STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

The Attorney General's

Petition for Rehearing and Clarification

Respectfully submitted,

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Dated: January 8, 2025

I. Introduction.

The Attorney General, under Rule 437 of the Rules of Practice and Procedure of the Michigan Public Service Commission ("MPSC" or "Commission"), Michigan Administrative Code R 792.10437, and MCL 460.352, files this Petition for Rehearing ("Petition") relative to the Commission's December 18, 2025, Order ("MPSC Order" or the "Order") in this proceeding. In its Order, the Commission conditionally approved DTE Electric's (DTE) request for *ex parte* approval of two special contracts to provide electric service to a 1.383 gigawatt ("GW") data center facility to be built in Saline Township, Michigan.

In this Petition, the Attorney General requests points of clarification, identifies points of error, raises concerns about unintended consequences, and challenges the statutory basis for the Commission's December 18th Order. Because the Commission proposes the conditions of its approval for the first time in its Order and because the Commission gave DTE 30 days to accept these conditions or seek a contested case hearing, a rehearing request is necessary for parties to respond to the new conditions and to review DTE's response while still preserving their ability to take further challenges. The Petition addresses the following points for rehearing and clarification:

- The Order provides vague and potentially unenforceable terms for a condition letter that DTE is required to submit on the docket. The

Attorney General thus seeks clarity on those terms as described in Section III.A below.

- The Order's conditions for approval, if requiring DTE to serve as a credit backstop to Oracle, present several errors and unintended consequences. Key among these is the risk that allowing such a backstop might threaten the solvency of Michigan utilities or present an illusory protection for ratepayers. The Attorney General thus requests that on rehearing the Commission order this matter to proceed as a contested case.
- The Order fails to meaningfully engage with the standards the Commission set forth in case U-21859 for special contract approvals. The Attorney General thus requests that the Commission apply those standards on rehearing.
- The Order fails to identify record evidence that would allow DTE's application to succeed under the U-21859 standards. The Attorney General thus requests that on rehearing the Commission order this matter to proceed as a contested case.
- The Commission erred in relying upon Section 6a(3) to approve the special contracts and its use of Section 6a(3) in this case expands the limited exception to the detriment of ratepayers.[1]

[1] While not all of the Attorney General's prior positions in this matter are repeated in the present Petition for Rehearing and Clarification, the Attorney General maintains all of her prior positions and reserves all of her rights to appeal the December 18 Order and any subsequent orders the Commission may issue in this docket.

II. Standard for Rehearing.

MPSC Rule 437(1) provides that "[a] petition for rehearing based on a claim of error shall specify all findings of fact and conclusions of law claimed to be erroneous with a brief statement of the basis of the error." Rule 437(1) further states that "[a] petition for rehearing based on a claim of newly discovered evidence, on facts or circumstances arising subsequent to the close of the record, or on unintended consequences resulting from compliance with the decision or order shall specifically set forth the matters relied upon."[2]

III. Argument.

A. The Attorney General seeks clarification as to conditions described in the Commission's Order and how the conditions might be enforced.

The Commission's Order purports to pose a "conditional" requirement for DTE to receive approval of its special contracts. To that point, the "ordered" section of the Order, which begins on page 43, sets forth the following language:

> The approval of the special contracts is conditioned upon the representations made by DTE Electric Company that payments made by Green Chile Ventures LLC under Rate Schedule D11 and the special contracts will cover the costs to serve Green Chile Ventures LLC such that the costs of serving Green Chile Ventures LLC (including generation, transmission, distribution, or other costs) are not covered by other customers. Within 30 days of the date of this order, DTE Electric Company shall file a letter in this docket expressly accepting these conditions, as described in this order.[3]

[2] Mich Admin Code r. 792.10437(1).
[3] December 18, 2025, Commission Order at 43.

This language on its own does not obligate DTE to cover any portion of costs incurred to serve Green Chile Ventures, LLC ("GCV" or "the Customer"), nor does it create any obligations for GCV beyond the terms of DTE's application. Thus, as described here, the "condition" does not appear to have any effect beyond DTE's prior assertions in its pleadings that it believes the contracts are adequate.[4] And as discussed at length in this matter,[5] there are myriad examples where DTE has failed to show how the GCV contracts will in fact cover the costs to serve the Customer. The Commission's Order further fails to shore up those underlying deficiencies.

Similar language to the block-quote above is also presented on page 40 of the Commission's Order.[6] This section reinforces a reading of the Order that no additional protections arise from the "condition," and the Commission explicitly acknowledges that the same assurances it seeks in a condition letter were already "represented by DTE Electric in its application, testimony, and subsequent filings…."[7]

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[4] *See, e.g.*, DTE's November 18, 2025, Response at 1 (arguing that it had demonstrated in its application materials that "approval of the Special Contracts 'will not result in an increase in the cost of service' to existing customers.").
[5] *See* for example as identified in the Attorney General's December 3, 2025, Reply.
[6] December 18, 2025, Commission Order at 40 – 41: "Moreover, the approval in the instant case is conditioned upon the assumption, as represented by DTE Electric in its application, testimony, and subsequent filings, and in the materials provided pursuant to the Staff's audit, that the Customer's obligations under Rate D11 and the special contracts will at least cover the costs to serve the Customer (including generation, transmission, distribution, or other costs). These are conditions that do not require amendment of the special contracts. The Commission directs DTE Electric to file, within 30 days of the date of this order, a letter in the instant docket accepting these conditions."
[7] *Id.*

Other pieces of the December Order include different findings as to what the Commission's intent might be for a condition letter. Page 32 of the Order sets forth what could be interpreted as a stricter requirement than that referenced in the other two points cited above, stating that:

> As described below, the Commission is conditioning its approval on the requirement that, at the very least, all current and future costs caused by the Customer shall be covered by the Customer or by DTE Electric and not existing customers.[8]

This language on its own would present a stricter requirement, because it might entail actual cost coverage rather than a mere statement of assurance as described on page 43 of the Order. However, this language is not included anywhere else in the Order, such as in the "ordered" section that provides direction to DTE. Further, its reference to "as described below," suggests that the less stringent language from the "ordered" section (see, e.g., from page 43 as block-quoted and addressed above) is in fact controlling.

Page 41 of the Order also presents a less-restrictive finding for what DTE might actually be obligated to do under such a "condition," at best tying DTE's obligation to the same collateral requirements of GCV under the primary supply agreement ("PSA") and energy storage agreement ("ESA").[9] So

[8] *Id*. at 32.

[9] *Id*. at 41: "In addition, in the event of a failure to pay the MBD under the PSA, or in the event of a termination, default, or other event whereby DTE Electric is required to draw on the letter of credit or parental guaranty, if the company determines that the specified collateral is not sufficient to cover the full amount of the remaining financial exposure associated with the ESA or the PSA (minus the value to customers), the Commission specifically cautions DTE Electric that any unrecovered costs shall not be borne by ratepayers and that DTE Electric bears responsibility for any remaining liability. All risk associated with the sufficiency of the collateral shall be borne by DTE Electric."

if GCV's incremental costs exceed revenues or fees collectible under the contracts' language, this requirement would not entail an obligation for DTE to cover those costs. Likewise, if GCV has no near-term exit-fee obligations under the ESA or PSA—an issue raised by the Attorney General in her pleadings[10]—DTE would also not be obligated to cover those costs under the language set forth on page 41. Thus, once again, the Commission's "condition" on this point does not in fact appear to provide additional protection for other ratepayers.

In addition to the lack of clarity for how the condition letter might provide additional ratepayer protections, the Order further fails to identify the processes or enforcement mechanisms for holding DTE to any such agreement. Though not included in the "ordered" section of the Order, on page 42 the Commission finds as follows:

> DTE Electric is further directed to file a quarterly report in this docket detailing the following: (1) the Customer's load profile for the previous quarter; (2) the amount of storage that is operational as of the end of that quarter; (3) the Customer's total demand for the preceding 12 months, compared to expected contract capacity and MBD; (4) any changes to the Customer's credit rating that trigger a change to the credit and collateral terms; and (5) DTE Electric's assessment of the financial state of the Customer. On an annual basis, in every report filed on December 31, DTE Electric shall also include any other information related to the realization of the projected affordability benefit. Such reports may be filed on a confidential basis as necessary to protect sensitive information. The Commission directs DTE Electric to file

[10] *See, e.g.*, Attorney General's December 3, 2025, Response at 6 – 8.

> the first of these quarterly reports no later than December 31, 2026.[11]

Nothing here specifically requires a full accounting of costs incurred versus costs covered by the Company, as might be used to assess DTE's liability under any reading of the letter conditions. As will be discussed below, for example, DTE presently exhibits cost-allocation inequities that would result in cost increases to its existing customers if not affirmatively addressed.[12] The reporting requirements in the Order also provide no process or mechanism to actually compel DTE to cover otherwise un-covered costs. This language further makes it unclear whether such reporting will necessarily be accessible or reviewable by the Attorney General given its description of "fil[ing] on a confidential basis…."[13]

In light of the above, the Commission's Order appears to circumvent an actual accounting of GCV's incremental cost-coverage by imposing vague, and possibly unenforceable, conditions. In the process, the Commission has failed to adequately address or engage with many points, identified by intervenors in pleadings, where DTE did not prove sufficient cost-coverage or the avoidance of rate-increases.[14] The terms of a condition letter as proposed in the language of the Order do not adequately address those concerns, nor has the Commission identified record evidence to support such a conclusion.

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[11] *Id*. at 42.
[12] *See, e.g.*, as addressed in the Attorney General's December 3, 2025, Reply at 9 – 12.
[13] December 18, 2025, Commission Order at 42.
[14] See for example as identified in the Attorney General's December 3, 2025, Reply.

An unintended consequence of the Commission's findings on this point is a lack of clarity as to what additional protection, if any, that DTE might be providing with the letter, as well as to what form and processes a credit backstop might take. The Attorney General thus seeks clarification on the following questions concerning the condition letter:

a) Whether the Commission intends to require DTE, and not its pre-existing ratepayers, to guarantee all costs it incurs to provide service to GCV, including all PA 235 compliance costs incurred as a result of added retail demand from the Customer;

b) Whether the Commission intends to require, as part of its reporting requirements, an assessment of costs-incurred to serve GCV compared to costs-covered, including an assessment of any near-term rate-increases for other customers caused by GCV's incremental costs (such as might occur through DTE's existing cost allocation methodologies);

c) Whether the Commission intends there to be processes for the Attorney General to seek payment or reimbursement from DTE to ratepayers for un-covered costs, tracking with the timing of the reporting requirements, and if so to specify what such processes are;

d) Whether the Commission intends that DTE's reporting will be accessible and reviewable in unredacted form by the Attorney General; and

e) Whether the Commission expects that DTE's investments to serve GCV won't begin accruing until the end of 2026, or whether it would consider instead requiring that DTE begin its reporting in the first quarter following the quarter in which it begins incurring costs to serve GCV.

Further, given that the prescribed letter deadline coincides with the deadline for filing a Petition for Rehearing and with taking a possible challenge on appeal,[15] the Attorney General is compelled to seek rehearing for clarity on this issue if for no other reason than to preserve arguments concerning the issues surrounding the Commission's unclear conditions.

B. The Commission's "conditional" approach presents further unintended consequences.

Even if the Commission intends the condition letter as requiring a full credit backstop by DTE, allowing such a condition in lieu of cost-coverage by GCV presents a series of errors and unintended consequences. For one, the Commission has not provided any analysis or explanation for why DTE itself is a reasonable and prudent credit backstop to Oracle, which has been described as the "canary in the coal-mine" for debt-financed AI spending.[16]

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[15] *See*, December 18, 2025, Commission Order at 40 – 41 ("The Commission directs DTE Electric to file, within 30 days of the date of this order, a letter in the instant docket accepting these conditions.").

[16] Christine Ji, *Oracle is the canary in the coal mine for Big Tech's debt-fueled AI spending spree*, MORNINGSTAR, December 9, 2025, accessible at https://www.morningstar.com/news/marketwatch/2025120949/oracle-is-the-canary-in-the-coal-mine-for-big-techs-debt-fueled-ai-spending-spree.

Indeed, the Commission's Order fails to acknowledge or engage with material presented by intervenors describing Oracle's unique credit risks.[17]

Nor does the Commission's Order address the potential unintended consequences of such a policy as it relates to a solvency risk for Michigan utilities. For example, the Order presents no analysis as to DTE's ability to absorb any given portion of GCV's incremental costs. The Order asserts a case-by-case assessment of new data center customers,[18] but provides no clear explanation for why it is applying a "conditional" solution for this case in particular; if this paucity of reasoning is allowed, the Commission could just as well make the same exception for any new data center customer. The problems with this policy are amplified when considering that Michigan utilities appear to be looking to add well over a dozen gigawatts of data center customers to their system.[19]

Also at issue here, which the Commission has not addressed, is the underlying path to profitability for OpenAI. Oracle has projected a large amount of future revenues relying on commitments from OpenAI for a return on Oracle's data-center investments (through use of Oracle's cloud

[17] *See, e.g.*, GLREA's Petition at 10 – 11 (citing Peter Rudegeair, Nate Rattner, and Sebastian Herrera, *Oracle was an AI Darling on Wall Street. Then Reality Set In*, THE WALL STREET JOURNAL, November 19, 2025, accessible at: https://www.wsj.com/tech/oracle-was-an-ai-darling-on-wall-street-then-reality-set-in0d173758) (behind paywall).

[18] *See*, U-21990, December 18, 2025, Order at 39 ("In the meantime, the Commission will consider any subsequent applications for approval of special contracts on a case-by-case basis.").

[19] *See, e.g.*, Case U-21859, Application Testimony of Consumers Energy's witness Connolly at 4:7 – 8 (Consumers Energy's witness testifying that "the Company has data center inquiries that total over 15 gigawatts of electric load in the economic development pipeline.").

infrastructure).[20] This relationship with OpenAI represents at least $300 billion of Oracle's recently reported $500+ billion in "remaining performance obligations."[21] As noted in the Attorney General's Notice of Intervention, the data center at issue in this case appears to be part of OpenAI's "stargate" initiative.[22]

To date, there is no apparent evidence that OpenAI is profitable in its operations. For example, last year CNBC reported that the OpenAI had expected to lose about $5 billion dollars on $3.7 billion in revenue for 2024,[23] with the company's CEO stating that "I think the rational thing to do is to just be willing to run the loss for quite a while."[24] Subsequent reporting reflects the

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[20] *See, e.g.*, Cade Metz, *OpenAI Signs $300 Billion Data Center Pact With Tech Giant Oracle*, THE NEW YORK TIMES, September 10, 2025, accessible at https://www.nytimes.com/2025/09/10/technology/openai-oracle-data-centers-deal.html (behind paywall).

[21] *See, e.g.*, *Oracle Announces Fiscal Year 2026 Second Quarter Financial Results*, Oracle.com, December 10, 2025, accessible at https://investor.oracle.com/investor-news/news-details/2025/Oracle-Announces-Fiscal-Year-2026-Second-Quarter-Financial-Results/default.aspx.

[22] As noted in the Attorney General's Notice of Intervention at 4: "[f]rom news reports and other public statements, it appears that the Customer will be related to "Stargate" AI data center operations involving Oracle and OpenAI Group PBC." *See, e.g.*, Expanding Stargate to Michigan, OPENAI.COM, October 30, 2025 (accessible at https://openai.com/index/expanding-stargate-to-michigan/).

[23] Ashley Capoot, *OpenAI's Altman is still looking to spend after GPT-5 launch and is 'willing to run the loss'*, CNBC.COM, August 8, 2025, accessible at https://www.cnbc.com/2025/08/08/chatgpt-gpt-5-openai-altman-loss.html.

[24] *Id.*

same perspective, with OpenAI appearing to have projected $9 billion in net losses for 2025.[25]

It is further worth noting that some analysts have been critical of the speculative characteristics of the AI software industry writ-large,[26] suggesting that profitability concerns might exist for at least some other companies similar to OpenAI.[27] MPSC Staff likewise provided testimony as to potential issues surrounding the AI software industry in Case U-21859, as noted in the Attorney General's Notice of Intervention here.[28]

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[25] Berber Jin, *Anthropic Is on Track to Turn a Profit Much Faster Than OpenAI*, THE WALL STREET JOURNAL, November 12, 2025, accessible at https://www.wsj.com/tech/ai/openai-anthropic-profitability-e9f5bcd6?gaa_at=eafs&gaa_n=AWEtsqfMGSOaEH_azJZ5ys96rYL22U5U7L3BJEPO5dnsDJqvcwkhSM1MBvYy&gaa_ts=695fbfab&gaa_sig=SRI9HGQT_FdxpV4Q8bSQKtVgB_-KjuAfR8kduk6VXeAqxVwrXqZXMLU6_Wf9y6_gG-vKdaN29Z1uJr12edJkWQ%3D%3D (behind paywall).

[26] *See, e.g. Francisco Velasquez, AI mania is worse than 1999's tech bubble, Apollo's top economist warns*, YAHOO!FINANCE, July 19, 2025, accessible at https://finance.yahoo.com/news/ai-mania-is-worse-than-1999s-tech-bubble-apollos-top-economist-warns-161530505.html?guccounter=1; *See also, e.g., AI boom is in early bubble phase, Bridgewater founder Ray Dalio says*, Reuters, January 5, 2026, accessible at https://www.reuters.com/business/ai-boom-is-early-bubble-phase-bridgewater-founder-ray-dalio-says-2026-01-05/; *See also, e.g.*, Yun Li, *Michael Burry launches newsletter to lay out his AI bubble views after deregistering hedge fund*, CNBC.COM, November 24, 2025, accessible at https://www.cnbc.com/2025/11/24/michael-burry-launches-newsletter-to-lay-out-his-ai-bubble-views-after-deregistering-hedge-fund.html; *See also, e.g.*, Laura Bratton, *How Oracle became a 'poster child' for AI bubble fears*, YAHOO!FINANCE, December 26, 2025, accessible at https://finance.yahoo.com/news/how-oracle-became-a-poster-child-for-ai-bubble-fears-150039511.html.

[27] *See, also, e.g.*, Christopher Mims, *Cutting-Edge AI Was Supposed to Get Cheaper. It's More Expensive Than Ever*, THE WALL STREET JOURNAL, August 29, 2025, accessible at https://www.wsj.com/tech/ai/ai-costs-expensive-startups-4c214f59 (behind paywall).

[28] Case U-21990, Attorney General's Notice of Intervention at 5 - 6 (noting, for example, Staff's testimony that "if the market for artificial intelligence in products and services never matures into a viable, sustainable business model, then a data center customer may exit service and create a stranded asset due to forces beyond the large load customer, the Company, and especially all other customers," citing U-21859, 4 TR, Isakson Direct at 300:9 – 12).

However, the Order's discussion of a "conditional" approval here does not engage with any assessment or analysis of financial risks posed by Oracle and OpenAI, or how related industry-wide risk might imperil a policy of conditional approvals for data center customers. Allowing Michigan utilities to backstop the risks of the AI software industry also contradicts the standard from U-21859 that the customers would cover their own caused costs.[29] The Commission thus erred in in its decisionmaking here.

A credit backstop approach further reflects a risk, born out historically, that Michigan utilities might eventually seek ratepayer coverage for backstopped costs despite any conditions on approval. In the case of the Midland Nuclear Power Plant, the Commission permitted Consumers energy to seek a "financial stabilization" rate increase on the premise that debt incurred to finance a stalled and converted project would otherwise present a solvency risk to the utility. *See, Att'y Gen v Pub Serv Comm'n*, 189 Mich App 138 (1991). Allowing DTE to act as a credit backstop to billions of dollars in costs thus presents a tremendous risk that any such condition might not protect ratepayers from such costs in the long-term, even if the Commission's intentions here are good.

The Commission's conditional approval presents additional unintended consequences, such as an overall uncertainty for how different utilities and

[29] *See, e.g.*, Case U-21859, November 6, 2025, Order at 117 (including that an adequate showing for special contracts would include "how *that interconnecting customer* will cover the costs of such resources." (emphasis added)).

customers will be treated under the Commission's now-fractured framework. Departing from the U-21859 standard, which required a detailing of all necessary resources, also appears to run head-first into the capacity cost issues driven by data center demand in PJM.[30] Neither DTE nor the Commission's Order addresses the concern repeatedly raised by the Attorney General here that DTE's application does not make clear the total generation build-out required to bring GCV to full service. Approving data center contracts despite that gap in analysis contradicts the requirement for a "detail" of all resources under the U-21859 standard, and presents a risk that Michigan utilities might not adequately plan to meet demand from new data center load.

Given the several unintended consequences of allowing DTE to serve as a credit backstop to Oracle, the Attorney General requests that on rehearing the Commission order this matter to proceed as a contested case.

C. The Commission's findings for approval of the GCV contracts contradicts its requirements for special contract approvals set forth in Case U-21859.

i. *The Commission fails to engage with its own standard of review from Case U-21859.*

As discussed at length in the Attorney General's December 3, 2025, Reply, DTE's pleadings in this matter fall short of the Commission's requirements for special contract approvals in Case U-21859, including that:

[30] *See* as referenced in the Attorney General's December 3, 2025, Reply at FN41 (citing Monitoring Analytics, Analysis of the 2026/2027 RPM Base Residual Auction Part A, October 1, 2025, at 3, (accessible at https://www.monitoringanalytics.com/reports/Reports/2025/IMM_Analysis_of_the_20262027_RPM_B ase_Residual_Auction_Part_A_20251001.pdf).

> [T]he filing should detail the generation, storage, and other resources (including, potentially, VPPs and demandside resources) that will be required to serve that large load customer and how that interconnecting customer will cover the costs of such resources.[31]

The U-21859 Order also specified that an adequate showing would include "that costs caused by the interconnecting large load customer to be served under this tariff are not being paid for by other customers"[32] and likewise that for special contracts "that the full costs of serving the large load customer are paid for by that customer under the provisions of the special contract."[33] The Commission further elaborated on the policy bases for these requirements, finding that:

> [I]n order to ensure that other customers are not effectively subsidizing these new large load customers, it is critical to understand the resources being used or constructed to serve these customers and the costs associated with doing so.[34]

The intervenors in this matter identified a litany of points where DTE failed to "detail" the resources required to serve GCV and corresponding cost-coverage, as required under the standard set forth in U-21859, including the following:

A. DTE failed to detail all generation resources required to bring the customer to full service under DTE's projected load ramp.[35]

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[31] *See* the Attorney General's Response at pages 12 – 16 (quoting here from the Commission's November 6, 2025, Order in Case U-21859 at 117).
[32] Case U-21859, November 6, 2025, Commission Order at 117.
[33] *Id*.
[34] *Id*. at 118.
[35] *See, e.g.*, Attorney General's December 3, 2025, Reply at 13 – 14.

B. DTE failed to detail all renewable resources required to accommodate the customers' additional sales pursuant to PA 235,[36] such as by failing to explain how the customer will cover costs for all such required resources and leaving open a huge range of potential compliance costs that it explicitly did not include in its purported "affordability modeling."[37] Because REC requirements are calculated based on retail sales,[38] the additional retail sales for the Customer directly drive an increase in renewable resources that must be developed for compliance with the statute.[39] This means that requisite renewable resource development (and corresponding cost coverage) for the added load falls squarely within the "detail" standard of Case U-21859.

C. DTE failed to detail all required transmission resources, such as by failing to explain how the customer will cover the cost of transmission upgrades associated with required generation resources or even

[36] *See, e.g., Id*. at 15.
[37] *See, e.g., Id* (noting this point in FN52).
[38] *See* MCL 460.1028.
[39] For further reference, DTE does not appear to have accounted for added data center sales in its forecasts for its most recent Renewable Energy Plan Case. *See, e.g.*, Case U-21662, MEC's Initial Brief at 24 ("Although the Company has been anticipating the emergence of data centers and internally preparing for the expected impact on load, DTE did not incorporate potential data center load into any of the Company's forecasts for the Amended REP filing."). DTE appears to have conceded this point in briefing in Case U-21662, instead arguing that the issue should be punted to its next IRP: "[a]lthough the impacts of data centers were too uncertain at the time DTE Electric filed its Amended REP, Michigan law permits utilities to file expedited cases if significant changes occur." Case U-21662, DTE's Reply Brief at 27.

explaining what portion of such resources are included within its $200 million in estimated transmission investments.[40]

D. DTE failed to detail costs for any other distribution assets that may be necessary to supply power to the Customer.[41]

E. DTE failed to detail how its PSA termination fee provisions will provide cost coverage in the near-term or how the ESA termination fee provisions will provide cost coverage during the pre-COD period of company-owned ESA project development.[42]

F. DTE's Attachment A failed to detail whether the Company is accurately accounting for generation resource costs such that it will in fact be covering the costs of all required resources.[43]

G. DTE failed to detail how its proposals address latent inequities in the Company's cost allocation processes,[44] such as how it will account for cost-allocation inequities due to transmission upgrade costs passed through the PSCR.[45]

The Commission's Order here does not directly address or meaningfully engage with the standard from its November 16, 2025, Order that a utility "detail" all required resources and corresponding cost-coverage, demonstrating

[40] *See, e.g.*, Attorney General's December 3, 2025, Reply at 15 – 16.
[41] *Id*. at 16.
[42] *Id*. at 6 – 8.
[43] *Id*. at 9 – 12.
[44] *Id*.
[45] *Id*.

an error in its decisionmaking. The Attorney General thus requests that the Commission apply that standard from Case U-21859 on rehearing.

ii. *The Commission's Order fails to identify record evidence for DTE to pass a review under the standards set forth in Case U-21859.*

The Commission further fails to identify record evidence on which an approval under its U-21859 standard might be gleaned, providing only generalized references to Commission staff having privately reviewed DTE's materials such as "the Commission notes that the Staff was able to perform an investigation in order to substantiate the validity of the request for *ex parte* treatment."[46] And even then, the Commission's Order only addresses a handful of items from the long list of deficiencies, as discussed in the following paragraphs below. For these reasons, the Attorney General requests that on rehearing the Commission order this matter to proceed as a contested case.

Termination fees. On the topic of termination fee sufficiency, the Commission provides no detail or analysis on the issue that there are no public provisions clearly requiring near-term exit fee obligations under the PSA or ESA.[47] Instead, the Commission asserts that:

> Additionally, addressing the Attorney General's concern that the termination fee may not be adequate to protect other customers, the Commission finds that the credit and collateral requirements in the unredacted PSA and ESA, along with the Commission's conditions, ensure that any risk that the Attorney General's concern materializes is

[46] U-21990, December 18, 2025, Commission Order at 32.
[47] *See* the Attorney General's December 3, 2025, Reply at 6 – 8 (noting, for example, that the PSA's "sample termination payment calculation" is completely redacted prior to the month and year of the load ramp completion).

> either covered by the substantial collateral collected or is borne by DTE Electric and not by other customers.[48]

Notably, this paragraph conflates exit fee obligations with a collateral requirement that might ensure payment of any such obligation. It further mixes in a reference to the Commission's own "condition" term such that it is impossible to tell how much protection is in fact provided under the GCV contracts themselves.

Assuming the Commission has conducted its own investigation into the unredacted GCV contracts, it has made no confirmation that exit fees might apply in the near-term. For example, it's possible that the Commission's reasoning presented above is premised on a belief that the contractual relationship will enter into a later stage where the exit fee provisions do apply; it's impossible to know what the Commission meant because it has not identified any supporting facts, or even explanatory reasoning, behind its finding here. Nor does the Order identify any analyses or calculations that might explain how the exit fee, even if applied in full, would be sufficient to cover incremental costs.

PA 235 compliance. Yet another example of the Order's flawed reasoning can be seen in the context of DTE's RPS-requirements driven by the addition of GCV to its retail sales. For background, DTE had stated in its pleadings that it only included a portion of its forecasted RPS compliance costs in its "affordability modelling;" the utility indicated that it had left about

[48] U-21990, December 18, 2025, Commission Order at 33 – 34.

1.4GW in RPS obligations, required by 2035, unincluded in that modelling.[49] This amount of RPS obligations could easily equate to hundreds of millions of dollars in compliance costs.

The Commission does not appear to contest the clear shortfall for RPS obligations in DTE's modelling, which represents a failure to "detail" necessary resource under the U-21859 standard. Instead, the Order merely notes that Staff "confirmed that… the company needs only 445 MW of new renewable resources… by 2033."[50] Without explaining how DTE's application will provide coverage for the remaining 2.8 GW (3.247 GW minus 445 MW) in eventual RPS obligations, the Commission instead pivots to assert that "Staff confirmed that this 445 MW will allow DTE Electric to meet the 20-year RPS target through 2045 based on the REP approved in Case No. U21662."[51] Notably, however, DTE's Case U-21662 RE Plan case did not include modelling for the new data center load.[52] And while the Commission later includes some generalized

[49] *See* U-21990, Foley Direct at 28, FN 6 (asserting that, "[f]or affordability modeling purposes, the Company assumed ~1,800 MW of incremental solar generation deployment which is the midpoint of the two buildout scenarios discussed by Company Witness Bilyeu (i.e., 443 MW of solar generation deployment and 3,247 MW of solar generation deployment)"). The Company elsewhere noted that "incremental renewable energy capacity required to meet the increased RPS could technically reach up to 3.2 GW, but may be as low as 443 MW by 2032 if the Company fully leverages its estimated REC bank." U-21990, Bilyeu Direct at 13:1 – 3.

[50] U-21990, December 18, 2025, Commission Order at 34.

[51] *Id*.

[52] *See, e.g.*, Case U-21662, MEC's Initial Brief at 24 ("Although the Company has been anticipating the emergence of data centers and internally preparing for the expected impact on load, DTE did not incorporate potential data center load into any of the Company's forecasts for the Amended REP filing."). DTE appears to have conceded this point in briefing in Case U-21662, instead arguing that the issue should be punted to its next IRP: "[a]lthough the impacts of data centers were too uncertain at the time DTE Electric filed its Amended REP, Michigan law permits utilities to file expedited cases if significant changes occur." Case U-21662, DTE's Reply Brief at 27.

provisions for modelling to occur in the next REP case,[53] nowhere does it actually impose an obligation that GCV be directly-assigned its caused PA-235 compliance costs. The Commission's Order further ignores the likely transmission upgrade costs associated with renewable resource build-out to meet the PA 235 standards.

It thus appears that the Commission's Order is punting the question of full PA 235 cost coverage, addressing only near-term costs and ignoring more than a gigawatt of additional obligations for which no cost-coverage has been explained. If that is not the case, then the Commission erred by failing to provide a clear explanation and analysis in its Order as to how it accounted for such cost-coverage.

Cost allocation. The Commission's Order identifies no facts to explain how DTE will overcome cross-subsidization inherent in its existing cost allocation methods. In fact, the Commission appears to confirm that it did not review any COSS modelling beyond the meager production DTE eventually included in its November 26, 2025, Response: "these COSSs were also made publicly available as Attachment A to DTE Electric's second response."[54] Multiple intervenors have identified issues with this limited production, such

[53] *See* U-21990, December 18, 2025, Commission Order at 35 (including, e.g., that "The amended REP application shall also include options for recovery of any incremental costs of compliance that may result in a surcharge such that the surcharge is not collected on a per meter basis. The options should include equitable ways to recover the incremental costs of compliance which ensure that costs and benefits are distributed among rate classes appropriately").
[54] U-21990, December 18, 2025, Commission Order at 38.

as the failure to identify generation-cost assumptions.[55] ABATE further identified that even this limited production showed a clear rate increase for a customer class.[56] The Commission's Order does not resolve the intervenors' concerns on this issues.

Further telling here is the Commission's treatment of certain cost allocation inequities in the context of Case U-21859. In reference to concerns there about Consumers' production cost allocation methodology—the same method used by DTE[57]—the Commission found that:

> This is unacceptable. A core tenet of ratemaking is that customers are responsible for the costs they impose on the system and the costs required to serve them. Residential, commercial, and other industrial customers should not have to pay for investments driven solely by large load additions.[58]

And while the Commission's Order directs DTE to perform a review of its cost allocation methods in the future, it does not require that GCV ever be held to any new rate or methodology resulting therefrom. In short, the Commission appears to be indicating the "unacceptable" is in fact "acceptable" for this customer. It has not provided any reasoning for this different treatment.

The Commission's Order further does not reference any review of PSCR modelling. Thus, neither the Commission nor DTE has identified any evidence

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[55] *See, e.g.*, the Attorney General's December 3, 2025, Reply at 11 – 12.
[56] *See*, ABATE's Reply at 2 – 4.
[57] *See*, as explained in the Attorney General's December 3, 2025, Reply at 9 – 12.
[58] U-21859, November 6, 2025, Commission Order at 116 (and citing to MNSC's Initial Brief at 33).

that might explain how the Company would avoid near-term subsidization of transmission upgrade costs passed through the PSCR and, under DTE's current practices, borne evenly by all PSCR customers. This is particularly concerning given that DTE's application affirmatively states that "[t]he Company is not proposing to change the way in which transmission costs are recovered from its customers" further noting that transmission upgrade costs "are recovered through the PSCR mechanism."[59] And neither DTE nor the Commission has made any attempt to address whether DTE is accounting for transmission upgrade costs associated with generation build-out.[60]

Once again, the Commission's Order fails to grapple with, and identifies no evidence to support, a departure from the caused-cost framework it touted in Case U-21859. If DTE's proposed solution is that deferred cost accounting will occur and/or that eventually enough revenue will be collected to offset rate increases, neither the Company nor the Commission has identified record evidence to support or explain how and when such a process might act to avoid otherwise inherent subsidization. In contrast, the Commission is approving an application wherein DTE has explicitly stated it seeks no change to its PSCR cost-allocation. Both DTE and the Commission have thus again failed to

[59] U-21990, Foley Direct at 31:22 – 32:3.
[60] *See, e.g.,* Attorney General's December 3, 2025, Reply at 15 – 16 ("To provide an example of "other resources" the Company has not identified, DTE's application and responsive pleadings do not explicitly identify the total transmission investments required to serve the Customer, such as the total transmission required for any additional generation resources, or whether the Company's $200 million transmission estimate includes such costs associated with renewable resources development.").

demonstrate how GCV will cover its caused-costs as required per the standard set forth in U-21859.

D. The Commission erred in relying on MCL 460.6a(3) to approve the special contracts.

DTE provided the following language in its application for approval of the GCV contracts:

> MCL 460.6a(3) states, in part: "An alteration or amendment in rates or rate schedules applied for by a public utility that will not result in an increase in the cost of service to its customers may be authorized and approved without notice or hearing." The approvals requested in this Application will not result in an alteration or amendment in rates or rate schedules and will not increase the cost of services to the Company's customers.[61]

After reviewing the statute and prior case law, the Commission found in its Order that DTE's "application meets the standard for *ex parte* treatment authorized by MCL 460.6a(3) because conditional approval of the special contracts will not result in an increase to the rates, rate schedules, or costs of service for any customers."[62]

The problem with DTE's application and the Commission's finding is that both fail to take into account the entire sentence of Section 6a(3). This section requires both that: a) the utility is seeking an alteration or amendment in rates or rate schedules; and b) that the result of that alteration or amendment is rates or rate schedules will not result in an increase in the cost

[61] U-21990, DTE's Application, p 4.
[62] *In the matter of the application of DTE Electric Company for approval of special contracts*, MPSC's December 18, 2025, Order, p 31.

of service to its customers. But as described above, DTE expressly asserts that its application "will not result in an alteration or amendment in rates or rate schedules," the first component of Section 6a(3).

All the cases that the Commission references to support its order involve a utility seeking to alter or amend a rate or rate schedule along with a claim that the action to alter or amend the rate or rate schedule will not result in an increase in the cost of service to its customers. In *Attorney General v Pub Serv Comm*, 227 Mich App 148 (1997), Consumers Energy sought *ex parte* approval of a contract it had negotiated with The Upjohn Company to provide Upjohn with discounted electric rates. [63] The issue of whether the contract altered or amended Upjohn's rates was not an issue on appeal. Rather, the issue on appeal was whether the discounted rates would result in an increase in the cost of service to other customers. See also *Attorney General v Pub Serv Comm*, 206 Mich App 290, 295-296 (1994) (involving a potential refund that alters the rate to customers and will not result in an increase in rates) and *Attorney General v Pub Ser Comm*, unpublished opinion per curiam of the Court of Appeals, issued June 11, 1999 (Docket No. 207993), p 4 (involving a change in rates that had the effect of increasing the cost of service to customers).

The Commission has no common law powers, possesses only that authority granted by the legislature, and must follow the plain meaning of the statute.[64] Here, DTE expressly claims in its application that it is not seeking

[63] *Id*. at 150.
[64] *Consumers Energy Co v Pub Serv Comm*, 460 Mich 148, 155 (1999).

to alter or amend a rate for a customer, and the Commission similarly claims that DTE is not altering or amending a rate with its application. Again, the clear and unmistakable language of Section 6a(3) requires both that the utility is seeking an alteration or amendment in rates or rate schedules and the result of that alteration or amendment in rates or rate schedules will not result in an increase in the cost of service to its customers. Because both DTE and the Commission appear to be arguing that the first portion of the statute is not applicable here, the Commission erroneously concluded that Section 6a(3) grants it the authority to approve DTE's application without a contested case hearing.

The Commission's application of this exception in MCL 460.6a(3) would further create the unintended effect of allowing a utility to file an application for a general rate increase and claim that a hearing is not required. Under the reasoning provided in the Commission's order, a utility could file an application seeking to alter or amend a rate or rate schedules, such as a general rate case, and claim that it "will not result in an increase in the cost of service to its customers." In fact, the Commission's decisionmaking here indicates that such a utility could file an application with the critical information redacted from the record and prevent any interested party from reviewing that information. In the redacted information, the utility could claim that the commodity price of natural gas or some other factor reduces costs to customers over time so that it offsets the rate increase request. Even though no other party could review

or contest the utility's claims, the Commission could then approve the application with no contested case hearing and deprive the public and interested parties of the opportunity to challenge the utility's claims.

The above hypothetical illustrates the absurd extension of the Commission's reasoning here. Section 6a(1) requires the Commission to hold a contested case hearing for utility requested rate increases, yet the Commission's expansive reading of the exception to a hearing in Section 6a(3) for this case eviscerates the protections that the legislature intended. Such an outcome should not be allowed; as a matter of long-established law, statutes should be construed to avoid absurd or unreasonable consequences, the Commission must reconsider its decision in the case.[65] The Attorney General accordingly requests that on rehearing the Commission order this matter to proceed as a contested case.

[65] *McAuley v General Motors Corp,* 457 Mich 513, 518 (1998).

IV. Conclusion.

For the reasons set forth above, the Commission should grant this Petition and issue an Order granting the Attorney General's requests and providing clarity as described herein and summarized in Section I.

Respectfully submitted,

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PROOF OF SERVICE - U-21990

The undersigned certifies that a copy of the ***Attorney General's Petition for Rehearing*** was served upon the parties listed below by e-mailing the same to them at their respective e-mail addresses on the 8th day of January 2026.

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