



June 20, 2025

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

Via E-File

RE: MPSC Case No. U-21260

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Reply Brief by Michigan Environmental Council; and
- Proof of Service

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Sincerely,

Holly L. Hillyer
holly@tropospherelegal.com

CC: Parties to Case No. U-21260

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **DTE
ELECTRIC COMPANY** for reconciliation U-21260
of its power supply cost recovery plan (Case
No. U-21259) for the twelve months ended
December 31, 2023.

REPLY BRIEF BY

MICHIGAN ENVIRONMENTAL COUNCIL

June 20, 2025

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I. INTRODUCTION

The Michigan Environmental Council (MEC) submits this brief to reply to DTE Electric Company (DTE or the Company) and the Michigan Public Service Commission (MPSC or Commission) Staff regarding the following issues: 1) MEC's recommended disallowance for excess costs paid to NEXUS; 2) MEC's recommended disallowance for replacement power costs incurred for outages at the Blue Water Energy Center (BWEC); 3) and Staff's recommendations regarding DTE's method for calculating replacement power costs.

II. Reply to DTE

A. The Commission should disallow excess costs paid to NEXUS.

MEC explained in its initial brief how DTE customers have been overpaying for gas supply under the NEXUS contract, and will likely continue to overpay, instead of seeing the cost savings DTE once anticipated. As Attorney General witness Sebastian Coppola testified, the cumulative excess costs amounted to about \$38.6 million at the end of 2023 and will continue to increase without Commission intervention.¹ Mr. Coppola recommended a disallowance of \$14.09 million based on the difference between the cost of gas purchased through the NEXUS contract and the cost of gas from other suppliers.² MEC witness Devi Glick recommended a disallowance of \$5.97 million based on the difference between the \$19.70 million in NEXUS transportation costs incurred in 2023 and the \$13.72 million in NEXUS supply value the Company said it received.³

¹ Direct Testimony of Sebastian Coppola, 2 Tr 225-26, 231.

² *Id.* at 228, 231.

³ Direct Testimony of Devi Glick, 2 Tr 310.

In its Initial Brief, DTE suggests that NEXUS costs are a settled issue, but they are not. DTE argues that the Attorney General and MEC “neglect that the Commission has repeatedly rejected similar arguments” to those Mr. Coppola and Ms. Glick raised, citing a series of decisions culminating in the Commission’s order in DTE’s 2022 PSCR Plan case.⁴ But DTE neglects key parts of the quote it selected⁵ from the 2022 PSCR Plan case:

The Commission notes that issues with the NEXUS contract and TEAL amendments have persisted through numerous PSCR proceedings and that the Commission previously determined that the reasonableness and prudence of DTE Electric’s decision-making for the original NEXUS agreements as well as the TEAL amendment is entitled to preclusive effect. However, **issue preclusion does not apply to the reasonableness and prudence of the costs incurred during the relevant PSCR year at issue**, even if it is only to show that they are consistent with contracted costs that have been previously approved by the Commission and should be considered to be reasonable and prudent on that basis. Towards that end, the Commission agrees with the ALJ that DTE Electric sufficiently explained its NEXUS costs for the 2022 plan year and that **a more complete assessment of the continuing reasonableness of the NEXUS arrangements can be made once a full year of BWEC operation is completed.**⁶

DTE argues that “any review of NEXUS issues is limited due to the ‘preclusive effect’ of the Commission’s prior decisions”⁷ but ignores that the Commission has expressly recognized the limits of that preclusive effect, which does not extend to the reasonableness and prudence of PSCR costs actually incurred in a particular PSCR plan year. As it does in every PSCR reconciliation case, DTE bears the burden of proving that the PSCR costs it actually incurred in a particular year were reasonable and prudent.⁸

⁴ DTE Initial Brief, pp 19-21.

⁵ DTE Initial Brief, p 21.

⁶ Case No. U-21051, Order, February 27, 2025, p 9 (citations omitted) (emphasis added).

⁷ DTE Initial Brief, p 21.

⁸ See Case No. U-15675, Order, January 25, 2010, p 9; Case No. U-13562, Order, June 27, 2003, p 3.

The Commission expressly contemplated making a “more complete assessment of the continuing reasonableness of the NEXUS arrangements”⁹ after the completion of a full year of BWEC operation. BWEC came online in June 2022¹⁰ and completed its first full year of operation in June 2023. This PSCR reconciliation case for the year ending December 31, 2023, is the first in which costs incurred after the completion of a full year of BWEC operation can be reviewed.

DTE offers no real evidence or argument to support a finding that its 2023 NEXUS costs were reasonable beyond rehashing its position that its original decisions to enter into the NEXUS contract and TEAL amendment were reasonable. That is insufficient to demonstrate the “*continuing* reasonableness of the NEXUS arrangements”¹¹ For the reasons discussed above and in the testimony and briefs filed by MEC and the Attorney General, the Commission should disallow excess costs that DTE incurred by continuing to overpay for, and underutilize, its NEXUS capacity in 2023.

B. The Commission should disallow replacement power costs incurred during outages at BWEC to perform warranty work.

In its initial brief, MEC discussed several concerns that Ms. Glick raised regarding DTE’s management of its generation fleet. As Ms. Glick explained in detail in her testimony, generation levels at DTE’s baseload plants were lower than planned, DTE’s baseload plants were offline longer than expected for both planned and random outages, and DTE relied on its peaker fleet more than planned. All this increased DTE’s power supply costs, which DTE now seeks to recover from ratepayers. In particular, extended outages at BWEC to perform certain warranty work

⁹ Case No. U-21051, Order, February 27, 2025, p 9.

¹⁰ Glick Direct, 2 Tr 289.

¹¹ Case No. U-21051, Order, February 27, 2025, p 9 (emphasis added).

resulted in DTE incurring \$6.4 million in replacement power costs. Because these costs should be borne by DTE or its vendors, not ratepayers, Ms. Glick recommended the Commission disallow the \$6.4 million in replacement power costs incurred for the duration of the BWEC outages attributable to the warranty work.¹² Attorney General witness Coppola went farther, recommending that the Commission disallow the full \$17.02 million in replacement power costs incurred for the total duration of the BWEC outages.¹³

MEC's initial brief generally anticipated and addressed DTE's arguments about the management of its generation fleet, including the BWEC outages, and MEC will not repeat those discussions here. MEC will, however, reply to two arguments DTE makes in its initial brief regarding the recommended disallowance for the BWEC outages.

First, DTE appears to mistake Ms. Glick's observation that DTE "can and should better protect itself from liability with contractor and manufacturer contracts" as her primary reason for recommending a disallowance¹⁴ but ratepayers should not be on the hook for design defects or installation errors irrespective of whether DTE negotiated sufficient protection for itself in its vendor contracts. DTE is responsible for reasonably and prudently overseeing the work of its contractors and DTE is in the best position to recover from those contractors if their work is unsatisfactory. As the Minnesota Public Utility Commission observed in its decision refunding customers replacement power costs from the Xcel Sherco plant outage, "the utility—and not the ratepayer—is in the best position to screen third parties and seek redress from any third party."¹⁵

¹² Glick Direct, 2 Tr 286.

¹³ Coppola Direct, 2 Tr 239.

¹⁴ DTE Initial Brief, pp 11-12 (quoting Glick Direct, 2 Tr 298).

¹⁵ Minnesota PUC Docket No. E-002/GR-13-868 et al., Order Adopting Administrative Law Judge Report as Modified, Requiring Refund of Certain Disallowed Replacement Power Costs, and Requiring Further Action,

If DTE does not protect itself by negotiating for its contractors to bear the costs of replacement power during outages caused by design or installation flaws, DTE should bear those costs.

Second, DTE ignores information that does not fit its narrative and attempts to improperly shift the burden of proof to MEC.¹⁶ DTE highlights Company witness Mark Kimmel’s testimony that Ms. Glick “did not and could not articulate” how the Company failed to protect itself in its vendor contracts, but Ms. Glick, in response to a discovery request from DTE, explained that replacement power provisions are common in power purchase agreements and provided DTE with an example of the kind of provision it could negotiate.¹⁷ DTE also argues that MEC and Ms. Glick “fail[ed] to specifically enumerate the alleged errors or any relevant actions that might have prevented the outcomes of which they complain,”¹⁸ but Ms. Glick clearly identified the warranty work at issue based on DTE’s own discovery responses.¹⁹ As DTE itself said, “[t]he planned warranty work that extended the Spring 2023 outage was the replacement of the Combustion Turbine Generator 11 combustion can seals” and “[t]he planned warranty work that extended the Fall 2023 outage was the replacement of the Heat Recovery Steam Generator 11 & 12 high pressure steam drum demisters.”²⁰ The errors that necessitated this warranty work are the errors that resulted in DTE incurring replacement power costs it otherwise would not have incurred.

December 24, 2024, p 21-22, available at <https://www.edockets.state.mn.us/documents/%7B907EFA93-0000-CC79-9AC8-DB1E96348EB8%7D/download?contentSequence=0&rowIndex=6>.

¹⁶ Glick Direct, 2 Tr 298.

¹⁷ Ex A-33.

¹⁸ DTE Initial Brief, pp 11-12.

¹⁹ Glick Direct, 2 Tr 297.

²⁰ Ex MEC-09, DTE Response to MEC Request 4.3c.

Moreover, MEC does not bear the burden of proof in this proceeding – DTE does.²¹ DTE has not proven that the replacement power costs it incurred while BWEC was offline for warranty repairs caused by the installation of faulty combustion can seals and too-small demisters were the result of reasonable and prudent selection and supervision of its contractors. Therefore, the Commission should disallow replacement power costs incurred during outages at BWEC to perform warranty work.

III. REPLY TO STAFF

A. The Commission should adopt Staff’s recommendations regarding DTE’s replacement power cost calculation methodology.

In its initial brief, MEC described how DTE calculates replacement power costs for outages that are random or longer than planned only when the unit that experienced the outage generates less than planned for the whole year. MEC witness Glick expressed three concerns with this method: 1) it does not account for the timing of the outage and cost to purchase replacement power at that time; 2) planned generation levels may not reflect the reality of how the system will operate under actual market conditions; and 3) it assumes the replacement power is market power and not coming from a different, more expensive generating unit like a peaker.²²

In its initial brief, Staff agrees with Ms. Glick and further argues that DTE’s replacement power cost calculation method frustrates the Commission’s reasonableness and prudence review in PSCR reconciliation proceedings.²³ Staff points out that DTE’s method is based on the faulty

²¹ Case No. U-8866-R, Order, September 14, 1990, pp 38–39 (costs from unplanned outages must be reviewed in PSCR reconciliation proceedings and “the utility has the burden of proving by at least a preponderance of the evidence that the outage was not due to negligence or mismanagement.”).

²² Glick Direct, 2 Tr 295-96.

²³ Staff Initial Brief, pp 10-11.

premise that no replacement power costs can exist when a unit generates as much or more than what was projected for the PSCR plan year, which would imply that all outages during the year are reasonable and prudent so long as the unit generates as much or more than planned. But that is not necessarily true – as Staff explains, “[a]n outage can have replacement power costs if the Commission deems all or any part of the outage to be imprudent,” irrespective of whether the outage was random, planned, or longer than planned, and “determination of these costs has no relationship to the unit’s actual generation compared to the plan for the year.”²⁴

As Staff noted, DTE’s method also overcomplicates the PSCR reconciliation process by requiring a closer review of planned outages than would otherwise be necessary. Finally, DTE’s method could incentivize the Company to project lower generation levels than it otherwise might, so that it is more likely that each unit will generate more than planned for the year despite any outages that may occur.²⁵ For example, if DTE projects that a unit will generate 1,000 MWh during the year and the unit experiences an outage and generates only 900 MWh, DTE would have 100 MWh in replacement power costs. But if DTE under-projects that the unit will generate only 800 MWh, the same scenario would result in zero replacement power costs because the unit would outperform the lower projection.

Ultimately, Staff asks the Commission to reject DTE’s replacement power cost calculation method, requests a finding that “any outage can have incremental replacement power costs,” and asks the Commission to “direct DTE to calculate incremental replacement power costs for any outage in its PSCR reconciliation cases, regardless of the comparison of the unit’s actual generation

²⁴ *Id.* at 14.

²⁵ In its initial brief, Staff identifies the potential for DTE’s method to incentivize skewed projections but suggests that the incentive would be to project generation levels as high as possible (Staff Initial Brief, p 13), which appears to be an error because it would be less likely that a unit would outperform higher projections and therefore more likely that the Company would have to calculate replacement power costs.

to the generation included in the plan, at least when requested by a party to the case.”²⁶ MEC agrees with Staff and supports its recommendations.

IV. CONCLUSION

For the reasons discussed above, MEC respectfully reiterates the requests for relief in its initial brief and asks that the Commission adopt Staff’s recommendations regarding DTE’s replacement power cost calculation method.

Respectfully submitted,

TROPOSPHERE LEGAL, PLC
Counsel for MEC

Date: June 20, 2025

By: _____

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²⁶ Staff Initial Brief, p 14.

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **DTE ELECTRIC COMPANY** for reconciliation of its power supply cost recovery plan (Case No. U-21261) for the twelve months ending December 31, 2023. U-21260

PROOF OF SERVICE

On the date below, an electronic copy of **Reply Brief by Michigan Environmental Council** was served on the following:

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

TROPOSPHERE LEGAL, PLC
Counsel for MEC

Date: June 20, 2025

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