawresourcecenter.com">bwcoyer@publiclawresourcecenter.com</a></p>	<p><b><u>MPSC Staff</u></b>  Amit T. Singh  Heather M.S. Durian  Michael J. Orris  Monica M. Stephens  Lori Mayabb  <a href="mailto:Singha9@michigan.gov">Singha9@michigan.gov</a>  <a href="mailto:durianh@michigan.gov">durianh@michigan.gov</a>  <a href="mailto:orrism@michigan.gov">orrism@michigan.gov</a>  <a href="mailto:stephensm11@michigan.gov">stephensm11@michigan.gov</a>  <a href="mailto:mayabbl@michigan.gov">mayabbl@michigan.gov</a></p> <p><b><u>Michigan Energy Innovation Business Council</u></b>  <b><u>Institute for Energy Innovation</u></b>  <b><u>Advanced Energy United</u></b>  <b><u>The Foundry Association of Michigan</u></b>  <b><u>Energy Michigan, Inc.</u></b>  Laura A. Chappelle Timothy  J. Lundgren  Justin K. Ooms  <a href="mailto:Ichappelle@potomaclaw.com">Ichappelle@potomaclaw.com</a>  <a href="mailto:tlundgren@potomaclaw.com">tlundgren@potomaclaw.com</a>  <a href="mailto:jooms@potomaclaw.com">jooms@potomaclaw.com</a></p> <p><b><u>PROTEC</u></b>  Michael J. Watza  <a href="mailto:Mike.watza@kitch.com">Mike.watza@kitch.com</a></p> <p><b><u>Walmart, Inc.</u></b>  Melissa M. Horne  <a href="mailto:mhorne@hcc-law.com">mhorne@hcc-law.com</a></p> <p><b><u>UWUA Local 223</u></b>  Benjamin King  <a href="mailto:bking@michworkerlaw.com">bking@michworkerlaw.com</a></p> <p><b><u>The Kroger Co.</u></b>  Kurt J. Boehm  Jody Kyler Cohn  Justin Bieber  <a href="mailto:kboehm@bkllawfirm.com">kboehm@bkllawfirm.com</a>  <a href="mailto:jkylercohn@bkllawfirm.com">jkylercohn@bkllawfirm.com</a>  <a href="mailto:jbieber@energystrat.com">jbieber@energystrat.com</a></p>
--	--

**EVgo Services, LLC**

Nikhil Vijaykar  
David Nacht  
Alicia Zaloga  
Lindsey Stegall  
Michael G. Oliva  
[nvijaykar@keyesfox.com](mailto:nvijaykar@keyesfox.com)  
[dnacht@nachtlaw.com](mailto:dnacht@nachtlaw.com)  
[azaloga@keyesfox.com](mailto:azaloga@keyesfox.com)  
[lindsey.stegall@evgo.com](mailto:lindsey.stegall@evgo.com)  
[moliva@fosterswift.com](mailto:moliva@fosterswift.com)

**Association of Businesses Advocating Tariff**

**Equity (ABATE)**

Stephen A. Campbell  
Michael J. Pattwell  
[scampbell@clarkhill.com](mailto:scampbell@clarkhill.com)  
[mpattwell@clarkhill.com](mailto:mpattwell@clarkhill.com)

**Environmental Law & Policy Center (ELPC)**

**Union of Concerned Scientists, Inc.**

**Vote Solar**

**The Ecology Center**

Nicholas N. Wallace  
Daniel Abrams  
Alonda Estrada  
[nwallace@elpc.org](mailto:nwallace@elpc.org)  
[dabrams@elpc.org](mailto:dabrams@elpc.org)  
[aestrada@elpc.org](mailto:aestrada@elpc.org)

**Soulardarity**

**We Want Green, Too**

Amanda Urban  
Mark N. Templeton  
Jacob R. Schuhardt  
D. Samuel Heppell  
Madison S. Wilson  
[t-9aurba@lawclinic.uchicago.edu](mailto:t-9aurba@lawclinic.uchicago.edu)  
[templeton@uchicago.edu](mailto:templeton@uchicago.edu)  
[jschuhardt@uchicago.edu](mailto:jschuhardt@uchicago.edu)  
[heppel@uchicago.edu](mailto:heppel@uchicago.edu)  
[madisonwilson@uchicago.edu](mailto:madisonwilson@uchicago.edu)

**Electrify America, LLC**

Jennifer Morante  
Stephen Bright  
Krystal D. Hermiz  
[jmorante@grsm.com](mailto:jmorante@grsm.com)  
[steve.bright@electrifyamerica.com](mailto:steve.bright@electrifyamerica.com)  
[khermiz@grsm.com](mailto:khermiz@grsm.com)

**Michigan Cable Telecommunications**

**Association**

Sean P. Gallagher  
[sgallagher@fraserlawfirm.com](mailto:sgallagher@fraserlawfirm.com)

**International Transmission Company**

Richard J. Aaron  
Olivia R.C.A. Flower  
Hannah E. Buzolits  
Courtney F. Kissel  
[raaron@dykema.com](mailto:raaron@dykema.com)  
[oflower@dykema.com](mailto:oflower@dykema.com)  
[hbuzolits@dykema.com](mailto:hbuzolits@dykema.com)  
[ckissel@dykema.com](mailto:ckissel@dykema.com)

**Intervenor EVgo Services LLC**

Michael G. Oliva  
[moliva@fosterswift.com](mailto:moliva@fosterswift.com)