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September 24, 2025

BY ELECTRONIC FILING

Ms. Lisa Felice, Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, Michigan 48917

RE: MPSC Docket No. U-21797

Dear Ms. Felice:

Enclosed please find the public version of *Application for Leave to Appeal Administrative Law Judge's Ruling on Motion for Partial Summary Disposition by Vassar Acquisitions, LLC* along with a *Proof of Service* dated September 24, 2025.

If you have any questions regarding the attached, please do not hesitate to contact me.

Very truly yours,

Fraser Trebilcock Davis Dunlap & Cavanaugh, P.C.

Sean P. Gallagher

Cc: Parties of Record

Enclosure

PUBLIC VERSION

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
VASSAR ACQUISITIONS LLC)
against DTE ELECTRIC COMPANY)
_____)

Case Nos. U-21797

Hon. Lesley C. Fairrow

**APPLICATION FOR LEAVE TO APPEAL THE ADMINISTRATIVE LAW JUDGE'S
RULING ON MOTION FOR PARTIAL SUMMARY DISPOSITION
BY VASSAR ACQUISITIONS, LLC**

PUBLIC VERSION, REDACTED CONSISTENT WITH PROTECTIVE ORDER

SEPTEMBER 24, 2025

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Under Michigan Public Service Commission Rule 433, Complainant Vassar Acquisitions LLC (“Complainant” or “Vassar”), by and through its attorneys, Fraser, Trebilcock, Davis, Dunlap & Cavanaugh, P.C., hereby submits this Application for Leave to Appeal the September 10, 2025 decision of the Administrative Law Judge (“ALJ”) Lesley C. Fairrow denying Vassar’s Motion for Partial Summary Disposition (“Ruling”). In support of the Application, Vassar submits the following brief.

I. Introduction

In September 2023, Vassar initiated a formal complaint against DTE Electric Company (“DTE”) based on DTE’s conduct towards Vassar in connection with a new electric service relationship, which Vassar asserts violated certain Commission rules in addition to Michigan statutes governing the Commission and electric service delivered thereunder.

Following the completion of discovery, Vassar filed a motion and sought partial summary disposition pursuant to Rule 432 and MCR 2.116(C)(10) on Count I of its Complaint on the basis that there is no genuine issue of material fact that DTE’s conduct toward Vassar was unlawful and/or unreasonable because DTE forced Vassar into special contractual terms and agreements, including making Vassar pay hundreds of thousands of dollars for a piece of system improvement equipment called a “capacitor,” pursuant to provisions of its tariff rate book concerning extension of distribution system service which did not and do not apply to Vassar (the “Motion”). This is the case because, REDACTED - U-21797 Confidential P.O. there was sufficient distribution system capacity in the area of Vassar to serve Vassar’s requested load as a new customer of DTE, and, as Vassar’s expert testified REDACTED - U-21797 Confidential P.O. “capacity” is not the same as “voltage, a point which matters when interpreting the relevant DTE tariff rate book language.

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DTE now claims that the capacitor was required to serve only Vassar while at the same time claiming that over 10,000 DTE customers would be subject to rolling blackouts if the capacitor were not installed before adding Vassar's proposed relatively small industrial electric load of 3 MVA.

It is undisputed that the Commission-approved tariffs that govern DTE's regulated monopoly electric distribution service business provide DTE with the authority, under the appropriate circumstances, to impose special contract provisions such as line extension agreements, minimum demand charges, contributions in aid of construction, financing guaranties, and commitment to a certain tariff rate for electric service for a length of time. DTE claimed that it had the right to exercise that authority as to Vassar based on language in subsection C6.1A(7) of its Rate Book for Electric Service that as a new customer "whose load requirements exceed the capacity of the available system in the area..."¹

The gravitas of Vassar's submission in its Motion is the underlying facts did not support DTE's claim of a lack of capacity, which DTE only made in 2021 after offering Vassar electric service in 2020 without any mention of concerns over its system capacity or any strings of special contract terms attached.

Vassar respectfully requests the Commission reverse the ALJ's decision to deny Vassar summary disposition because the material undisputed facts applied along with the appropriate legal standard to interpret DTE's tariff language shows Vassar is entitled to judgment as a matter of law.

¹ DTE's pre-filed testimony and case before Vassar file the Motion relied on the legal and factual assertion of a lack of capacity. In response to the Motion, DTE changed tactics asserted that other language in the same section of the tariff gave DTE the right to exercise the authority to impose special contract terms.

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The ALJ's decision must be reversed because (1) there is no genuine issue as to any material fact concerning the facts necessary to analyze whether DTE had the right to exercise tariff authority to impose special contract terms on Vassar because it is undisputed that DTE had sufficient distribution capacity to serve Vassar's proposed load that and "capacity" is not the same as "voltage" and (2) applying these undisputed facts to the correct legal standard to interpreting section C6.1A(7), a standard which serves the Commission's long-held policy that the tariffs should be interpreted to establish and maintain uniform and nondiscriminatory rates to protect ratepayers from harmful utility conduct, supports the conclusion DTE acted unreasonably and/or unlawfully in imposing special contract terms because DTE exercised authority in circumstances beyond that allowed by the tariff, because it had sufficient distribution capacity, despite its electric system's apparent subtransmission and voltage deficiencies, and Vassar is entitled to judgment as a matter of law.

II. Application for Leave to Appeal

Pursuant to Rule 433 of the Commission's Rules of Practice and Procedure, R792.10433, Vassar submits this Application for Leave to Appeal the September 10, 2020 Ruling of ALJ Lesley C. Fairrow denying Vassar's Motion for Partial Summary Disposition ("Ruling"). Rule 433 provides that, during the course of a proceeding, a party may appeal an ALJ's ruling to the Commission.² This rule sets forth the criteria used by the Commission when reviewing an Application for Leave to Appeal:

The commission shall grant an application and review the presiding officer's ruling if any of the following provisions apply: (a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding. (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large. (c) A decision on the ruling

² Mich Admin Code R 792.10433.

before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.³

The Commission should grant Vassar's Application because by doing so, the Commission will materially advance a timely resolution of this proceeding.

The Ruling failed to apply the correct legal standard to the merits of Vassar's motion for summary disposition, the interpretation of the Commission's tariff language at issue – which should be interpreted to protect customers from harmful utility conduct – and consideration of whether there were any genuine issues as to any material facts concerning whether DTE had sufficient distribution capacity to serve Vassar's new load and whether "capacity" is the same as "voltage."

III. Relevant Background

Factual Background of Vassar's Motion

Vassar's Amended Formal Complaint asserts five counts of statutory and administrative rules violations by DTE. MPSC Case No. U-21797, Dkt. 0005.⁴ Vassar filed its formal complaint only after pursuing the informal complaint process at the Commission pursuant to Rule 440 of the Rule of Practice and Procedure before the Commission.

Vassar brought its Amended Formal Complaint pursuant to Rule 439, concerning matters involving alleged unjust, inaccurate, or improper rates or charges or unlawful or unreasonable acts, practices, or omissions of a utility, including a violation of any commission rule, regulation, tariff filed or published by a utility, order, or a violation of a statute administered or enforced by the commission.

Mich Admin Code R 792.10439.

Vassar also brought its Amended Formal Complaint pursuant to Rules 441, 442 and 443.

³ Mich Admin Code R 792.10433(2).

⁴ Vassar has since agreed with DTE to voluntarily dismiss Count IV, concerning Rule 502.

Vassar's Count I asserts, in relevant part, that

DTE orchestrated a series of unjust, unlawful, and/or unreasonable acts, practices, and/or omissions in connection with the rates, fares and terms of service imposed by DTE on Complainant by a utility in violation of MCL 462.25, by...

- (a) suggesting that the Complainant pay \$1-2 million dollars for a capacitor that must be installed in less than a year;
- (b) requiring the Complainant to execute the LEA to fix DTE's infrastructure in exchange for power to the Complainant's Subject Property;
- (c) forcing the Complainant to execute the LEA Guaranty in the amount of \$825,000;
- (d) issuing shut off notices in excess of \$905,826.23;
- (e) making conflicting power service representations to the Complaints Subject Property from DTE;
- ...
- (h) failure of DTE to offer any other rate options than D11 to the Complainant;
- (i) forcing the Complainant to execute contracts and agreements for more service than needed to obtain necessary power;
- (j) forcing the Complainant to execute the LEA that includes a provision that the Complainant pay DTE the higher of the standard building [SIC – "billing"] demand or contract demand of 2550kW or actual metered billing....⁵

Vassar first approached DTE representatives in 2018 concerning power available at the subject property ("Vassar Facility").⁶ There is no dispute that the Vassar Facility is located on real property previously used as a foundry which closed in or about 2014.⁷ Vassar's discussions with DTE culminated in the submission in 2020 of a service request to DTE representative Marino Burla, who submitted a Method of Service request to DTE to provide Vassar with 3 MVA of power as a new customer of DTE ("1st MOS").⁸

⁵ Formal Complaint, pp. 15-16, ¶95.

⁶ Dkt. 0076, Motion Ex. 2, Pre-filed Direct Testimony of Christopher Stevens at 4-5.

⁷ Motion Ex. 7, Pre-filed Direct Testimony of Marino Burla at 5.

⁸ Motion Ex. 7, Burla Direct at 4-5.

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Mr. Burla submitted the 1st MOS to the distribution system engineers at DTE.⁹ The engineers at DTE gave Mr. Burla approval of the MOS for 3 MVA of power for Vassar which did not reference a capacitor or need for a line extension agreement.¹⁰ Mr. Burla relayed that offer to Vassar on November 13, 2020.¹¹ REDACTED - U-21797 Confidential P.O.¹²

Mr. Burla later offered direct testimony that the ‘process’ for submitting a method of service for a new customer involved Mr. Burla delivering the MOS to both the distribution system engineers and the subtransmission engineering team, and that both set distribution and subtransmission engineering approval was required before an MOS could be approved for a new customer.¹³ REDACTED - U-21797 Confidential P.O.

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REDACTED - U-21797 Confidential P.O.¹⁵ Mr. Burla testified the distribution engineers at DTE failed to check with the subtransmission engineers concerning whether the subtransmission system could handle Vassar’s additional 3 MVA of capacity.¹⁶

Mr. Burla claims Vassar did not sign the 1st MOS because Vassar sought more than the 3 MVA of power.¹⁷ Vassar and DTE’s discussions progressed into 2021, with Vassar submitting at

⁹ Motion Ex. 7, Burla Direct at 6.

¹⁰ Motion Ex. 7, Burla Direct at 5-6; see also Ex. 2, Stevens Direct at 7.

¹¹ Motion Ex. 2, Stevens Direct at 7.

¹² REDACTED - U-21797 Confidential P.O. (Statements concerning confidential material are shaded in the confidential version of this document.)

¹³ Motion Ex. 7, Burla Direct at 3-4.

¹⁴ REDACTED - U-21797 Confidential P.O.

¹⁵ REDACTED - U-21797 Confidential P.O.

¹⁶ Motion Ex. 7, Burla Direct at 6.

¹⁷ Motion Ex. 7, Burla Direct at 6.

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least two more MOSs in September 2021, the latter reduced to the original 3 MVA.¹⁸ At a lunch meeting with Frank Denardo, Chris Stevens, Ken Stefen, Mr. Burla represented to Vassar that the 3 MVA re-submittal on September 16, 2021, would be approved by DTE.¹⁹

After two months of continued communication, to Mr. Burla learned that DTE could not that DTE could not meet Vassar's request for even 3 MVA of power.²⁰ When Mr. Burla asked, "[W]hat changed?," Mr. Zarins responded that the original MOS in November 2020 was valid for 3 months and since that time there had been significant load growth on the distribution and subtransmission system in the area, requiring significant s\subtransmission upgrades to serve the Vassar's 3 MVA of load.²¹ Mr. Stevens testified that Mr. Burla told him in December 2021 via text message that Vassar would have to pay for a capacitor and that the cost would be REDACTED - U-

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DTE's subtransmission system engineers in 2021 prepared a power flow study which showed that there were low voltage violations already on DTE's system in the subtransmission system that serves Vassar even before adding Vassar's requested 3 MVA of load. (Ex. 8, D. Sumskiene Direct Testimony at 6; see also Ex. B, Voltage Records attached to Sumskiene Direct).

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[REDACTED]

[REDACTED] 23

¹⁸ Motion Ex. 7, Burla Direct at 10.

¹⁹ Motion Ex. 5 Frank Denardo Rebuttal Testimony at pp. 2-3.

²⁰ Motion Ex. 11, 12/01/2021 Email Burla to P. Zarins.

²¹ Motion Ex 11, 12/01/2021 Email Burla to P. Zarins.

²² Motion Ex. 2, Stevens Direct at 10.

²³ REDACTED - U-21797 Confidential P.O.

DTE admits that there was sufficient capacity on DTE's distribution system in the area of Vassar to serve the 3 MVA of load requested by Vassar through the Birch station.²⁴ [REDACTED - U-21797 Confidential P.O.]

[REDACTED]

[REDACTED]²⁵

[REDACTED - U-21797 Confidential P.O.]

[REDACTED]

[REDACTED] Vassar's expert witness, Glenn Keates [REDACTED - U-21797 Confidential P.O.]

[REDACTED] reached the conclusion that DTE's Derby and Birch substations had sufficient capacity to serve Vassar.²⁶ Mr. Keates also opined that DTE "capacity" is a different concept than "voltage."²⁷

Mr. Keates further testified that in over 30 years of working with customers and interacting with DTE, he could only recall one instance in which DTE claimed it did not have the capacity to meet a customer's needs.²⁸

DTE's concern with Vassar's load was that for DTE's subtransmission system, the low voltage violations and conditions already present will be exacerbated and that "rolling blackouts" would occur for over 10,700 DTE customers which are served by the subtransmission system which serves the Birch station which feeds Vassar.²⁹ Mr. Keates opined that DTE's determined

²⁴ Motion Ex. 4, Direct Testimony of Glenn T. Keates, P.E., attaching Exhibit GTK-7, Page 007 of 009, DTE Response to Vassar Request VA-DTE-1.8 ("As stated above, the **Derby distribution system had sufficient capacity for Vassar's power needs under the parties MOS Agreement**") (emphasis added).

²⁵ [REDACTED - U-21797 Confidential P.O.]

²⁶ Motion Ex. 4, Keates Direct at 12-13; see also Motion Ex 6, Keates Rebuttal at 6-7.

²⁷ Motion Ex. 6, Keates Rebuttal at 6-7.

²⁸ Motion Ex. 6, Keates Rebuttal at 7.

²⁹ Motion Ex. 4, Keates Direct, attaching Exhibit GTK-7, Page 008 of 009, DTE Response to Vassar Request VA-DTE-1.9.

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solution of adding a capacitor to its subtransmission system to prevent cascading blackouts to over 10,700 customers was to address a low voltage solution on the subtransmission system, not a capacity problem.³⁰

Before it would agree to provide [REDACTED] MVA of capacity to Vassar, DTE required Vassar to execute several agreements, including a March 2022 MOS Agreement (“Final MOS”) and a June 2022 Line Extension Agreement (“LEA”).³¹ [REDACTED - U-21797 Confidential P.O.]

[REDACTED]³² The LEA also required [REDACTED - U-21797 Confidential P.O.]

[REDACTED].³³

Vassar objected to the provisions of the Final MOS and the LEA, but ultimately executed those documents because it needed power.³⁴ Vassar’s urgency was the burgeoning adult-use marijuana growing marketplace and it needed power to get into the market as fast as possible.³⁵

Vassar expert witness Mr. Keates raised concerns in his testimony about the limited amount of power Vassar was seeking, [REDACTED] MVA and just [REDACTED] kVa for construction in 2022-2023, and opined on the significant system problems predating Vassar’s load request which these limitations suggested.³⁶ He further recommended the Commission investigate DTE’s use of line extension agreements to finance DTE system improvements which are not extraordinary but are

³⁰ Motion Ex. 6, Keates Rebuttal at 3, 5-7.

³¹ Motion Ex. 7, Burla Direct at 13-15.

³² Motion Ex. 7, Burla Direct at 13-14.

³³ Motion Ex. 7, Burla Direct at 14.

³⁴ Motion Ex. 2, Stevens Direct at 13-14; see also Ex. 7, Burla Direct at 15.

³⁵ Motion Ex. 3, F. Denardo Direct at 5.

³⁶ Motion Ex. 4, Keates Direct at p. 16, lines 5-10; Ex. 6, Keates Rebuttal at p. 5.

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within normal electric utility system maintenance requirements from which thousands of customers benefit.³⁷

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REDACTED - U-21797 Confidential P.O. reports that he has had at least two other legal interactions with DTE beyond the above-captioned matter, including a matter involving a street collapse in September 2021.³⁹ Based on those cases, one where Mr. Denardo REDACTED - U-21797 Confidential P.O. and REDACTED - U-21797 Confidential P.O.

, Mr. Denardo believes DTE is out to get him and questions the timing of the circumstances of those matters and how they coincide with how DTE had 3 MVA of capacity available for Vassar in 2020 and by 2021 did not have sufficient capacity without payment for a capacitor.⁴⁰

Procedural History

On September 25, 2024, Vassar filed its Amended Formal Complaint (“Formal Complaint”).⁴¹ On October 15, 2024, DTE answered the Formal Complaint.⁴² Administrative Law Judge Sally L. Wallace, initially assigned to this matter, held a prehearing conference November 26, 2024, and issued a Scheduling Memorandum.⁴³ The Scheduling Memorandum was amended by stipulations approved by ALJ Wallace.⁴⁴ ALJ Wallace also issued a Protective Order to allow

³⁷ Motion Ex. 4, Keates Direct at p. 18, lines 10-16.

³⁸ REDACTED - U-21797 Confidential P.O.

³⁹ Motion Ex. 15, July 30, 2025 Affidavit of Frank C. Denardo.

⁴⁰ Motion Ex. 15, Denardo Affidavit.

⁴¹ Dkt. 0006.

⁴² Dkt. 0008.

⁴³ Dkts. 0015, 0016, 0017.

⁴⁴ Dkts. 0018, 0021, 0033.

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protection for confidential information as well as critical energy infrastructure information.⁴⁵ ALJ Fairrow was assigned to this matter on June 4, 2025.⁴⁶ The parties pursued discovery, which concluded July 25, 2025, and pre-filed testimony and exhibits on June 6, 2025, and July 11, 2025. Vassar filed its Motion on July 30, 2025.⁴⁷ DTE filed a response on August 20, 2025.⁴⁸ ALJ Fairrow held a hearing on the Motion on September 5, 2025.⁴⁹

ALJ Ruling Denying Vassar’s Motion

On September 10, 2025, the ALJ issued the Ruling, denying Vassar’s Motion as well as denying a motion for summary disposition of all of Vassar’s claims filed by DTE.⁵⁰

The Ruling recounts the factual and procedural background and discusses Vassar’s Motion.⁵¹

The Ruling also identifies legal standards on which it decided the Motion.⁵² Notably, the Ruling does not discuss the legal standard for interpreting Commission-approved tariffs.⁵³

The Ruling discusses DTE’s motion and concludes there are genuine issues of material fact, articulating them specifically.⁵⁴

The Ruling discusses Vassar’s Motion in one paragraph and finds that it is deficient for the same reasons” as DTE’s motion.⁵⁵ Stating that “tariff charges approved by the Commission under

⁴⁵ Dkt. 0026.

⁴⁶ Dkt. 0045.

⁴⁷ Dkts. 0076 – 0078.

⁴⁸ Dkt. 0081.

⁴⁹ Dkt. 0088.

⁵⁰ Dkt. 0089.

⁵¹ Ruling at 1-3, 6-8.

⁵² Ruling at 9-10.

⁵³ Ruling at 9-10.

⁵⁴ Ruling at 11-12.

⁵⁵ Ruling at 12-13.

MCL 462.25 are presumptively lawful and reasonable,” the Ruling concluded “there are genuine issues of material fact as to whether DTE engaged in unlawful or unreasonable conduct.”⁵⁶

IV. Legal Standards

Rule 426 of the Rules of Practice and Procedure Before the Commission provides:

A party may make a motion for summary disposition of all or part of a proceeding. If the presiding officer determines that there is no genuine issue of material fact or that there has been a failure to state a claim for which relief can be granted, the presiding officer may recommend, to the commission, summary disposition of all or part of the proceeding. If the entire proceeding is disposed of, the presiding officer shall issue a proposal for decision.

Mich Admin Code R792.10426.

A motion under MCR 2.116(C)(10) does test the factual support for a claim and is properly granted where there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Mich Nat'l Bank v Laskowski*, 228 Mich App 710, 712 (1998). When reviewing a motion under MCR 2.116(C)(10), a court must examine the documentary evidence presented and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996). The nonmoving party has the burden of establishing through affidavits, depositions, admissions, or other documentary evidence that a genuine issue of disputed fact exists to warrant a trial. *Id.* If the nonmoving party fails to establish the existence of a material disputed fact, the motion is properly granted. *Id.* at 363.

MCL 462.25(a) states:

It shall be unlawful for any express company operating or doing business in the state of Michigan to charge or collect a greater amount for the transportation of merchandise or other property within this state than the rates and charges set forth and contained in the schedule of rates, tariffs and classifications on file at each station and office to or from which said rates, tariffs

⁵⁶ Ruling at 12-13.

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and classifications are intended to apply; a copy of which said schedule of rates, tariffs and classifications shall be filed with the railroad commission by the issuing carrier or some duly authorized agent or representative of such carrier[.].

(Emphasis added). See also *Union Carbide Corp v Public Serv Comm 'n*, 431 Mich 135, 156; 428 NW2d 322 (1988) (discussing authority of the Railroad Commission transferred to the Michigan Public Utilities Commission and later the Michigan Public Service Commission).

MCL 460.557 states:

The rates of an electric utility **shall be just and reasonable and a consumer shall not be charged more or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions.**

(Emphasis added).

“The rates that a public utility may charge for its regulated services are established through tariffs filed with and approved by the Public Service Commission. The statutes and tariffs should be interpreted to further the Public Service Commission’s ability to establish and maintain uniform and nondiscriminatory rates.” *In re Complaint of Bierman Against CenturyTel of Michigan, Inc*, 245 Mich App 351, 363; 627 NW2d 632 (2001) (citing *Midland Cogeneration Venture Ltd. Partnership v Public Serv Comm 'n*, 199 Mich App 286, 309-310; 501 NW2d 573 (1993)). The policy behind this standard of interpreting Commission-approved tariffs is to protect ratepayers from harmful utility conduct. *In re Complaint of MCTA*, 241 Mich App 355, 370 n8; 615 NW2d 255 (2000).

V. Argument

A. There is no genuine issue as to the material fact that DTE had sufficient distribution capacity to serve Vassar's load and that "capacity" and "voltage" are not the same.

The Ruling concludes that there remains a genuine issue of material fact as to whether DTE acted unreasonably or unlawfully.⁵⁷

Respectfully, Vassar disagrees and submits that whether DTE acted unreasonably or unlawfully is a legal conclusion based on the facts presented. The material facts required to reach a conclusion on that point are that (1) REDACTED - U-21797 Confidential P.O. there was sufficient distribution capacity to serve Vassar's new load and that (2) Vassar's expert testified REDACTED - U-21797 Confidential P.O. "capacity" and "voltage" are not the same thing.

Based on those undisputed facts, the only remaining operation to consider whether DTE acted unreasonably or unlawfully is to apply those facts to the Commission approved DTE tariff language in subsection C6.1A(7).

B. Applying the correct standard to interpreting Commission-approved tariff language in DTE's Rate Book for Electric Service subsection C6.1A(7) shows that DTE acted unreasonably or unlawfully.

In its Motion, Vassar discussed that section of DTE's Rate Book of Electric Service concerning distribution system service extensions and argued that applying the correct standard to the tariff provision at issue here, under the facts identified by Vassar, should not allow DTE to impose special contract provisions on Vassar.⁵⁸ Vassar argued that DTE did not have the authority to impose special contract provisions.⁵⁹ Vassar maintains the arguments it presented to the ALJ in its Motion and at the hearing on the Motion.⁶⁰

⁵⁷ Ruling at 13.

⁵⁸ Motion at 13-18.

⁵⁹ Motion at 19.

⁶⁰ Dkts. 0076-0078, 0088.

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The Ruling does not mention, consider, or apply the correct standard for interpreting Commission-approved tariff language.⁶¹ Respectfully, Vassar submits this the Ruling is also in error for failing to recognize and apply that standard to the undisputed facts identified above.

The Michigan Court of Appeals has articulated the proper standard for interpreting Commission-approved tariffs. See *In re Complaint of Bierman Against CenturyTel of Michigan, Inc*, 245 Mich App at 363, above. Commission tariffs are to be interpreted “to further the Public Service Commission’s ability to establish and maintain uniform and nondiscriminatory rates.” *Id.* Doing so serves the public policy aim of protecting ratepayers from harmful utility misconduct and overreach. See *In re Complaint of MCTA*, 241 Mich App at 370 n8.

As savvy as a customer might be in matters of business, the risk of being taken advantage of by a monopoly electric utility still exists because of the information asymmetry inherent in the relationship between a customer and a utility.

DTE claims it did not have sufficient voltage on its subtransmission system, the system beyond the distribution system, to serve Vassar’s relatively small proposed load of just ^{RED} MVA without causing rolling blackouts to over 10,000 customers. But even if true, they are not the material facts which turn the analysis in DTE’s favor.

In this case, the undisputed facts are that there was sufficient distribution capacity in DTE’s system and that “voltage” is not the same as “capacity.” The tariff language in subsection C6.1A(7) which DTE relied upon in its pre-filed case, in claiming it did not have sufficient capacity to serve Vassar’s load, states:

The Company reserves the right to make special contractual arrangements as to the provision of necessary service facilities, duration of contract, customer advances for construction, contributions in aid of construction, deposits, amounts of refunds, minimum bills, service charges or other service conditions. **This applies to** existing

⁶¹ Ruling at 9-13.

customers and **prospective customers whose load requirements exceed the capacity of the available system in the area** or whose load characteristics or special service needs require unusual or additional investments by the Company or where there is not sufficient assurance of the permanence of the use of the service.

(Emphasis added).

As it did in asking for a ruling in its favor for partial summary disposition, Vassar submits that the plain language of the tariff, and the word “capacity” in this section should not be read to include DTE’s subtransmission system or the voltage on DTE’s subtransmission system.

Vassar submits that this plain reading of the tariff language applies the proper standard for interpreting Commission-approved tariffs to maintain uniform and nondiscriminatory rates in a fashion to protect customers – in this case, Vassar – from utility overreach.

Relief Requested

For these reasons, Vassar Acquisitions LLC respectfully requests the Commission grant its Application, find based on the undisputed facts and Michigan law that DTE acted unreasonably and/or unlawfully toward Vassar, and issue an order granting partial summary disposition in Vassar’s favor on Count I of its Amended Formal Complaint.

Respectfully Submitted,

Dated: September 24, 2025

Fraser Trebilcock Davis Dunlap & Cavanaugh, P.C.

By: /s/ Sean P. Gallagher

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the complaint of)
VASSAR ACQUISITIONS LLC)
against **DTE ELECTRIC COMPANY**)
_____)

Case No. U-21797

PROOF OF SERVICE

Joann M. Schofield hereby certifies that on September 24, 2025, she did cause to be served the public version of the *Application for Leave to Appeal Administrative Law Judge's Ruling on Motion for Partial Summary Disposition by Vassar Acquisitions, LLC* and this *Proof of Service* by electronic mail to the persons identified below.

/s/Joann M. Schofield
Joann M. Schofield

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