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November 18, 2025

Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

RE: In the matter of the Application of DTE Electric Company for Approval of Special Contacts
MPSC Case No. U-21990

Dear Ms. Felice:

Attached for electronic filing in the above referenced matter is DTE Electric Company's Response Opposing the Attorney General's Request for a Contested Proceeding. Also attached is the Proof of Service.

Very truly yours,

Andrea E. Hayden

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Andrea E. Hayden

AEH/erb
Attachments

cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the Matter of the Application of DTE Electric Company for Approval of Special Contracts	)))))	Case No. U-21990

DTE ELECTRIC COMPANY'S RESPONSE OPPOSING THE ATTORNEY GENERAL'S REQUEST FOR A CONTESTED PROCEEDING

INTRODUCTION

On October 31, 2025, DTE Electric Company ("DTE Electric" or the "Company") filed an Application for *Ex Parte* Approval of Special Contracts ("Application") requesting that the Commission grant expedited *ex parte* approval of the Company's Primary Supply Agreement ("PSA") and Energy Storage Agreement ("ESA") (collectively, the "Special Contracts") with Green Chile Ventures LLC (the "Customer"). On November 6, 2025, the Michigan Attorney General ("Attorney General") filed a Notice of Intervention and Request for a Contested Proceeding ("Request").

The Commission should deny the Attorney General's Request because the Company provided detailed testimony and exhibits demonstrating that approval of the Special Contracts "will not result in an increase in the cost of service" to existing customers. MCL 460.6a(3). The Attorney General merely speculates that there might be some cost-of-service increase or other effects in the future, however, this speculation fails to satisfy the controlling statute and case law and the Attorney General tellingly fails to cite any legal authority supporting her position.

The Attorney General's suggested concerns about the future also lack relevance in this matter. DTE Electric's relief requested involves the approval of the Special Contracts that establish the terms of service for one customer. The Company has shown that the terms of service for this customer do not increase the cost of service for the Company's other customers, and adequate protections are included to address the issues the Commission reviewed in Case No. U-21859. Questions about the future will be addressed in the appropriate future case as the Company's filing indicated (e.g. Renewable Energy Plans, Integrated Resource Plans, rate cases). The Commission will have jurisdiction in those cases, and various parties, including the Attorney General, will have notice and an opportunity to participate. Therefore, the Attorney General's request for a contested proceeding should be denied. The Attorney General's request for intervention is premature, but should correspondingly be denied as moot.

DISCUSSION

The central premise of the Attorney General's opposition is that the Application does not qualify for *ex parte* treatment under MCL 460.6a(3) because approval may increase the cost of service in the future. The Attorney General primarily relies on the preliminary assessment outlined in her Attachment A, Affidavit of Sebastion Coppola, along with a series of cost-related issues framed as alleged deficiencies. Specifically, the Attorney General contends that the Application: presents several large Customer costs that have not been adequately supported; includes insufficient detail supporting calculations and cost estimates; provides minimal detail regarding the development of renewable resources to accommodate the Customer's additional load and the related cost recovery; and presents an unclear range of potential renewable resource development. Request, pp. 6–10.

Case Law Does Not Support the Attorney General's Position.

In her Request, the Attorney General neglects that MCL 460.6a(3) provides a clear and efficient path for approval when an application such as this "will not result in an increase in the cost of service to [a utility's] customers." As outlined in the Application, supporting testimony, and exhibits, DTE Electric's Application meets the statutory requirements for *ex parte* approval because it does not seek to "*increase* its rates and charges or to alter, change, or amend any rate or rate schedules, the effect of which will be to *increase the cost of services* to its customers." *Attorney General v Pub Serv Comm*, 220 Mich App 561, 566–67, 560 NW2d 348, 351 (1996) (emphasis added). Mr. Coppola's preliminary assessment merely questions the adequacy of disclosed calculations, but provides no evidence that the Special Contracts will increase the cost of service to other customers. Mere speculation is not sufficient to require a contested proceeding under MCL 460.6a(3).

The Attorney General offers no contrary authority. In fact, the Court of Appeals has rejected similar arguments in *Attorney General v Pub Serv Comm*, 227 Mich App 148; 575 NW2d 302 (1997). There, the Commission granted *ex parte* approval of a special contract. The Attorney General appealed, arguing (as she does here) "that the focus should be on whether the [special contract] approved by the PSC creates any potential for a rate or cost increase in the future." 227 Mich App at 152-53. The Court of Appeals rejected the Attorney General's position, holding instead that the Commission's interpretation of the statute (then MCL 460.6a(1)) was reasonable and consistent with the statutory language. The Court explained in part that "[t]he PSC's interpretation recognizes that merely approving and implementing [the special contract] in question is not sufficient, in itself, to cause any rate or cost of service increase to occur." 227 Mich App at 154. The Court further observed that if there were some future case involving a potential

rate or cost of service increase, then all interested parties would have ample opportunity for notice and a hearing there. *Id.* at 155. This is controlling authority concerning the same situation that exists here. MCR 7.215(C)(2), (J)(1). See also, *ABATE v Pub Serv Comm*, 2004 Mich App LEXIS 1753 (2004) at * 12-13 (again rejecting the Attorney General's position).

Company Witness Foley provides detailed information explaining the safeguards and protections underpinning the Special Contracts that help ensure the Special Contracts will not increase the Company's cost to serve existing customers. As Witness Foley explains, under the framework established by the Special Contracts, the Customer bears all energy storage portfolio costs during the 15-year recovery period of each project. *Qualifications and Direct Testimony of Neal T. Foley*, Case No. U-21990 (Oct. 31, 2025) ("Foley Direct"), p. 15. The ESA specifically stipulates that no energy storage portfolio costs will be passed to other customer classes. Commission approval of the Special Contracts will not impact existing rates or increase the Company's cost of service for existing customers. In fact, Witness Foley highlights that the Special Contracts generate an affordability benefit for existing customers through two specific mechanisms: (1) PSA D11 charges and (2) PSCR Surcharge provisions. Therefore, and as further detailed in the Application and Witness Foley's testimony, approval of this Application without notice or hearing is lawful and appropriate. MCL 460.6a(3).

The Attorney General also contends that the Commission should reject DTE Electric's Application until it develops an evidentiary record and conducts proceedings pursuant to Chapter IV of the Administrative Procedures Act [MCL 24.271 *et seq*.]. To the contrary, the Application, testimony, and exhibits provide ample support for the Commission to make an *ex parte* decision on the narrow issues presented. The Company's filing includes: (1) detailed testimony from Company experts on cost recovery, resource planning, and ratemaking impacts; (2) specific

preliminary cost estimates for transmission and distribution upgrades; (3) a clear explanation of how renewable energy standards will be met; and (4) copies of contracts that establish a balanced and protective framework.[1] The Commission has sufficient information for evaluating whether approval of the Special Contracts is reasonable, appropriate, and in the best interest of customers.

The Commission's Order in Case No. U-21859 does not Require a Contested Proceeding

The Attorney General's reliance on the Commission's November 6, 2025 Order in Case No. U-21859 ("November 6 Order") is misplaced because that case involved a tariff amendment applicable to various customers, in contrast to this case which involves special contract approval for one customer that will take electric service on the Company's existing Rate Schedule D11. In U-21859, Consumers Energy ("Consumers") requested *ex parte* approval of certain amendments to its General Primary Demand Rate ("Rate GPD") to add a Data Center Provision. Thus, the Commission was tasked with considering the electric load of new data centers generally, and found that this broad issue "presents unique and significant cost implications, and the development of an evidentiary record to consider [Consumers' application] is prudent and reasonable. (November 6 Order, p. 3). The Commission ultimately found that the new large load tariff provisions should apply to loads of 100 MW or greater, and be end-use neutral, rather than applied only to data center customers. (November 6, Order, pp. 105-106).

The Commission's statement that "data center customers present unique and significant cost implications" does not create a blanket prohibition on *ex parte* approval for data center contracts as the Attorney General seems to suggest. Instead, the Commission indicated in the

[1] Mr. Coppola argues the Application cannot be adequately examined without reviewing fully unredacted versions of the Special Contracts. (Request, Attachment A, p. 3). This argument lacks merit as the Company supplied the most critical provisions of the Special Contracts along with the expert testimony of Company Witness Foley who provides further context and background surrounding the key provisions.

November 6 Order that it anticipates *ex parte* review of special contracts for individual customers where the rate is already established, similar to what DTE Electric requests here. DTE Electric's filing requests approval of two unique, negotiated contracts specifically tailored to this Customer which include bespoke provisions—such as minimum bill protections and termination fees—designed to isolate risk and ensure appropriate cost recovery from the Customer. The ESA specifically holds the Customer responsible for all energy storage portfolio costs—the Customer's responsibility for these costs cannot be reduced or eliminated.

Moreover, DTE Electric's filing is consistent with the findings in the November 6 Order. The key terms addressed by the Commission in Case No. U-21859 were those that could create an opportunity for stranded costs and included contract term, minimum billing demand ("MBD"), termination fee, and collateral. As set forth in the Company's filing, the Special Contracts include terms that were carefully designed to protect against stranded assets consistent with the Commission's findings in the November 6 Order.

Contract Term. The term of the PSA is approximately 19 years, which is beyond the minimum 15-year contract term suggested by the Commission in the November 6 Order. The term of the ESA is 15 years from the commercial operation date of the last storage project to be built under the ESA. The Special Contract terms were designed to mitigate stranded asset costs or cost shifts to the Company's other customers and are consistent with the November 6 Order (See pp. 107-108).

Minimum Billing Demand. The PSA includes an 80% minimum billing demand. In paragraph 10 of Attachment A, Mr. Coppola questions the 80% MBD included in the Special Contracts, but in the November 6 Order the Commission found that 80% MBD was appropriate noting, among other things, that it "received the most support among the parties and aligned with

what was approved in Indiana—the closest state, geographically, to Michigan, and a fellow midwestern and MISO state which also shares regulation of I&M". (November 6 Order, p. 109).

Termination Fee. In the November 6 Order, the Commission found that a termination fee equal to the MBD multiplied by the number of months remaining on the contract term to be a reasonable termination fee. The termination fee is intended to capture the remaining unpaid balance of any assets that were built to accommodate the customer. (November 6 Order p. 110). The ESA includes a termination fee designed to collect the unrecovered balance of the storage assets constructed/contracted for the Customer. Beyond the ESA, the PSA includes an additional termination fee that ensures the Customer pays at least ten years of MBD. The termination fee (approximately $2.3 billion if terminated in the first year post load ramp) far exceeds the cost of any distribution and transmission upgrades that may be necessary to serve the Customer (estimated to be approximately $500 million).

Collateral. The November 6 Order established certain threshold credit requirements for large load customers under Consumers' Rate GPD, however, the Commission did allow for flexibility based on the particular credit worthiness of the customer. (November 6 Order, pp. 113-14). While the credit terms of the Special Contracts are confidential, the collateral terms were designed after the Company's extensive review of the Customer's and the Customer parent's credit worthiness, and in consideration of the risk of stranded assets under both the PSA and the ESA.

Cost Impacts. The Commission directed Consumers to demonstrate in subsequent filings that "costs caused by the interconnecting large load customer to be served under this tariff are not being paid for by other customers". (November 6 Order, p. 117). The Company has done that here, and in fact estimates that all other factors held constant, the Customer would reduce the cost of service for all existing customers. (Foley Direct pp. 28-29).

In sum, the Commission's November 6 Order does not require that a contested proceeding be held. Through that order, the Commission provided guidance on large load customers generally, and the Special Contract terms are consistent with the November 6 Order. There is no need to immediately undertake another contested case to consider virtually the same issues, particularly where the Special Contracts include equally protective terms as those set forth in the November 6 Order.

The Company will Provide Additional Detail on its Renewable Energy Resources Development Plans and Long-Term Resource Planning in the Appropriate Statutory Proceeding

The Attorney General's argument that the Company provided minimal detail regarding the development of renewable resources to accommodate the Customer's additional load and the related cost recovery has no merit. The Company has an obligation to provide access to retail electric service to those who locate in its service territory. See MCL 462.4(a); MCL 460.54. The purpose of the Company's filing is to seek approval of the terms of service for the Customer. However, the Company recognizes that the impacts of the Customer's load on the Company's Renewable Portfolio Standard ("RPS") obligations set forth in Public Act 295 of 2008, as amended, MCL 460.1001 *et seq*., will need to be addressed in future proceedings and therefore provided an overview of its commitment to meet the standard in this filing. See Qualifications and Direct Testimony of Kevin L. Bilyeu, Case No. U-21990 (Oct. 31, 2025) ("Bilyeu Direct"), pp. 6–8. The commitment to meet all RPS obligations is clearly stated in Witness Bilyeu's testimony, and the mechanism for doing so will continue to be fully vetted in the dedicated forums the Commission has established for that purpose. Requests for additional detail on long-term resource planning (which will be addressed in the Company's forthcoming Integrated Resource Plan) or hypothetical scenarios are not a valid basis for rejecting the clear and present benefits that the Special Contracts provide.

CONCLUSION

DTE Electric respectfully requests that the Commission deny the Attorney General's request for a contested proceeding and grant *ex parte* approval of the Special Contracts. The Company has met its burden under MCL 460.6a(3) by demonstrating through detailed testimony that approval of the Special Contracts will not increase the cost of service to existing customers. The proposed framework reflects a reasonable and appropriate balance between the advantages of serving a new large load customer and protecting existing customers from added financial risk and potential cost subsidies. The Special Contracts work in tandem to meet the Customer's unique needs responsibly. Together, the Special Contracts also provide enhanced protections to ensure a long-term commitment to DTE Electric, mitigate potential stranded asset risks, and protect existing customers from potential cost subsidies. The Attorney General's Request seeks to transform a straightforward special contract approval into a wide-ranging exploration of issues properly addressed in other dockets. The Request should be denied.

Respectfully submitted,

DTE ELECTRIC COMPANY

By: Andrea E. Hayden

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Dated: November 18, 2025

STATE OF MICHIGAN

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In the matter of the Application of DTE Electric Company for Approval of Special Contacts	)	Case No. U-21990

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ESTELLA R. BRANSON states that on November 18, 2025, she served a copy of DTE Electric Company's Response Opposing the Attorney General's Request for a Contested Proceeding, in the above captioned matter, via electronic mail, upon the persons listed on the attached service list.

Estella R. Branson

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MPSC Case No. U-21990
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