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 for the generation and distribution of electricity and for other relief.	U-21534 ALJ Sally Wallace

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INITIAL BRIEF OF THE

THE MICHIGAN MUNICIPAL ASSOCIATION FOR UTILITY ISSUES

October 3, 2024

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I. RATE BASE: COORDINATION WITH MUNICIPAL WORK[1]

A number of witnesses offered testimony regarding the potential to reduce costs of underground infrastructure projects through coordination with other utilities and other work by local governments in the right of way. These witnesses were MI-MAUI witness Bunch (6 Tr 4354-4364), DTE witness Kryscynski (3 Tr 101-02 and rebuttal 3 Tr 457-65) and Ann Arbor witnesses Stewart (6 Tr 4235-40) and Stults (6 Tr 4265-67).

A. The Company Failed to Comply with the Commission's Order in U-21297 Regarding Coordination

In the prior rate case, the commission ordered DTE to include in this case "a demonstration of its efforts to improve communication and coordination with local governments regarding construction activities." Order, p. 361, Case No. U-21297 (Dec. 1, 2023). DTE's rate case testimony contained a total of 14 total lines of testimony (from witness Kryscynski) regarding coordination with local governments. (Reproduced in full at 6 Tr 4356-4357). The only "improvement" listed by Kryscynski was "improving frequency" of communications to local governments (without stating what the old frequency was or what the new one would be), and asking in what form local governments would like to receive communication that the Company had already decided to undertake a project and was prepared to seek permits to do so. Specifically, it was clarified in discovery that these communications occur "once a DTE project is selected to move forward," the Company then communicates with the local government to seek potential coordination opportunities; it does not do so before it has already committed

[1] This issue is row number 21 of DTE's disputed issues chart under "rate base."

capital to a project and identified in what year it plans to complete the work. 6 Tr 4362, citing Exhibit MAU-37.

Kryscynski did state that DTE worked with "county road commissions to support their projects, and to coordinate where possible to avoid conflicts." It is notable that when undertaking projects with Federal Highway Administration funds, federal regulation requires that adjustments to utility infrastructure occur at a "time convenient to and in coordination with the associated highway construction." 23 CFR § 645.115.

Witness Bunch identified three key ways in which the Company failed to meet the Commission's directive regarding coordination: a) it was too cursory to qualify as a "demonstration of efforts"; b) it did not describe "improvements" in coordination (and described no effort to consult at the beginning of prioritization and planning processes, instead of after those processes had concluded and projects scheduled); and c) it failed to see any potential financial benefit beyond "conflict avoidance." 6 Tr 4358. In contrast, Bunch noted that local governments see "coordinated project planning and implementation as an opportunity as well as a risk-management exercise, and as part of their responsibility to the ratepayers and taxpayers they serve."

Bunch's testimony noted that Capital Improvement Plans, which are prepared by municipal governments and give a five-year outlook of planned and in-progress municipal infrastructure investments. "Relevant project information includes the timeline, location, and type of project (i.e., surface penetration). Knowing such information would answer the "when", "where", and "what" of project planning, and could help inform a utility about potential project coordination opportunities." 6 Tr 4362. Bunch offered testimony about the ease of locating such

plans, including evidence that such plans were often the first Google search result.[2] Exhibit MAU-36.

Ann Arbor witness Stewart provided examples of identified cost savings that resulted from coordination of projects for underground work in locations where two projects (one municipal and one utility) were scheduled. 6 Tr 4239. In that case, project cost savings for the utility were approximately 14% of the assumed cost. Exhibit AA-14. Stewart's testimony did provide evidence that the Company's main case did not regarding improvements in efforts to coordinate upcoming projects. *Id.* Similarly, in response to a discovery question, Witness Deol identified a new effort for DTE Gas and DTE Electric to coordinate on a project in Detroit. Exhibit MAU-40. While admirable, these efforts should not be one-offs in only a few communities, but a way of doing business, in order to capture the cost savings that the Page Avenue project demonstrates can be achieved.

In order to impress upon DTE the seriousness with which coordination should be pursued, Witness Bunch recommended that the Commission state that in the next case, it would presume "10% of the costs of electric infrastructure projects that involve excavation in the public right of way or easements are not recoverable unless the Company can show neither DTE Gas nor the government plans potential work in the same area, or that the Company made reasonable attempts to coordinate work with such projects." 6 Tr 4364. He goes on to say:

> *In most cases, the requirement regarding local governments could be met by reference to publicly-available CIPs with very little effort. For example, the Commission should require DTE to demonstrate that it prioritizes locations of infrastructure undergrounding and*

[2] The Commission should take note that witness Bunch's testimony on project coordination pertains to all electric distribution system projects, not only to street lighting, although undergrounding work for streetlights may also provide coordination opportunities.

> *underground maintenance projects, in part, by identifying local-government infrastructure projects that require excavation with which the DTE projects could be co-located and -scheduled. This discipline should apply to preventive maintenance projects, as well: the Company should prioritize maintenance of its underground infrastructure at times and places where local governments plan to implement their own infrastructure projects.*

Id.

II. RATE BASE: STREETLIGHTING ISSUES

A. The Commission Should Continue Its Adjustments to LED Lighting Capital Accounts to Only Recover Only Amounts Necessary for More Appropriate and Less Expensive Choices.[3]

This issue involves the recommendation by witness Bunch for a cumulative disallowance of either $7,705,567 (using his recommended wattage lights) or using $5,833,539.33 if Consumers Energy's LED equivalencies are the benchmark. This is primarily discussed by DTE witness Bellini in his direct testimony, 6 Tr 3119-3131 and in Bellini rebuttal testimony 6 Tr 3171-3177 in addition to MI-MAUI witness Bunch's revised direct testimony, 6 Tr 4328-4349.

i. DTE's Own Experts' Workpapers Show Cheaper Lights Will Meet Standards.

In the prior rate case, U-21297, the Commission disallowed $5.8M in LED gross plant accounts associated with the selection of higher-wattage LEDs that were more expensive than models MI-MAUI witness Bunch argued were chosen by other utilities and were compliant with lighting standards. Specifically, DTE uses a 58W LED when converting a 100W HPS fixture, and witness Bunch argues a 37W LED should usually be used. Similarly, DTE uses a 136W

[3] This is issue 24 on DTE's Disputed Issues Chart.

LED when converting a 250W LED; witness Bunch argues that a 72W LED should usually be sufficient. 6 Tr 4342.

Despite the disallowance, DTE has continued to install the higher-wattage LEDs, and seeks now to recover those costs in the proposed rates, based on new analysis from two lighting experts regarding the proper conversion wattage. MI-MAUI continues to believe this practice causes unreasonable costs, and believes the workpapers and modelling done by the Company's own experts bear out that the more expensive lights DTE favors are not commonly necessary to meet lighting standards.

Witness Bellini disagrees with witness Bunch that DTE's modeling by the Company's experts shows that DTE's standard LED choices frequently overlight roadways relative to current standards. 6 Tr 3174. He clarifies, "Both experts evaluated DTE's replacement LEDs as an equivalent to the original HPS fixture." The conversion standard witness Bellini prefers to observe, in brief, matches output of new LEDs to old HID lights, without regard to whether the new lights approximate compliance with roadway lighting standards. This is consistent with what concerned the ALJ and the Commission in the prior rate case, namely that "the company is simply guided by the original lumen output, which does not equate to compliance with the relevant standards and is based on an outdated technology that is undergoing replacement." Docket No. U-21297, Commission order (Dec. 1, 2023) at 139.

Witness Bellini is explicit about his preferred standard in direct testimony: "The reason it would be impractical and costly to conform to current ANSI/IES RP8 lighting standards for pre-existing lighting systems is that these older municipal lighting systems would need extensive reconfiguration inclusive of work such as pole relocations and rewiring of the overhead and

underground system cable." 6 Tr 3120. This contradicts his own prior testimony two rate cases ago in which he argued that using brighter lights is in fact a cost-saving methodology: "[u]sing higher wattage fixtures means fewer poles and luminaires are used which is economical and reduces the need for additional infrastructure." Exhibit MAU-27, U-20836 Bellini rebuttal.

Even if Bellini's current testimony is correct, it is also a straw man. MI-MAUI does not advocate that every lighting installation must achieve perfect compliance with roadway lighting standards. Rather, witness Bunch provided evidence, based on the workpapers of the Company's own experts, that DTE's installations are, on balance, more likely to radically over-light applicable roadways, and that this over-lighting comes at a cost.

Bellini's rebuttal countered that HPS and LED lumen output diminishes over time, making it necessary to install lights that initially exceed roadway lighting standards to ensure that they continue to meet standards throughout their service life. Witness Bunch did not directly address this light loss factor in his testimony; as witness Bellini acknowledges, light loss factor was also omitted from the report and modeling by expert McLean that DTE offered. 6 Tr 3175.

Regarding light loss factor, Bellini quotes the Federal Highway Administration handbook, which contains both recommendations for the upper and lower bounds of roadway lighting: "it is recommended that lighting not exceed the maintained lighting level specified for the roadway by more than 50%...designers are encouraged to get as close as possible to the required maintained level while not going below that level." 6 Tr 3175. He goes on to claim that the 37W LED lights witness Bunch recommends "all fall below the maintained lighting level." 6 Tr 3175. This is simply not true. Witness Bellini's rebuttal exhibit A-40, schedule EE-8 clearly shows that the 37W LED, after light loss factor is taken into account, would exceed lighting

standards in three locations, fall an insignificant 2% below in a fourth, and not meet the standard in three other locations. On average, they would barely miss the mark at 2% below the standard. Witness Bellini's rebuttal exhibit, though, helpfully reinforces witness Bunch's direct testimony on two points. First, it is not necessary to increase wattage 57% by going up to 58W to address the shortfall of a few 37W lights, when interim LED wattages are available; and second, using a single LED wattage to replace all HID lights of a given wattage yields wildly unreliable results with respect to lighting standards.

It is also worth noting that witness Bellini does not address the portion of the Federal Highway Administration guidance that discusses how much over-lighting the FHA recommends – specifically, that lighting not exceed the specified level by more than 50%. 6 Tr 317. Turning again to witness Bellini's rebuttal exhibit A-40, schedule EE8, we see that the Company's preferred 58W LED provides initial luminance 88% above the initial luminance target on average, going as high as 213% above the standard in one case. In contrast, the 37W LED that witness Bunch generally prefers provides average initial luminance 43% above the standard, comfortably within the FHA guidance witness Bellini cites.

It is worth noting, moreover, that Bellini's rebuttal avoids addressing Bunch's testimony regarding the brighter lights modeled by the Company's experts – the "250" roadways modeled by expert McLean. Taking into account light loss factor, a streetlight should initially provide at least 143% of the luminance standard if it is to deliver luminance equal to the standard at the end of its service life. Working from McLean's calculations, Bunch shows that DTE's preferred 136W LEDs deliver initial luminance of 317% of the standard, which exceeds a reasonable allowance for light loss factor. Bunch's table – again, based wholly on expert McLean's

modeling – further shows that using a 72W LED instead would initially provide, on average, 88% above the luminance standard; thus, the lowest LED wattage that Mr. McLean modeled is still well above FHA's 50% upper bound, and thus could be expected to comfortably absorb a light loss factor and never go below standard during its expected service life. 6 Tr. 4342.

ii. "Meaningful Discussion" Regarding Lighting Choices

In the Proposal for Decision in Case No. U-21297, the ALJ found that DTE failed to establish that it has "any meaningful discussion with customers currently regarding the choice of lighting." DTE proposes to address this concern by memorializing the customer's option to select another light – however, it does not provide the "standard contract language" it will be using to do so. For instance, if the contract language is actually a list of additional costs or requirements the customer will have to shoulder if it opts for a lower wattage light, in addition to a request to sign a document saying such lighting is not compliant with standards (even if no lighting design study has been done), the Commission should consider whether this addresses the concern the PFD expressed. Alternatively, if the Company is genuinely seeking workable options to meet a municipality's preferred lighting solution, then this standard would be met. The Company has not offered sufficient specifics to determine whether the Company's proposed actions truly constitute "meaningful discussion." Bunch also points out that DTE's proposal to replace burned-out HPS fixtures with new LED luminaires will require no contract and no discussion with the customer; it seems reasonable to anticipate that these reactive conversions will comprise most LED installations going forward.

Another aspect of customer choice is color-correlated temperature (CCT). Ann Arbor witness Naheedy testified that Ann Arbor preferred lower color temperatures than DTE's

standard 4000K and that public feedback clearly favored streetlights with warmer (i.e. lower) color temperatures. 6 Tr. 4227. Witness Bellini defends the Company's choice to offer only 4000K LEDs as the only standard option by citing the FHA Handbook's statement that, "at higher speeds, 4000K LED lighting might be beneficial for increasing driver visibility. […] Similarly, other research has shown that the use of 4000K light sources generally improves object detection distance." 6 Tr. 3173. Greater detection distance is needed because stopping distances are greater at higher speeds (e.g., highways) than on city roadways where municipal lighting is installed. As its principal support for this statement, the FHA Handbook cites a National Academy of Sciences report, "Solid-State Roadway Lighting Design Guide: Volume 2 (Research Overview) 2020," the four authors of which include DTE's experts in this proceeding, Mr. McLean and Dr. Gibbons. Exhibit MAU-47. That report notably concluded that under most conditions, there were no observed differences between lights of different CCTs in terms of driver visual performance. Exhibit MAU-47 at 11. The research is not definitive and should not be cited as justification for offering only a single color temperature as a standard offering that does not also accommodate additional values, including aesthetics and desire to reduce obtrusive light. Thus, part of meaningful discussion with communities should include at least one CCT option as a standard offering.

iii. A Technical Workshop Is Unlikely to Meet the Stated Goal

Witness Bellini recommends that "if the Commission deems it necessary, the Company would be amenable to a Staff facilitated technical workshop inclusive of Leotek's engineering team, DTE, outside consultants, and MI-MAUI with the intent of evaluating appropriate HID to LED equivalent conversions." 6 Tr 3131. MI-MAUI and its members are certainly open to

opportunities to discuss street lighting concerns with the Company, experts, staff and other stakeholders in a more collaborative setting, in hopes of avoiding litigating this issue in future rate cases. MI-MAUI wishes to note that its support for such a discussion should not be misunderstood as supporting a technical discussion *in lieu* of a decision in this matter: the Commission can and should make a decision on this issue in this case based on whether the Company has adequately supported its request for an increase in its streetlighting revenue requirement with the evidence necessary to support the reasonableness of its costs.

A concern MI-MAUI has regarding this recommendation is the timing. If the Company follows its normal practice of filing a new rate case less than three months after the decision in a previous rate case, then it is unlikely this technical workshop could be concluded before the issue was once again in active dispute in a rate case. As a practical matter, given the rapidity with which rate cases have been filed, there is simply not enough time between rate cases to tackle thorny technical issues before litigation of those issues recommences. Past technical conferences held with the goal of resolving an issue that was in active litigation in an ongoing rate case have rarely been able to achieve their aim, in part because a free flow of ideas or debate is unlikely to occur when all participants are aware that every presentation and word spoken is likely to become part of the evidentiary record. This reality underlies Michigan Rule of Evidence 408, which protects settlement communications from being entered into the record in order to facilitate resolution of disputes. In short, if the Company does plan on an extended period without an active rate case, then this recommendation may be worth considering. Absent such assurances, such a technical conference is more likely to prove an administrative burden to all involved than it is a forum in which these issues can be ultimately resolved. The stated goal of

coming to a shared understanding of appropriate LED conversion models is far more likely to be achieved (if an active rate case is pending or imminent) via a meeting inclusive of the parties DTE names that is held pursuant to M.R.E. 408. Witness Bellini's rebuttal clearly foresees the same potential despite his making the recommendation, noting that these discussions should be "handled in a forum in which expert, intervenor, and [utility] perspectives can be shared freely without risk of being taken out of context." 6 Tr. 3176. It is not clear to MI-MAUI that the technical collaborative witness Bellini proposes would likely produce the kind of discussions he clearly envisions, for the reasons explained above. While the MPSC likely cannot order alternative dispute resolution or its ilk for a case that is not yet pending before it, should DTE extend MI-MAUI an invitation to the envisioned discussion under MRE 408 protections, MI-MAUI would welcome the opportunity.

iv. Revisiting the Past Rate Decision Would Constitute Retroactive Ratemaking.

Witness Bellini argues that in addition to allowing the recovery of the costs of the Company's preferred LEDs in the rates approved in this case, the Commission should "revisit the decision to disallow the $5.8M in LED gross plant as ordered in case no. U-21297." 6 Tr. 3131. This recommendation is a classic example of retroactive ratemaking. In the absence of specific statutory authorization, which Mr. Bellini does not identify in this instance, retroactive ratemaking in utility cases is prohibited. *Mich. Bell Tel. Co. v. Pub. Serv. Comm.,* 315 Mich. 533, 547, 554–555, 24 N.W.2d 200 (1946). The classic description of retroactive ratemaking is as follows:

> Past expenses and costs are factors to be considered in determining what the new rate should be so it is fair and reasonable. Past expenses and costs are not recoverable under a future rate. **If a rate**

> **structure is wrong and causes a utility to lose $1,000,000, the utility cannot recover that in its new rate.** The commission must certainly raise the rate so the loss will not continue. If the rate structure is wrong so the utility gains $1,000,000 more profit than is reasonable and just, the commission cannot order a refund. It can certainly lower the rate so there will be no excess profit in the succeeding years.

In re Consumers Energy Application for Rate Increase, 291 Mich App 106, 113; 804 NW2d 574 (2010) (emphasis added), quoting *Detroit Edison Co. v. Pub. Serv. Comm.,* 82 Mich App 59, 68, 266 NW2d 665 (1978). It is true that more modern contours of retroactive ratemaking permit recovery of expenses that the Commission agreed could be *deferred* and recovered in later rates, but MI-MAUI knows of no case where a court has allowed recovery of expenses that were explicitly disallowed for rate inclusion to be added to later rates in addition to the revenue required to provide service in the future as DTE suggests. The heart of the retroactive ratemaking docket remains untouched: once a rate is lawfully set by the Commission, it is not appropriate to go back and "correct" an error by either agreeing for over-recovery in later years to recapture revenue from a disallowance or by requiring utilities to refund monies that the Commission now believes should not have been included in approved rates. *Id.* 291 Mich App at 114. Thus, it is not legally "appropriate to revisit" past rate decisions for the purpose of recovering disallowed amounts, as Mr. Bellini recommends. 6 Tr 3131. Therefore, the Commission should reject this recommendation and consider only the just and reasonable revenue requirement to be recovered for LED gross plant in the rates at issue in this docket.

B. Current Lighting Rate E1 Option I, Intended to Slowly Reduce Subsidization by Underground Customers of Overhead Customers, Is Instead Increasing Subsidization and Should Be Altered to Comply with the Cost of Service[4]

This issue is discussed by DTE witness Bellini in his direct testimony, 6 Tr 3132-3139 and in Bellini rebuttal testimony 6 Tr 3148; MI-MAUI witness Bunch's revised direct testimony, 6 Tr 4349 - 4351. Additionally, key data and discussion of the tariffs is provided in the direct testimony of DTE witness Bellini, 6 Tr 3101-3109.

In 2016, the Commission recognized that streetlight customers served by underground wires were paying more than their cost of service in the E1 lighting rates (EI Opt I UG/decorative), and those served by overhead wires (E1 Opt I OH) were paying less than their cost of service. 6 Tr 4349-4350. In addition to being problematic as in violation of the Commission's statutory responsibility to ensure rates equal the cost of service, found in MCL 460.11, this subsidization has had the unintended effect of making rates for LED lights higher and those of older and less efficient HID lights lower than the actual cost of service, thus discouraging a shift to more efficient and modern lighting. 6 Tr 4350; see also 6 Tr 3103 (approximately two-thirds of E1 Opt I lights are now LED). The Commission, concerned about rate shock from an immediate correction to cost of service rates, ordered a process that would gradually rebalance UG and OH rates to the cost of service. U-18014 (Commission order Jan. 31, 2017).

[4] This is issue 85 on DTE's Disputed Issues Chart.

Despite the intervening seven years and six rate cases, the E1 rates are still not at cost of service – at the Company's current rates, underground customers are paying $156,935/yr in excess of the cost of service. 6 Tr 4351. But instead of attempting to finally bring the rates in line with cost of service, the Company's proposed rates would increase that subsidization nearly five-fold, to $745,523. *Id*. The Company, in rebuttal, did not take a position on this recommendation nor dispute Bunch's analysis of the cost-of-service implications of DTE's proposal, but did state that moving to cost of service would have a significant financial impact on certain communities. 6 Tr 3148. Bellini also said the Company is seeing robust demand for LED conversions. 6 Tr. 3177-3178.

MI-MAUI submits that the proposed rates, by increasing instead of decreasing subsidization, is in conflict with the Commission's legal requirement to ensure sub-class rates are equal to the cost of service. It is not consistent with the multi-year effort to bring rates gradually in line with the cost of service; instead, it would increase the level of subsidization substantially. In doing so, it would also reduce the incentive for communities to invest in more efficient lights via planned conversions. The fact that DTE is seeing communities seek planned replacements under current rates is no predictor that this will continue if the economic benefit of doing so is reduced in the same year that the Company has informed its customers that conversions will be conducted on a reactive basis without any up-front investment. See 6 Tr 3107. In fact, witness Bellini himself acknowledges that 11,000 currently planned HID-LED conversions are 80% paid for by SEMCOG grants[5], comprising more than half of the anticipated conversions; many of the remaining conversions will take place because of HID burnouts. See also Ann Arbor witness

[55] Bellini rebuttal, pp.10-11.

Naheedy, 6 Tr. 4226 ("the City is able to make this investment [to convert 4,087 streetlights] because a large portion of the cost is being covered by a Carbon Reduction Grant from SEMCOG."). It appears that municipal customers are unlikely to pay for LED conversions out of pocket, and the low and unreliable return they get on the investment likely is a factor in that reluctance.

Given that proactive conversions are likely to be more cost-effective than purely reactive conversions, and may only be undertaken if customers agree to pay a CIAC under the proposed tariff structure, now is not the time to worsen the economic disincentive to taking action to move toward the more efficient standard offering. Eg. 6 Tr 4230. Therefore, MI-MAUI urges that E1 lighting rates be adjusted to eliminate the current subsidy and be brought into line with the cost of service as Michigan law requires.

To the extent the Company or Commission has concerns regarding the impact on certain communities, particularly those still using mercury vapor lights, MI-MAUI could be supportive of proactive LED conversions taking place to eliminate MV lights from DTE's service territory. Not only would that potentially reduce O&M costs overall by standardizing lighting options the Company must support, it would likely be less costly over time than large numbers of one-off reactive conversions, and bill impacts of the move to cost of service may be blunted by the lower tariffs associated with LED technology.

C. Underground Cable Capital Replacements[6]

Testimony on issues involving the underground cable capital replacement program was provided by witness Bunch (6 Tr 4316-4319) and was rebutted by witness Bellini (6 Tr 3162-3165). As explained below, while MI-MAUI still believes cost-effectiveness was not demonstrated in the main case, if the program is administered primarily as described in the rebuttal testimony, MI-MAUI withdraws its recommendation for a disallowance of the program costs.

i. Criteria for Selection of Projects

As Witness Bunch understood the underground cable capital replacement program as described by the Company, the intention was to use the funds to replace underground cables that would be predicted to fail – and he expressed concern that the Company did not have the kind of data necessary to make those kind of predictions with accuracy. 6 Tr 4317. Thus, he recommended disallowing program costs until such data could be made available and analyzed.

In rebuttal, the Company described a very different program, in which projects were selected based on a known history of outages and actual knowledge of the repair history and performance of the cable to be replaced. 2 Tr 3164. The Riverview project described by witness Bellini would be such a project, given recurrent outages of multiple lights occurring after multiple attempts to patch the cable, and actual testing of the cable itself prior to full replacement. 2 Tr 3163. MI-MAUI views such a program as likely to be an efficient use of capital, although data to compare the costs to the savings that come from avoiding further

[6] This issue is row number 25 of DTE's disputed issues chart.

reactive repairs, and averting outages, would allow the Commission and MI-MAUI to verify the cost-effectiveness of the effort. If the Company is not proposing to replace cable that is fully functional but *may* fail (as MI-MAUI understood the proposal to be), and is instead seeking to replace underground cables with known performance issues, then MI-MAUI does not object to the inclusion of the program expenses in the revenue requirement. Moreover, if the Company chose to replace neighboring cable of similar vintage while replacing failing cable as part of the program, provide that neighboring cable also fails the test described by witness Bellini, then MI-MAUI could also support such proactive efforts to limit truck rolls, contractor costs, otherwise gain cost efficiencies and avert outages. That said, given the expense of the program, assuring it remains data-driven and cost-effective is important and would require more information or scrutiny than is currently provided, as discussed below.

ii. Inclusion in Distribution Grid Plan

In addition to recommending disallowance, witness Bunch argued that the underground cable replacement program should be included in, and considered as part of, the Company's distribution grid plan. 6 Tr 4319. To date the Company's grid plan has included no discussion of either streetlight reliability or the associated underground cable replacements. *Id.* Bunch argues that such inclusion would allow examination of the investments in this area alongside other reliability investments and with application of similar criteria. Witness Bellini opposes this recommendation, noting that Community Lighting's assets are separate and distinct and operate independently from DTE Distribution Operations. 6 Tr 3164-3165. MI-MAUI agrees that DTE makes investments in streetlighting infrastructure that are distinct from the overall distribution system; but such investments do not have the same process of justification of similar

expenditures made on the distribution system. Such investment should be required to be included in the plan and receive the same level of scrutiny.

Bunch makes the need for closer scrutiny of streetlight reliability costs plain in testimony. From 2017 to 2023, total outage restoration costs have more than doubled, from $4.5 million to $9.4 million with very little growth in the number of lights overall. 6 Tr 4320. Over the same period, customers have spent many millions of dollars more paying CIAC to have their lights converted to LED, partly in hopes of improving reliability. Despite so many new luminaires and significant outlays of capital by DTE on reliability efforts, annual outage counts have diminished less than expected by witness Bunch; and outage durations are longer than they were before the COVID pandemic. This underlying truth is driving MI-MAUI's concern regarding whether the Company has sufficient data to determine what is driving the outage numbers, and what efforts have been most cost-effective at addressing it. Put another way: MI-MAUI does not doubt that DTE has made great efforts to improve streetlighting reliability; what it doubts is whether the results of those efforts have been examined in a data-driven way to ensure future spending is prioritized to maximize results, because it suspects some of the current efforts may not be worth the costs. While MI-MAUI will be pleased to receive such data and analysis in any form or proceeding, the logical and orderly place for it to appear is in the Company's distribution grid plan. The Commission should order the Company to provide a streetlight infrastructure and investment plan as part of its next EDIIP submission, and in the meantime justify capital expenditures proposed in rate cases to the same standard observed in the distribution grid plan.

III. REVENUE DEFICIENCY: O&M STREETLIGHT STAFFING COSTS[7]

Testimony on this issue, which involves a requested 41% increase in staffing costs for streetlighting operation and maintenance, was provided by witness Bunch (6 Tr 4325-4326). The Company did not provide direct testimony explaining the request to increase staffing costs by more than a half a million dollars. Although the Company did not explicitly respond to Bunch's proposed staffing disallowance in rebuttal testimony, witness Bellini's rebuttal testimony indicated that this does not necessarily mean the Company has conceded the issue. 6 Tr 3150. Discovery responses provided by the Company and cited in witness Bunch's testimony provide some insight into the Company's reasoning behind this requested increase.

Witness Bunch recommended inclusion of $941,950 in supervisory and administrative costs in this category, noting that this represents the same staffing levels approved in U-21297, plus a 2.9% inflation adjustment. 6 Tr. 4326. This level would represent just under 14% of O&M costs going toward staffing. *Id.* The Company proposed a spending level of $1.8M in staffing, which would mean more than a quarter of all O&M dollars would be dedicated to "supervisory and administration" staff. *Id.* Bunch noted that the need for such a sharp increase in staffing dollars is especially odd given that the Company's test year is projected to have fewer Community Lighting staff than in recent history, and that these staff are expected to need to oversee fewer inspections and respond to fewer streetlight outages than in the past. 6 Tr. 4325. In discovery responses, witness Bellini stated only that the increased staff would cover "new

[7] This issue is missing from the disputed issue chart prepared by the Company, but the Company has not stated whether or not it opposes this disallowance so its omission may indicate it is no longer an area of dispute.

hires for unfilled positions" and "an increase in administrative costs inclusive of using contractors." Exhibit MAU-26.

It is the Company's burden to provide appropriate support for requests for increases in rates in its main case. Not only did DTE fail to do so, it also failed to provide any testimony in rebuttal to explain why it needs half a million dollars more to hire people it does not even include in its future test year forecast, or justify why more staff are needed to supervise less work. Therefore, the Commission should adopt Bunch's proposed disallowance.

One item is worth noting: in the O&M budget, the Company continues to forecast that its costs of responding to outages will decrease in the test year. However, Bellini also testifies that in the past two years, the Company has had to redirect funds intended for maintenance activities like painting into outage response (see section regarding post painting and inspection). This indicates a more troubling trend, in which the Company fails to see the causal connection between lowered spending on preventative maintenance and outage costs that regularly exceed its expectations. MI-MAUI believes that it is likely the Company needs to "catch up" with that maintenance to eventually bring outages (and their costs) down. The Company would likely find it easier to justify such revenue increases by bringing future test year projections in line with past history and inspection backlog impacts. MI-MAUI believes that an honest discussion and presentation of the current state of affairs and projected needed maintenance budgets for work that provides long-term rate savings and reduces outages could be an area of future agreement between the Company and MI-MAUI. Unsupported requests for staffing increases are not conducive to achieving any such agreement.

IV. REVENUE DEFICIENCY: POST PAINTING AND INSPECTION[8]

Testimony on this issue, which involves an O&M expense for streetlights, was provided by witness Bunch (6 Tr 4313-4316) and was rebutted by witness Bellini (6 Tr 3160-3162).

A. The Commission Should Disallow the $260K Proposed Spend.

DTE proposes $260K be collected to support post inspection and painting, an activity which MI-MAUI recognizes is important to long-term streetlighting costs and generally supports. DTE and MI-MAUI also agree that the actual spend for this activity in recent years has been significantly less – more than $600K less – than the amounts collected for the activity in 2022 and 2023. 6 Tr 3160, referencing Exhibit A-40 Schedule EE2. Because of this over-collection, which dwarfs the proposed spend in this category, witness Bunch recommended disallowance of the requested $260K.

In rebuttal, witness Bellini provided a table that included not just the spend on inspection and painting, but an additional category of spending labelled "outage maintenance" where spending had vastly exceeded the levels used to set the company's revenue requirement. Thus, he argued, overall the "net O&M spend" was negative in that same period by approximately $885K. Because this combined to show a deficiency, Bellini argued the $260K should continue to be included in this revenue requirement. Effectively, the Company argues that the $260K in post inspection and painting should be maintained as part of the revenue requirement because past dollars for those activities were reallocated to a different O&M activity. More explicitly, the

[8] This issue is row number 118 of DTE's disputed issues chart under "Future Rate Cases, Further Study, and Other" and is characterized as a recommendation by MI-MAUI for additional reporting on this issue. The relevant testimony also recommends a disallowance of $260K, so is discussed as a revenue deficiency item in this brief, with reporting as a secondary element included.

Company argues that if the $260K is disallowed in this category, then the Commission should *increase* the revenue requirement for overall O&M in the same amount.

This line of reasoning is problematic, because it suggests that the individual building blocks of the Company's rate case cannot be examined individually. In this line of thinking, a failure to demonstrate the reasonability of one component of the revenue requirement is immaterial, as long as there are other just and reasonable items elsewhere to which revenue could be added. A better approach to setting of a revenue requirement is to seek to recover deficiencies in the proper categories, and thus allow for scrutiny of whether the building blocks of the revenue requirement are each individually reasonable. The Commission has already validated disaggregation of line items the lighting O&M budget in prior cases when it has disallowed increased supervisory & administrative personnel costs, LED washing costs and HPS relamping costs.

The Commission should be especially vigilant when examining what is in effect a request to allow the Company to cut maintenance and inspections in favor of categories of spending that may facilitate projects with a capital component, as outage restorations often do. Specifically here, the Commission should discourage treatment of preventive maintenance activities such as post inspection and painting as financially interchangeable with outage response activities. Assuming that DTE's 2022 and 2023 estimates for the dollars needed for inspections and painting were reasonable, the Company is now years behind on those activities because more than half of those dollars were reallocated to outage maintenance. The Company now plans to reduce work in this area in this coming year down to one painting contractor, and thus presumably perform half as much painting as it used to think it needed. Encouragingly, at least

one expected cost reduction in this category does not simply occur from doing less maintenance: the Company believes it can reduce inspection costs in this category in part because the pole-top maintenance program will be able to lower pole inspection activity for streetlight-only wooden poles. 6 Tr 3110.

The reliance on the pole-top inspection program to perform streetlighting inspection work, however, may be misplaced. Witness Andahazy testified in cross examination that in the year 2023, the Company inspected fewer than 13,000 poles, which is the equivalent of a 70 to 80 year cycle for inspections (compared to the recommended 10 to 12 year inspection cycle frequency). 4 Tr 1069-71. Therefore, to the extent that streetlighting inspections and painting are now years behind due to having to direct more than half the funds intended for such activities toward outage maintenance, it is unlikely streetlighting can rely on the pole-top maintenance program to "catch up," given the current inspection cycle performance and the Company's request to cut inspections in favor of previously identified infrastructure repairs or replacement.

B. Reporting on Streetlight Post Painting and Inspection Status Should Be Required in the Next Rate Case.

Given the multi-year under-spending on inspection and painting, witness Bunch noted that he is concerned that premature capital replacement costs will be incurred due to poor maintenance. 6 Tr. 4315. Decorative metal poles represent significant out-of-pocket financial investments for local governments, and are most often located in high-visibility locations where appearance matters almost as much as function. 6 Tr 4313. In the eyes of these customers, they should not be forced to forgo normal maintenance of assets they paid handsomely to install because the money is needed to repair rate-based assets instead. Accordingly, in addition to the

recommended disallowance, Bunch recommended the Commission require "DTE to state annual targets for inspections and painting and to report on its performance to those targets in rate filings" as well as including "actual costs with amounts recovered in rates, looking back five years." 6 Tr. 4315. The proposed inspection requirement closely parallels distribution system inspection plans detailed in the Company's grid plan. Witness Bellini opposed this requirement in rebuttal, arguing that "isolating specific areas of Commission-approved spend to actuals can be misleading" because of potential variances in when expenditures occur. 6 Tr 3161-3162. Witness Bellini did not specifically discuss the recommendation to require DTE to state annual targets for inspections and painting and report on performance to those targets.

Witness Bellini's rebuttal points to why such reporting would be valuable and helpful in assessing the true amounts DTE needs for various maintenance and inspection activities, as well as restoration of outages. By going back in time five years, any temporal variance in collection vs. spending should be visible and can be "smoothed." To the extent the Company has reassessed and revised the level of effort it believes is necessary to keep poles in good repair, this can be noted. (It is worth observing that in this case, Witness Bunch testified *in favor* of increased spending intended for a different inspection program, the Night Patrol program. 6 Tr 4316.) If the Company has regularly found it must "borrow" from the inspection and maintenance activities like post painting to fund outage response, that can quickly become a vicious cycle and result in premature asset retirement, as Bunch testified is his concern. The requested reporting will allow the MPSC, local governments, and the Company itself to assure this is not happening, or if it is happening, to address it before it is too late and adjust the rates to reflect the actual costs of service, as they are intended to do.

V. RATE DESIGN AND TARIFF ISSUE: CASH PAYMENT REQUIREMENT[9]

The testimony regarding DTE's cash-only payment requirement for approximately 1 in 50 residential customers was offered by MI-MAUI witness Bunch (6 TR 4286-4298) with rebuttal testimony from two DTE witnesses: Hatsios (6 Tr 2304-2328) and Sparks (6 Tr 2396-2398).

A. DTE's Cash-Only Payment Requirement Unreasonably Increases Uncollectible Expenses by Making It Hard to Pay a Bill

Most DTE customers have a large number of options for how to pay their bills – automatic bill payment (using both withdrawals from bank accounts or credit cards), by check, money order, credit or debit card and in cash. If customers want to pay by mail, then they must use either checks or money orders. 6 Tr 4286, citing Exhibit MAU-2.

But for other customers, they have only one choice for at least a *year*: cash. This is imposed by the Company in accordance with DTE's rate book, Section C4.6B17: "Payment by personal check, credit or debit card is not reasonable if the customer has paid with a personal check, credit or debit card within the last 12 months and at least 1 check has been returned for insufficient funds or no account, or at least 1 credit or debit card payment has been denied excluding financial institution error."

For the reasons explained below, this practice is unreasonable and drives up uncollectible expenses by making it very difficult and sometimes dangerous for thousands and thousands of

[9] This issue is row number 74 of DTE's disputed issues chart under "other revenue related items." MI-MAUI notes that this item also pertains to uncollectible expenses (categorized under Adjusted Net Operating Income, row number 61 of DTE's disputed issues chart) but believes it is best understood as rate design and tariff issue (section VII of the disputed issues chart, row number 78-80).

people to pay their DTE bill. Moreover, even if this practice did not drive up costs for other ratepayers, this practice violates Michigan statute by mandating payment of an additional fee in excess of the rate in exchange for service, and violates the billing rules by limiting payment options in situations where that is not authorized (though deposits may be required instead). Therefore, the MPSC should order DTE to cease imposition of any cash-only payment requirements in all situations not explicitly permitted by the MPSC billing rules.

Witness Bunch also recommended a 1% reduction in uncollectable expense recovery to offset the impact of the cash-only program administration. 6 Tr 4298. In rebuttal, DTE witness Sparks argues that Bunch provided no analysis in support of this figure and that the policy has the effect of reducing the escalation of arrears. 6 Tr 2397. Sparks provided no data or analysis in support of his claim that the policy reduces arrears. Witness Bunch admitted that "DTE does not keep data that would allow us to determine the degree to which customers required to pay in cash for a year default compared to customers not required to do so," and therefore argued for 1% as a "reasonable assumption" that recognizes both an increase in uncollectables, but an overall "small percentage of overall revenue" resulting from the default rate of the approximately 48,410 customers required to pay in cash in 2023. 6 Tr. 4298. This reduction, though, would be needed only if the Commission allowed DTE to continue requiring cash payments, which it should not.

B. DTE's Policy Makes It Significantly Harder for Customers to Pay.

DTE will accept a cash-only payment at a payment agent (where customers are charged an additional fee) or at a DTE kiosk (where no additional fee is assessed). See 6 Tr Exhibit MAU-5. Thus, customers facing this cash-only requirement first need to obtain enough cash to

pay their bill (and any additional fee for the payment agent), and then travel to either a kiosk or a payment agent in order to make their payment.

"Geographic distribution" is not a factor DTE uses in determining where to place its kiosks. 6 Tr 2328. In practice, kiosks can be found only in five communities, all in or bordering Detroit in Wayne County. 6 Tr 4288, citing Exhibit MAU-7. (DTE's website states that kiosks "are located all across the service territory." *Id.*). Wayne County had more than 23K customers required to pay in cash for a year in 2023. Even if 100% of those individuals lived in and around the communities with kiosks (which witness Bunch testified is unlikely), that would still mean more than half of the customers on whom this requirement was imposed had no access to kiosks anywhere in their county, much less their community. *Id.*

Thus, most of the residential customers who face this requirement must find an authorized billing agent to accept their cash. Even that may be very difficult for customers: for instance, 262 customers in Sanilac County were required to pay in cash for a year in 2023; the entire county has a single location where bills can be paid in cash (in Sandusky, which may be 30 miles away from the customer). 6 Tr 4288-89.

Bunch summarized the situation for cash-only payment customers this way: "most customers have poor access to kiosks, and some customers do not have any option that accepts cash payments within a 5-mile radius." 6 Tr 4292. The burden may be particularly hard on certain customers "who have medical conditions that compromise their immune systems or render them homebound may find the requirement to pay in cash imposes unreasonable logistical or personal safety risks when trying to deliver cash payments." *Id.*

C. Cash-Only Requirement Imposes a Safety Risk on Customers.

Witness Bunch offered testimony about the safety risks DTE's cash-only policy poses for customers, especially those trying to avoid an additional fee while paying at a kiosk. 6 Tr 4291. He stated that carrying a large amount of cash on a regular schedule to a known location can create a risk of robbery, and noted that this result was "real and not merely perceived," given that DTE cited "kiosk theft activity" and "requests from store owners to remove kiosks "to protect their business from possible theft activity" as reasons for reducing the number of kiosks sharply in recent years. *Id*., citing Exhibit MAU-9. Since 2023, the Company has removed 25 kiosks from service. Exhibit MAU-7.

In rebuttal, DTE said that there were no safety concerns for customers using its kiosks, noting that it maintained that paying by kiosks was a "safe, secure way for customers" to make a cash payment and customers did not have a risk of robbery when doing so. 6 Tr 2327. Specifically, DTE argued that while a number of kiosks were removed in 2023 due to "theft activity," the criminal activities "were specifically directed at the kiosks themselves and typically occurred when there was no one around to prevent the theft." 6 Tr 2327. DTE did not present any evidence (e.g. related police reports, etc.) in support of this assertion. Other kiosks had been removed as a "precaution." 6 Tr 2327. Therefore, the Company reasons, warning customers to take safety precautions while making cash-only payments was "not warranted." 6 Tr 2328. In other words, it is DTE's position that customers do not face a serious risk of being robbed or hurt when making cash-only payments at its kiosks, because in general kiosks experience burglaries only when no one is around.

Perhaps if DTE had checked the publicly available crime data near the addresses of its kiosks, it would have a better sense of whether or not carrying large amounts of cash on a predictable schedule to their kiosk locations represents a safety risk to customers. A review of police reports in the close vicinity (a 7-minute walk or less) of DTE's kiosks in Detroit locations (only) for the months of July and August 2024 (only) is found in Exhibit MAU-42 and reveals at least 11 police reports, including the below:

i. Reports of Assault and Aggravated Assault

- On July 1, 2024, at 9:30 pm, an assault was reported a tenth of a mile from a DTE's Imperial Market kiosk on 8 Mile.
- On August 1, 2024, at 10:30 pm an assault was reported three tenths of a mile from DTE's Imperial Market kiosk on 8 Mile.
- On August 1, 2024 at 10:45 pm an aggravated assault (non-fatal shooting) was reported a tenth of a mile from DTE's Saturn Super Foods kiosk on Joy.

ii. Reports of Larceny[10]

- On July 19, 2024, at 10:42 pm, a larceny was reported two-tenths of a mile away from DTE's Imperial Market kiosk on 8 Mile.
- On July 22, 2024, at 8:00 pm, a larceny was reported 350 ft. from DTE's Imperial Fresh Market kiosk on Schaefer.
- On July 29, 2024, at 3:00 pm, a larceny was reported a tenth of a mile away from DTE's Saturn Super Foods kiosk on Joy.

[10] See MCL 750.360(1) (larceny defined to include theft of money); MCL 750.530 (larceny may be felony when a person "uses force or violence against any person who is present, or who assaults or puts the person in fear.")

iii. Report of Burglary[11]

- On August 16, 2024, at 6:45 pm, a burglary was reported 250 feet away from DTE's Saturn Super Foods kiosk on Joy.

Even a cursory review of police data reveals that while a single burglary was reported very close to a DTE kiosk in August, it occurred at 6:45 p.m. More common were reports of larcenies (again at least one in the middle of the afternoon) and assaults in close proximity to these kiosks.

In short, in determining whether requiring customers to carry large amounts of cash to kiosks puts those customers at risk, the Commission has two choices: rely on the Company's statements that while kiosks have experienced theft, there is no reason to think criminals will assault or rob *people* in those locations; or rely on what people tell the police happens in the immediate vicinity of DTE's kiosks, sometimes in the middle of the afternoon.

D. DTE's Practice of Requiring Cash-Only Payments for a Year Is Not a Common Business Practice

The prevalence of identity theft means that a "trigger" DTE is using to impose this penalty – a rejected credit card or returned check – may no longer be a reliable indicator of an inability to pay by alternative means. Bunch testified that 10% of Americans were victims of identity theft in 2021, meaning situations in which customers may freeze a bank account or cancel a credit card -- and may not remember to change the form of payment for their DTE bill – are likely to be common. 6 Br 4294. Witness Bunch went on to say "such situations are likely to

[11] See e.g. MCL 750.112 (Robbery as entry a building for the purpose of committing a crime).

be easily rectifiable by providing another credit card or setting up payment from an alternative bank account."

Company witness Sparks argued that in practice, the Company had an "ongoing evaluation process" to limit the application of its cash-only rule to situations that were in fact likely to result in uncollectible expenses: notably, allowing those enrolled in automatic payment plans up to 2 returned payments before imposition of the requirement, and allowing customers not currently in arrears to provide one alternative form of payment. 6 Tr 2397-2398.

Witness Bunch characterized his statement that "making it harder for people to pay you is generally going to decrease your collections and drive up your collection costs" as "common sense." 6 Tr 4294. Witness Sparks argued that the practice as applied "serves as a proactive measure to curb the escalation of arrears resulting from returned payments" and that eliminating it would in fact "contribute[] to an increase in uncollectibles." 6 Tr 2397.

One way to test who is likely to be right is to investigate how common DTE's practice is – whether other utilities enforce similar policies. Witness Bunch testified that this practice appears to be exceedingly *un*common. Exhibit MAU-11 summarizes research on whether the requirement for some customers to pay their bill in cash for a year is imposed by other utilities. 6 Tr 4293. As Bunch summarized the research, none of the 39 municipal electric utilities in Michigan had any discussion of such a practice on their websites; the same was true for seven of the biggest electric investor-owned electric utilities operating outside of Michigan. *Id.* The unusual nature of the practice indicates that most utilities do not impose similar requirements on their customers in an effort to decrease uncollectible expenses.

E. Cash-Only Requirement Imposition in Non-Shutoff Situations Violates Commission Rules

Testimony regarding whether DTE's imposition of cash-only requirements to customers not in imminent danger of shutoff is a violation of the Commission billing rules consists of the revised direct testimony of MI-MAUI witness Bunch (2 Tr 4286-4292) and the rebuttal testimony of DTE witness Sparks (2 Tr 2396). As explained below, the rules provide no explicit prohibition against imposing a cash-only payment requirement for customers generally, but also provide explicit authorization for doing so only in situations that are much narrower than DTE's tariff reaches. Thus, as explained further below, whether this practice is in conflict with MPSC rules turns on a question of interpretation: does specifying only specific, limited situations in which denying the customer the right to pay their bill mean that the utility may take identical action against customers in other situations that are not specifically authorized? MI-MAUI argues it does not. DTE argues that a lack of specificity in the rules prohibiting the practice means it is permissible. (2 Tr 2396).

The billing rules assume that all customers have the right to pay by mail. For instance, R.460.120 provides that "customers who use electronic billing and payment shall have the same rights and responsibilities as customers who use paper bills and payment by United States mail." Similarly, R 460.124 provides that if a due date for a payment "falls on a day when the mail is not delivered…the payment date shall be extended through the next business day." The same rule set discusses how customer remittance postmarks are to be treated for the purpose of calculating timely payment.

DTE does not accept cash payments through the mail, so requiring payment in cash effectively blocks the customer from using mail payments or automatic bill payment systems. 2 Tr. 4286 citing Exhibit MAU-2. The rules specify the conditions under which this is reasonable (when a customer is facing immediate shutoff but has had payment forms rejected). R. 460.142(4).

The language of DTE's tariff authorizing cash-only payments in certain situations is essentially identical to the language of R.460.142(4), a rule referring to the "manner of shutoff." In other words, while the rules specifically authorize the limiting of a customer's payment form when in active arrears and facing shutoff, the tariff goes further and applies those limitations to customers who are not facing a threat of shutoff. Outside of a shutoff, the rules also offer a clear remedy to prevent uncollectible expenses from customers with a history of rejected payment forms: a deposit. R. 460.109. Mr. Bunch provided testimony about the reasons customers would benefit more from a deposit than from a cash-only payment requirement, in part because a deposit requires only one trip and results in interest paid back to the customer, instead of a fee imposed on the customer. 2 Tr 4291-4292.

"Under [the negative-implication] canon of statutory construction, the express mention of one thing implies the exclusion of other similar things." *Comerica, Inc v Dep't of Treasury*, 509 Mich 204, 218, 984 NW2d 1 (2022). The application of the negative-implication canon of statutory construction is appropriate in this situation. The utility is using a word-for-word identical description of a practice that is explicitly permitted in one situation (imminent shutoff) and which in another context, gives the utility explicit permission to impose a *different* remedy (deposit). Compare R.460.142(4) and R. 460.109. DTE argues that despite the specificity of the

permission to use one remedy in this precise situation (deposit), it may in fact bypass the specified remedy (deposit) and instead impose a restriction on customers that is explicitly permitted only when customers are in arrears and face imminent shutoff. When precise language is included in one location of a statute or rule but omitted in another, as it is here, "it is generally presumed" that the "disparate inclusion or exclusion" is intentional and purposeful. *Barnhart v. Sigmon Coal Co.*, 534 US 438, 452, 122 SCt 941, 151 LEd2d 908 (2002); see also *LeFever v Matthews*, 336 Mich App 651, 662-663, 971 NW2d 672 (2021). In contrast, when courts have declined to use the negative-implication canon, they have often done so because the practice in question was unaddressed by the statute in question. E.g. *Comerica, id.,* 509 Mich at 218 (no reason to think the legislature intended to regulate "all the ways" credits could be transferred in the future by regulating initial transfer). Here, the billing rules, which exist to protect customers, specify the situations under which customers in this precise situation may be required to pay in cash (when they are in arrears and facing shutoff), and the billing remedy the utility may exercise for this same set of customers who are not in arrears (a deposit). Allowing the reading DTE urges, in which the utility may reach beyond the situations when a practice is explicitly permitted and impose it on other customers, thwarts that consumer protection purpose and does not adhere to common statutory construction principles.

F. For Most Customers the Cash-Only Requirement Also Violates MI Statute Because It Operates as an Unauthorized and Discriminatory Rate.

Witness Bunch testified that for most customers required to pay in cash for a year, there is effectively no access to a payment method that does not require the customer to pay an additional fee, and thus the cash-only policy is for most of those customers an illegal rate. 6 Tr. 4288. In

rebuttal, DTE witness Sparks argued that Commission approval was secured when the MPSC approved the Company's tariff language that included the cash payment requirement. 6 Tr 2396.

i. No MPSC Authorization to Require Customers to Pay Agent's Fee

MAUI does not dispute DTE witness Sparks' statement that the MPSC approved the current language allowing DTE to require cash payments in Case No. U-17767. 6 Tr. 2396. It is also the case that billing rules allow DTE to offer customers the option of using payment agents, and for those agents to charge a fee. R 460.123(5). What has never been authorized in tariff or in rule, however, is for the Company to *require* certain customers to use an authorized agent and thus require those customers to pay an agent's fee. It is also worth noting the amount of the fee is not even disclosed on DTE's website. 6 Tr 4287, citing Exhibit MAU-6.

As discussed above, the only method by which a customer can pay a bill in cash without a fee is at a kiosk. But as witness Bunch noted, most customers required to pay in cash do not have reasonable access to a kiosk. "Even if all the people in Wayne County who were required to pay in cash in 2023 (23,178) lived in and around the five Detroit-area communities with kiosks (which is unlikely), then more than half of the people required to pay in cash would not have access to fee-less payments. 6 Tr 4288, citing Exhibit MAU-8. "For instance, in 2023, there were 10,040 cash-only customers in Oakland County, 8,488 in Macomb County, 2,365 in Washtenaw County and 1,211 in Saint Clair County. DTE currently operates no kiosks in these counties." *Id.* Thus, in practice, the Company is requiring those customers to pay an additional fee that increases the cost of their service – a fee that *has not been approved by the Commission* for inclusion in rates.

Under MCL 460.6a, DTE is not permitted to "alter, change or amend any rate… **the effect of which will be to increase the cost of service to its customers**, without first receiving commission approval." (emphasis added). Here, the effect of requiring customers to pay in cash, while making no method of doing so available that does not require payment of an additional fee, increases the cost of service to those customers in an amount that is not approved by the Commission. The Commission has found in the past that in the absence of proper tariff filings, even fees that could have been avoided through voluntary customer action may not be placed on a bill or made a condition of maintaining utility service. *Michigan Pub Serv Comm'n. Staff v. Barry County Telephone Co.*, Case No. U-10725 (Order of May 18, 1995) (1995 WL 385774). Therefore, the failure to explicitly receive authorization for requiring customers to pay an authorized agent's fee means DTE's practice runs afoul of this legal requirement.

Stated another way, even if the tariff language was in compliance with the billing rules (which MI-MAUI contends it is not, as discussed further below), nothing in the tariff or rule language authorizes DTE to *require* customers to use an authorized agent and pay the added costs of doing so. Yet in practice, given the unavailability of kiosks, DTE is requiring tens of thousands of customers to pay an additional fee that is neither optional nor reviewed by the Commission. This is not permissible under the law. Moreover, as discussed below, the accessibility of a fee-free payment option is especially problematic due to the differing racial makeup of communities which have kiosks compared to those that do not.

ii. Imposition of Agent's Fee Is Discriminatory in Practice

Witness Bunch's testimony examined the location of kiosks and found that they were exclusively located in higher-poverty areas with high African-American and other non-white

populations; communities of similar size and poverty rates, but a racial makeup that is more heavily white, had no such kiosks. 6 Tr 4292. Bunch's testimony supports the conclusion that there is a racial difference between the customer population that can reasonably avoid paying the payment agent's fee to continue their utility service and those that cannot. *Id*. The rebuttal testimony of DTE witness Hatsios listed the reasons behind the Company's placement of kiosks at 6 Tr. 2328, specifically stating that DTE did not use race or residence location (or poverty rates, community size, or geographic distribution) as factors in determining where to place kiosks; instead, the placement is due only to the former locations of customer offices. Hatsios rebuttal, 6 Tr. 2328. (The Company does not explain how it first chose where to place such offices.) Even assuming the Company never considered race or residential location, and never violated R 460.108 or state law when determining where to offer and maintain a fee-free payment option to cash-only customers, the discriminatory *impact* of its placement of kiosks is still relevant in determining whether this practice is reasonable and should be continued.

When a facially-neutral policy has a discriminatory effect on members of a protected class, that disparate impact can constitute illegal discrimination if similarly situated individuals pay a higher rate than others of a different race. Federal law recognizes that discrimination can arise from "practices that are fair in form, but discriminatory in operation" even if there is no discriminatory motive. E.g. *Griggs v Duke Power Co.,* 401 US 424, at 429-430, 91 SCt 849, 28 Led2d 158 (1971).

The Company's choice about where to offer a fee-free payment option to cash-only customers raises precisely these concerns. The racial makeup of the communities in which this option is offered is different from otherwise similar communities (size, poverty level) in DTE's

service territory. Thus, similarly situated individuals (those who have identical payment histories, electricity usage, and cash-only requirements) will, in operation, pay a different amount to retain utility service. This should concern the Commission regardless of the racial makeup of the communities and thus the likely racial differences of the affected customer groups, but overlaid with this strong potential for discriminatory effect, the Commission should find the operation of the cash-only payment requirement is neither just nor reasonable, and thus cannot continue to be a part of DTE's approved tariff.

G. Recommendations Regarding Cash-Only Payments

Mr. Bunch's revised direct testimony regarding cash-only payments concluded with a series of recommendations for Commission action (6 Tr 4296-4297), depending on the MPSC's findings.[12] These are summarized below.

If the MPSC finds the operation of the cash-only requirement imposes a fee that is not authorized by statute or the billing rules, the Commission should order an amendment to DTE's tariff to restrict the Company's ability to require customers to pay in cash to the specific and narrow circumstance covered by Rule 42.

Alternatively, if the MPSC finds the operation of the cash-only requirement is lawfully imposed, the Commission should still take action to constrain its impact on uncollectable expenses by:

- finding its application to certain customer populations (i.e. critical care or medical emergency program enrollees) is unreasonable;

[12] Additionally, Mr. Bunch recommended correction of the reference regarding late payment fees to Rule 460.122 in section C4.8A of the rate book. The correct reference is to Rule 460.125. 6 Tr. 4298.

- creating requirements pertaining to the form and content of notices to the customer of the cash-only payment requirement, including notice by mail with information regarding how to appeal the decision to require cash-only payments; and
- disallowing 1% of the expense amount uncollectibles contribute to the revenue requirement to compensate for the increased uncollectable expenses from the policy.

VI. RATE DESIGN AND TARIFF: STREETLIGHTING

A. Those Customers Who Paid Upfront to Convert Their Own Streetlights to LEDs Should Not Be Required to Pay for Other Communities' Conversions[13]

A number of witnesses offered testimony regarding whether communities that paid an up-front CIAC to convert their streetlights to LEDs should receive any reduction in rates via a credit given that other communities will now receive LED lights without up-front payments: MAUI witness Bunch (6 Tr 4300-4311), Ann Arbor witnesses Naheedy (6 Tr 4225-31), Stults (6 Tr 4274-76) all addressed this issue in direct testimony, and rebuttal testimony was provided by Staff witness Isakson (6 Tr 4913-14) and DTE witness Bellini (6 Tr 3150-3152). Additionally witness Bellini provided some information relevant to the question in his direct testimony (6 Tr 3102-3107.) All witnesses except Bellini expressed support for credits for communities that made up-front payments to convert their streetlights to LEDs.

[13] This is a portion of issue 86 on DTE's Disputed Issues Chart.

DTE rightfully notes that MI-MAUI has sought to eliminate the CIAC for planned LED streetlight conversions in both the Consumers and DTE territories over a period of many years, and has sought to ensure that communities that have already paid a CIAC for such conversions are treated fairly. MI-MAUI's primary argument regarding such conversions has been that LED lighting is in effect the default and most common streetlighting choice, so charging communities a CIAC as if they were selecting a specialty, non-standard light is inappropriate. In 2023, DTE argued that allowing customers to convert to LEDs without paying a CIAC would harm those communities that had already paid to convert to LEDs. U-21297, Commission Order (Dec. 1, 2023) at 130 ("In replies to exceptions, on the CIAC issue, DTE Electric argues that [if LEDs conversions occur without a CIAC] the municipalities that already converted their lighting systems to LEDs will be penalized by having subsidized other municipalities' conversion work.").

Before the Commission could rule on whether MI-MAUI was correct in arguing the dominant nature of LED technology meant requiring a CIAC for planned conversions was inappropriate, the market effectively decided the issue. In November of 2023, DTE notified its community lighting customers that LEDs would be the new default light – specifically, that it would begin replacing failed high-pressure sodium ("HPS") streetlights with LEDs after its existing inventory of HPS lamps is depleted. The driver for this decision was the discontinuation of manufacturing of HPS streetlights due to "continued movement toward LED technology." 6 Tr 3105. Thus, while on December 1, 2023, the Commission ruled that it was still appropriate to treat LED technologies like a special order item that requires a CIAC and HPS fixtures as the

standard offering, the marketplace had already determined that LED was the only technology with sufficient demand to justify continued manufacture.

Now, in this case, DTE proposes altering the E1 Option I and D9 tariff to include language notifying customers that all HPS fixtures will be converted to LEDs upon failure starting on January 1, 2025. 6 Tr 3107.

Now that the market has proven that LEDs are in fact the default lighting choice, DTE's proposed adjustment in rate design to this new reality is minimal. It proposes both continuing the identical CIAC for those communities that wish for a planned conversion instead of a reactive one, and opposes any credit going toward customers who have already paid a CIAC despite the concern the DTE expressed less than a year ago that providing costless conversions would force a subsidy by CIAC-payers to non CIAC-payers.

Testimony by Mr. Bunch recommends a streetlighting credit design that was refined over several rate cases and one proceeding specific to the streetlight credit issue in the Consumers Energy territory. 6 Tr 4305. Staff witness Isakson agreed with the central premise behind the credits. "As described by MI-MAUI witness Richard Bunch, if all customers will begin to be upgraded to LED service via spending in base rates, then it is appropriate for customers that paid CIAC on their conversions to be made whole. 6 Tr 4913. Isakson also supported MI-MAUI's proposed credit structure. *Id.* at 4913-4914. Although Isakson believed Ann Arbor witnesses were arguing for an alternative credit mechanism, any such impression is incorrect: Ann Arbor supports the MAUI credit structure proposal.

In rebuttal, Mr. Bellini quotes testimony applicable to early (and different) credit proposals that were not adopted, and says he cannot answer "why" the Commission approved

such credits. 6 Tr 3157. However, he recognizes that the Commission has in fact chosen to require a system of time-limited bill credits in the Consumers Energy territory to address this issue, though he faults witness Bunch's testimony for failing to "provide context" explaining why the mechanism was found to be reasonable by the Commission in U-20697. *Id.* Bellini argues that Consumers Energy had previously charged a CIAC for reactive and not planned conversions to LEDs, so that is one reason the bill credit mechanism may not be appropriate in the DTE territory. 6 Tr 3157. This argument is based on a false premise: Consumers has never charged CIAC for reactive conversions; indeed it did not perform reactive conversions at all until it instituted its no-CIAC burnout conversion policy. Before that, Consumers did charge CIAC for planned conversions, and still does, although demand has plunged sharply since customers learned they could get LEDs at no up-front cost merely by waiting for the existing HID lamps to burn out. Additionally, Bellini says, without citation, that Bunch believed LEDs installed in early days in the Consumers territory had a much shorter life than LEDs installed later when LEDs became standard. This argument is not an accurate characterization of Mr. Bunch's arguments, and may be a misunderstanding of how many years LEDs had on average already been installed when the shift to LED as a standard installation took place. (A factor that helped determine the time-limited nature of the credit.)

In short, while 2023 DTE believed that allowing some customers to get LEDs at no additional cost would cause communities that had paid upfront for those conversions to effectively subsidize their neighbors, 2024 DTE believes it is not a subsidy for Ferndale, Ann Arbor, and others who paid 100% of the costs of their own LED conversions to also pay to convert their neighbors' lights, as long as that conversion is done on a reactive basis. Witnesses

for MI-MAUI, Ann Arbor and the Staff agree the situation would cause early actors to pay twice for conversions, and a bill credit is an appropriate way to avoid the subsidy that 2023 DTE rightfully identified would result.

Finally, while witness Bunch did use DTE-specific data in his description of the proposed credit, witness Bellini's concern regarding the potential to need to tweak the credit mechanism to accurately reflect the costs in the DTE service territory can be easily addressed by adopting witness Bunch's recommendation that DTE consult with staff and intervenors in the development of its proposed credit calculation in advance of its next filing, and file a bill credit method and initial amount in its next rate case. 6 Tr 4308. The Commission should do so.

B. A CIAC Is Inappropriate for Planned Streetlight Conversions to Standard Offering LED Streetlights. [14]

Testimony on this issue was provided by MAUI witness Bunch 6 Tr. 4310-4311 and DTE witness Bellini in rebuttal, 6 Tr. 3151-3155.

The Company's rates are required to be just and reasonable. Witness Bunch's unrebutted testimony is that it cheaper for the Company to convert streetlights via planned group conversions projects than to do so one at a time as they burn out. 6 Tr 4301. However, those planned conversions would only be undertaken under the Company's proposal if a customer chose to shoulder an up-front and substantial CIAC fee instead of getting the more-expensive, reactive conversion option at no additional cost.

[14] This is a portion of issue 86 on DTE's Disputed Issues Chart.

Bellini objects that "the discontinuation of CIAC would result in the Company absorbing full project conversion costs into rate base, that would be socialized among all E1 Option I municipal customers." 6 tr 3155. MI-MAUI believes these costs would be socialized among the customers that are benefitted by such costs, given that planned conversions would be less expensive to execute than reactive conversions. Therefore, a CIAC is neither necessary to recoup excess costs nor address cost-causation issues. It should not be charged.

C. E1 Streetlighting Sales Forecast Should Be Updated to Adjust for Current Outage Rates.[15]

Testimony regarding whether the E1 streetlighting sales forecast should be adjusted to match the percentage of lights the Night Patrol identified as out in 2023 was offered by MI-MAUI witness Bunch (6 Tr 4311-4313) and DTE witness Bellini (6 Tr 3158-3159).

Specifically, witness Bunch recommended a reduction of 3,308,045 kwh, which is equivalent to 4.06% of DTE's unadjusted forecast for E1, Option 1 streetlights, in line with the prior method the Commission approved to adjust for the fact that streetlights that are out use no (or almost no) electricity. 6 Tr 4312. Witness Bellini generally agreed with this recommendation for this rate case, noting that the Company had already reduced the sales forecast by 3.25% so the recommendation was an incremental change of 0.81%. 6 Tr 3159.

Bellini cautioned that if night patrols are (as is intended) directed toward communities that are reporting higher than average outages in the coming years, as is planned, the Night Patrol data may no longer be as good a measure of the system-wide outage rate (as it would tend to

[15] This is issue 87 on DTE's Disputed Issues Chart.

over-predict outage rates). 6 Tr 3159. Therefore, Bellini recommended that the Commission order DTE, MPSC Staff, and MAUI to confer regarding a better methodology to estimate the outage rate for the purpose of adjusting the sales forecast in future cases. *Id.* MI-MAUI would welcome the opportunity to confer as recommended by Mr. Bellini and supports this recommendation, and to include discussion of outage information and reporting discussed further below.

D. The Company Should Be Required to Improve Streetlight Outage Reporting[16]

Testimony on this issue is found in MI-MAUI witness Bunch's testimony (6 Tr 4319-4324) and DTE witness Bellini's rebuttal (6 Tr 3165-3170). Additionally, relevant information is found in the testimony of Ann Arbor witness Naheedy (6 Tr 4225).

Since the order in U-21297 to provide quarterly reports to streetlighting customers, there have been a number of changes that can impact outage reporting. In January 2023, DTE retired its former outage management system ("OMS"), and the new OMS came online in October of 2023. 6 Tr 4225. The Company, Staff and MI-MAUI met and agreed that limiting the outage reporting required by U-21297 to only E1, Option I customers was acceptable and had fruitful discussion regarding the schedule of such reporting, given the need to allow some time after the OMS could be fully operational. Both the lack of OMS data for much of 2023 and the format of outage reporting to Ann Arbor, the only community to receive reporting that allows for pinpointing the number of lights and length of outages, has changed in ways that makes it more

[16] This is issue 88 on DTE's Disputed Issues Chart.

difficult to determine trends on outage response and restoration time. Presumably, beginning regular and consistent reporting to all communities, as was ordered in the prior rate case, will allow some kind of consistent year-over-year comparisons. *Id.* Both witnesses Bellini and Bunch agree that there is merit in the ability to better track events and know where recurring outages are occurring. 6 Tr. 3168.

While there has been progress, there are still areas of disagreement, largely around key gaps in data that must be addressed to determine whether measures are working, and what programs are cost-effective at preventing outages. The most important piece of information is some kind of consistent data that tracks the number, length, and especially the cause of streetlight outages. E.g. 6 Tr 4322.

In the last seven years, the Company's spending on streetlight reliability efforts has increased substantially. However, it remains difficult to assess what of its efforts are likely to have or have had a measurable impact on outage occurrences or duration. Without that data, it is hard to understand how DTE can assess which of its efforts to increase reliability are producing results, and whether defective equipment issues, operational practices or other problems may lie at the root of subpar reliability. For instance, there is no way to track whether delayed maintenance has produced more outages, and thus focus efforts on averting premature failure, or data that would allow DTE to determine if shifting money to underground cable replacement from other efforts would prevent enough outages to be a better use of available funds.

The Company is right that MI-MAUI is not clear on what data is in fact available. To illustrate why that confusion may exist, witness Bellini's rebuttal testimony both states the OMS system does not provide the "necessary information to provide root cause data" regarding

outages (6 Tr 3166, 3169) but at the same time witness Bellini does have sufficient root cause data to state that outages are "generally the result of the result of a failed luminaire, failed wiring or components such as a photocell, or failed underground cable" (6 Tr. 3167). Perhaps the root-cause data witness Bellini is relying on to report what does cause outages comes from night patrol, and that date is not captured in the new OMS. E.g. 6 Tr 3111. In that case, it is not clear whether there is the ability to cross-walk such information so that outage tracking could be done with some causation information. The Company apparently does have enough information to allow Witness Bellini to testify that LED replacements (which involve the installation of a new luminaire) are unlikely to be responsible for any improvement in reliability, even though he lists luminaire failure as one of three major causes of outages and those should theoretically be reduced by having nearly one-third of luminaires be LEDs that have no lamps to burn out. 6 Tr. 3167-8; 6 Tr 3103.

If our only source of root cause data is currently in data generated by night patrol and not incorporated into the OMS, that increases the need for other consistent reporting. Night patrol information has apparently been among the better available sources for assessing *why* outages occur and their system-wide prevalence, because such inspections are performed regularly and uniformly and such data is gathered in some form. DTE now proposes to shift Night Patrol to focus on areas of worse reliability, which while reasonable, suggests one of the key sources of data that can be used to track streetlighting performance consistently will no longer provide good year-over-year comparison data in the future.

Mr. Bellini's rebuttal offers testimony about various ways he believes this sort of outage and outage causation information cannot be gathered: it cannot be gained through networked

lighting solutions, and software allowing it cannot be purchased at a reasonable cost. 6 Tr 3169. What he does not say is whether DTE sees any possibility that it will be able to perform data analyses of what is causing outages, and what measures are most cost-effective at addressing them. It is noteworthy, though, that the Company represents that its new outage management system improves outage response and will shorten durations, but at the same time that system will not be able to generate useful information about what causes the outages so that they might cost-effectively be prevented.

Finally, witness Bellini recommends a Staff-facilitated meeting where the current and potential future abilities of the OMS system could be explored. (6 Tr. 3170.) MI-MAUI agrees that it could be helpful and notes this could be combined with the recommended tripartite discussion of how to estimate system-wide outage rates if Night Patrol is altered, since many of the same issues will be relevant in both contexts.

Given all these developments, MI MAUI believes it is prudent for the Commission order to reaffirm its commitment to the reporting ordered in the prior rate case, including a date certain by which initial reporting must commence. It also urges the requirement to set forth a path by which the Company will be able to keep sufficient records to allow evaluation as to the efficacy of its various efforts. As a key step in record keeping, the Commission should also order the Company either to implement, or propose with its next rate case, a way to report outage counts that reflect the number of lights affected, rather than reporting "1" outage whether it is one light or a dozen that may be affected.

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.	U-21534 ALJ Sally L. Wallace

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PROOF OF SERVICE

On the date below, an electronic copy of the public version of the **Initial Brief of the Michigan Municipal Association for Utility Issues** was served on the following:

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

Dated: October 3, 2024

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