January 8, 2026

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

Via E-File

RE: MPSC Case No. U-21990

Dear Ms. Felice:

Attached please find the enclosed documents for filing:

- Petition for Rehearing and Clarification by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan; and
- Proof of Service.

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

Sincerely,

Christopher M. Bzdok
chris@tropospherelegal.com

CC: Parties to Case No. U-21990

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

PETITION FOR REHEARING AND CLARIFICATION

BY MICHIGAN ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND CITIZENS UTILITY BOARD OF MICHIGAN

January 8, 2026

Table of Contents

I. Introduction 1

II. Standard for Rehearing 2

III. Argument 3

A. Petitioners seek clarification of the conditions in the Order regarding the allocation of the costs of serving the GCV data center to GCV. 3

B. Petitioners seek clarification of the condition that DTE bears all of the risks associated with the sufficiency of the credit and collateral provisions in the PSA and ESA. 7

C. Petitioners seek clarification regarding DTE's Energy Waste Reduction ("EWR") obligations in the years before a new EWR Plan is put in place. 11

D. Petitioners seek clarification regarding whether the required affordability reporting will be discoverable in any proceeding. 13

E. Petitioners seek clarification regarding, and granting of, their petition to intervene in this docket. 16

F. The statutes cited in the Order do not grant the Commission authority to approve a special contract for a new customer *ex parte*. 17

IV. Relief requested 19

V. Conclusion 22

I. INTRODUCTION

The Michigan Environmental Council ("MEC"), Natural Resources Defense Council ("NRDC"), Sierra Club, and Citizens Utility Board of Michigan ("CUB") (collectively, "MNSC" or "Petitioners"), 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 460.351, files this Petition for Rehearing and Clarification ("Petition") relating to the Commission's December 18, 2025 Order granting *ex parte* approval of two special contracts[1] for DTE Electric ("DTE") to provide electric service to a 1.383 gigawatt ("GW") data center facility to be built in Saline Township, Michigan.

In its Order, the Commission stated that it was conditioning approval of the special contracts "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."[2] The Order, however, purports to achieve that requirement through a handful of conditions that were first raised in the Order itself and, therefore, not subject to any input or evidentiary development by any of the parties to this proceeding. A careful review of the Order shows that those conditions lack the terms and provisions needed to provide meaningful protection to DTE's ratepayers from the billions of dollars of costs that would be incurred to serve the Green Chile Ventures LLC ("GCV") data center. Rehearing and clarification of those conditions are necessary to avoid the unintended consequence of an increased cost of service and rates for ratepayers from the special contracts that the Order's stated intent is to protect against. As such, MNSC respectfully requests

[1] The contracts at issue are entitled the Primary Supply Agreement and the Energy Storage Agreement, referred to hereinafter as the "PSA" and "ESA", respectively.

[2] Case No. U-21990, Order, December 18, 2025, p. 32 (hereinafter "Order").

that the Commission grant this Petition and issue an order addressing the shortcomings in the conditions more fully explained below.[3]

II. STANDARD FOR REHEARING

MPSC Rule 437(1) provides for rehearing, and explains 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. 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.[4]

It is, of course, well-established that a petition for rehearing is not an opportunity for a party to rehash an argument that the Commission has already rejected, or to simply disagree with the Commission's decision.[5] This Petition does neither of those things. First, outside of the arguments in Sections III.E and III.F below, MNSC is primarily seeking rehearing and clarification regarding conditions that arose for the first time in this proceeding in the December 18 Order. As such, neither MNSC, nor any other party, has had a chance to present any argument or develop a record regarding most of the conditions for which rehearing and clarification are sought. Second, while MNSC reserves its right to challenge on appeal the Commission's *ex parte* approval of the special contracts and denial of MNSC's request for a contested case proceeding, beyond addressing in

[3] While not repeated in the present Petition for Rehearing and Clarification, MNSC maintains its prior positions in this proceeding and reserves all of its rights to appeal the December 18 Order and any subsequent orders the Commission may issue in this docket.

[4] Mich Admin Code, R 792.10437(1).

[5] See, e.g., U-21534, Order, April 10, 2025, p. 25.

Section III.F below the lack of statutory authority for *ex parte* approval here, the Petition does not directly challenge the *ex parte* approval. Instead, in this Petition, MNSC primarily seeks rehearing and clarification of various conditions established in the Order so as to resolve ambiguities of how those conditions would be implemented, increase the likelihood that such conditions could actually be enforced, and reduce the chances that the conditions will be ineffective in achieving their stated goal of protecting ratepayers from increased cost of service and rates.

III. ARGUMENT

A. Petitioners seek clarification of the conditions in the Order regarding the allocation of the costs of serving the GCV data center to GCV.

In their requests for a contested case, MNSC and other entities detailed concerns about the likelihood that the billions of dollars of costs to serve the GCV data center would lead to increases in cost of service and rates for DTE's residential and other ratepayers, rather than being fully borne by the data center causing such costs. In summary, those concerns were based on: (1) DTE's almost complete failure to disclose assumptions, calculations, workpapers, and modeling upon which its claims about costs and benefits were based; (2) the failure to assess much less account for additional costs that would be needed to ensure compliance with resource adequacy, renewable energy, clean energy, and energy waste reduction requirements; and (3) the apparent failure to fully account for the impacts of the distribution and transmission investments that would be needed to serve the GCV data center.

Despite these concerns, the Commission granted *ex parte* approval of the special contracts. Relying at least in part on unredacted modeling files and copies of the PSA and ESA that were not publicly disclosed, along with an undisclosed "audit" performed by Staff, the Commission found that "conditional approval of the special contracts will not result in an increase

to the rates, rate schedules, or costs of service for any customers."[6] Per the Order, DTE is to assess the incremental costs of compliance with resource adequacy, renewable energy, clean energy, and EWR requirements in future rate cases, Integrated Resource Plans ("IRPs"), Renewable Energy Plans ("REPs"), etc. The Commission then further conditioned its approval as follows:

> 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. If the company is unwilling to accept these conditions, it may file an application for a contested case.[7]

Given that the billions of dollars of costs to serve the GCV data center would not be incurred in the absence of that data center, it is appropriate and critical that the payments made by GCV cover all the costs to serve it. However, at least without rehearing and clarification, it is quite unlikely that the conditions set forth in the Order will ensure that result. This is so for at least five reasons.

First, the Order identifies the costs of serving the GCV data center as "including generation, transmission, distribution, or other costs."[8] The word "or" should be changed to "and," as "or" could suggest that only one or some of those cost categories are covered, while "and" would confirm that all such categories are covered by this condition.

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[6] Case No. U-21990, Order, December 18, 2025, p. 31.

[7] Order, p. 40-41. Similar ordering language on page 43 of the Order states that the payments made by GCV must at least cover the costs of serving the data center so that such costs "are not covered by other customers."

[8] Order, pp. 40, 43.

Second, the Order does not explain how compliance with this condition would be assessed or enforced. Nowhere does the Order identify any process or docket in which, on a regular basis, all the costs that have been incurred to serve the GCV data center would be identified and compared to the payments made by GCV. Nor does it require DTE to make an affirmative showing that actual payments being made are fully covering the costs being incurred. In addition, the Order is silent on how this condition would be enforced in the event that it was determined that the payments being made by GCV are not fully covering the costs of serving the data center. Would DTE be on the hook for the difference and/or how would the additional costs be recovered from GCV? Rehearing and clarification are needed to address each of these omissions.

Third, the Order is inconsistent at best with regards to the required evaluation in future dockets of the allocation of any incremental costs DTE may incur to achieve compliance with resource adequacy, renewable energy, clean energy, and EWR requirements inclusive of the GCV data center. The Order is pretty close to the mark with regards to the analysis of incremental EWR compliance costs,[9] as it requires DTE to present "an analysis of updated surcharges that are designed to ensure other customers are not affected by the incremental energy waste reduction program costs attributable to Green Chile Ventures LLC."[10] By contrast, with regards to incremental renewable energy standard compliance costs, the Order simply requires DTE to provide an analysis of "equitable ways" to recover such costs that "ensure[s] that costs and benefits are distributed among rate classes appropriately."[11] With regards to compliance with clean energy and resource adequacy standards, the Order requires evaluation in DTE's next IRP of scenarios

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[9] The EWR provision in the Order is further addressed in Section III.C below.

[10] Order, pp. 37, 44.

[11] Order, pp. 35, 43.

with and without the GCV data center load,[12] but does not require any particular analysis of the allocation of incremental compliance costs. Rehearing and clarification are needed to ensure that DTE provide analyses of allocation of all categories of incremental costs attributable to the GCV data center that "are designed to ensure other customers are not affected" by such costs.[13]

Fourth, the Commission needs to clarify the basis for its claim that "These are conditions that do not require amendment of the special contracts."[14] Those special contracts clearly identify the costs that GCV has agreed to pay, including for the construction of approximately 1.4 GW of battery storage, and state that they represent "the entire agreement among the Parties with respect to the subject matter hereof."[15] As such, it is not readily apparent how the costs of whatever additional incremental generation, transmission, or distribution investments may need to be made to serve the GCV data center would be fully allocated to GCV without an amendment to the special contracts providing that GCV will pay for those investments. The Commission should clarify the basis for its statement that the conditions set forth in the Order "do not require amendment of the special contracts," including explaining why the allocation of all costs for serving the GCV data center to GCV would not risk GCV exercising under PSA Section 5.1.2 its "right to challenge at the Commission and on appeal any increases or changes to the rates or terms and conditions applicable to the Customer."

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[12] Order, pp. 35-36, 37.

[13] While the Order requires DTE to evaluate six different cost allocation methods in its next rate case, that analysis is identified as applying to "future large load interconnection customers," which would appear to rule out it applying to the GCV data center. Order, pp. 39-40. In addition, many of the incremental compliance costs for the GCV data center would likely not be at issue in that rate case.

[14] Order, p. 40.

[15] Direct Testimony of Neal T. Foley, Ex. A-1, PSA Section 19.8, p. 24; and Ex. A-2, ESA Section 15.8, p. 20.

Finally, while MNSC appreciate the requirement that DTE file, within 30 days, a letter in the instant docket accepting the condition "that the Customer's obligations under Rate D11 and the special contracts will at least cover the costs to serve the Customer," that requirement should be strengthened. In particular, the Commission should clarify that such letter should be sworn to under oath and signed by someone with authority to legally bind DTE to the commitment requested. Such a requirement would increase the strength of DTE's commitment, and ensure that the Commission, Staff, and/or other interested parties would know who at DTE could answer questions about that commitment in the event any arise in the future.

B. Petitioners seek clarification of the condition that DTE bears all of the risks associated with the sufficiency of the credit and collateral provisions in the PSA and ESA.

MNSC,[16] the Attorney General,[17] and Great Lakes Renewable Energy Association ("GLREA")[18] all raised significant concerns about whether the "Customer Credit Support" provisions in the PSA and ESA provided sufficient protection for DTE and its ratepayers in the event of a default or termination by GCV. Under those provisions, GCV is to provide DTE with a parent guarantee from Oracle[19] or an affiliate of GCV,[20] which could be supplemented by one or

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[16] MNSC's Motion for a Contested Case Proceeding, p. 10, para. 12 and n. 22.

[17] Attorney General's Request for a Contested Proceeding, Attachment A at 3, para 11.

[18] GLREA Motion for a Contested Case, pp. 10-11, para. 9e.

[19] While heavy redactions of the PSA and ESA make it impossible for MNSC to know whether Oracle is a signatory to either agreement, it is not identified as a party to the agreements, nor does any parent guarantee agreement appear to be in the public record for this proceeding.

[20] While DTE claims that the "both the PSA and ESA require Oracle (as the parent of Green Chile Ventures LLC) to guarantee all payment obligations under each agreement . . .", DTE Resp. to ABATE, MNSC, CEO, and GLREA, p. 12, the plain language of the PSA and ESA provide that the parent guarantee could come from Oracle or "another Affiliate of Customer," which is GCV, not Oracle. PSA Section 8.1, p 13; ESA Section 8.1, p 12. The public record does not identify any such potential Affiliate guarantors, or identify what financial metrics such Affiliate would need to meet in order to be able to serve as the parent guarantor here.

more letters of credit if not-publicly-disclosed credit metrics for Oracle are not met.[21] Concerns about the sufficiency of such provisions had four primary bases:

(1) The PSA and ESA reflect billions of dollars of costs to serve the GCV data center – as the December 18 Order notes, the minimum termination amounts under those two contracts are approximately $2.3 billion under the PSA and $3.9 billion under the ESA[22]

(2) DTE's application and supporting testimony provide no information about the financial condition of GCV, which is simply identified as a Delaware limited liability company and a subsidiary of Oracle Corporation[23]

(3) There are significant and growing questions about Oracle's financial health stemming from that company's rapidly growing debt load[24]

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[21] DTE's Response Opposing Requests for a Contested Proceeding by ABATE, MNSC, CEO, and GLREA, pp. 11-13. While DTE suggests that it would be Oracle that would provide the letter(s) of credit, the non-redacted text of the PSA and ESA provide that the "Customer [i.e. GCV] shall provide Company with . . . one or more letters of credit". PSA Section 8.1, p. 13; ESA Section 8.1, p. 12.

[22] Order, p. 33-34.

[23] Direct Testimony of Neal T. Foley, p. 5 and Ex. A-1 at 1. DTE's application went so far as to redact GCV's address, and the names and titles of the signatories to the PSA and ESA, and of the representatives who are supposed to receive notices under those contracts.

[24] GLREA Motion for a Contested Case, pp. 10-11, para. 9.e.

See also S&P Global, *Oracle Inc. 'BBB' Ratings Affirmed; Outlook Negative; New Debt Rated 'BBB'*, Sep. 24, 2025, https://www.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3446571 (accessed January 7, 2026);

Moody's, *Moody's Ratings affirms Oracle's Baa2 rating; outlook revised to negative*, July 28, 2025, https://www.moodys.com/research/Moodys-Ratings-affirms-Oracles-Baa2-rating-outlook-revised-to-negative-Rating-Action--PR_510524 (accessed January 7, 2026);

Bryce Elder, Financial Times, *Oracle is already underwater on its 'astonishing' $300bn OpenAI deal*, Nov. 18, 2025, https://www.ft.com/content/064bbca0-1cb2-45ab-85f4-25fdfc318d89 (accessed January 7, 2026);

Seema Mody, CNBC, *Wall Street cools on Oracle's buildout plans as debt concerns mount: 'AI sentiment is waning'*, Nov. 13, 2025, https://www.cnbc.com/2025/11/13/ai-sentiment-is-waning-wall-street-cools-on-oracle-buildout-plans.html (accessed January 7, 2026);

Jordan Novet, CNBC, *Oracle plummets 11% on weak revenue, pushing down AI stocks like Nvidia and CoreWeave*, Dec. 10, 2025, https://www.cnbc.com/2025/12/10/oracle-orcl-q2-earnings-report-2026.html (accessed January 7, 2026;

Nate Wolf, Barron's, *Insuring Against an Oracle Default Is Getting Costlier. Is It a Bad Omen for AI?*, Oct. 28, 2025, https://www.barrons.com/articles/oracle-credit-default-swap-spreads-ai-omen-c4798324 (accessed January 7, 2026);

(4) Almost all of the Customer Credit Support terms in the PSA and ESA were redacted, thereby preventing Petitioners from being able to review and assess the adequacy of those terms.

Despite these concerns, the Commission found that "the credit and collateral requirements in the unredacted PSA and ESA, along with the Commission's conditions, ensure that any risk . . . . is either covered by the substantial collateral collected or is borne by DTE Electric and not by other customers."[25] With regards to the credit and collateral requirements, the referenced "conditions" appear to be the statement on page 41 of the Order that:

> 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.* (emphasis added)

Placing the risk of the credit and collateral provisions in the PSA and ESA being inadequate on DTE is wholly appropriate given that DTE negotiated those agreements and stands to benefit significantly from the increase in rate base and return on equity that would result if the GCV deal succeeds.

Unfortunately, at least without further clarification, it appears quite unlikely that the language quoted above would actually lead to DTE bearing the costs in the event that GCV terminates or defaults and the credit and collateral provisions prove to be insufficient. For one

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Robin Wigglesworth, Financial Times, *Morgan Stanley thinks you should short Oracle*, Nov. 27, 2025, https://www.ft.com/content/d2fd7846-9e79-431c-a91e-06cea8c809b6 (accessed January 7, 2026).

[25] Order, p. 33.

thing, it is not even clear that the language from page 41 of the Order quoted above is a condition on DTE and approval of the special contracts. In particular, unlike the other conditions in the Order, the sufficiency of the credit and collateral condition is not included in the list of things specifically ordered by the Commission set forth on pages 43-45 of the Order. In addition, in stark contrast to the 30-day letter that DTE is required to file accepting the condition that payments made by GCV would cover the costs of serving GCV, the Order does not require DTE to affirmatively accept a condition that it, and not its customers, will be required to bear the costs and risks of any insufficiency of the credit and collateral provisions. Combined, these omissions raise serious concerns about whether the language on page 41 of the Order cited above regarding DTE bearing the costs and risks of insufficient credit and collateral provisions is even a binding condition. Those concerns, however, can be reduced by the Commission granting rehearing and issuing an order that (1) requires DTE to file a letter accepting the condition that it bear the costs and risks of any insufficiency in the credit and collateral provisions,[26] and (2) includes such condition in the lists of things specifically ordered by the Commission in this proceeding.

Unfortunately, even with such steps, there is substantial concern about whether and how a future Commission would actually enforce this condition against DTE. In a situation in which GCV defaults or terminates and the parent guarantee falls through, hundreds of millions or even billions of dollars of costs could be at issue. In such circumstance, DTE would undoubtedly contend that requiring it to bear such costs – rather than recovering them from its other ratepayers – would undermine the financial viability of the utility. Clarification of how this condition would

[26] As discussed above with regards to the letter that DTE is already required to file within 30 days, a letter from DTE accepting the condition that it bear the costs and risks of any insufficiency in the credit and collateral provisions should be sworn to under oath and signed by someone with authority to legally bind DTE to the commitment requested.

be enforced if and when DTE makes such a claim is critical to ensuring that the credit and collateral condition is meaningful rather than just a paper tiger.

Finally, MNSC appreciates the Commission requiring DTE to file quarterly reports regarding, among other things, "any changes to the Customer's credit rating that trigger a change to the credit and collateral terms," and DTE's "assessment of the financial state of the Customer."[27] However, according to DTE, it is the credit rating of Oracle, not GCV, that determines the extent to which the parent guarantee may be supplemented by letters of credit.[28] More broadly, reporting on the credit ratings and financial state of Oracle and any affiliate of GCV that may end up providing the parent guarantee is necessary to get a fuller ongoing assessment of the levels of financial risk at issue here. As such, MNSC requests the Commission grant rehearing to modify the quarterly reporting requirement to provide an up-to-date assessment of the credit rating and financial state of GCV, Oracle, and any affiliate providing a parent guarantee for the PSA and/or ESA. For reasons explained in Section III.D, *infra*, MNSC also seek clarification regarding whether the Commission will require DTE to make available the quarterly reporting to parties seeking intervention in this case, along with parties to future electric rate cases, so that such parties can monitor the potential cost-of-service implications of the information in the quarterly reports.

C. Petitioners seek clarification regarding DTE's Energy Waste Reduction ("EWR") obligations in the years before a new EWR Plan is put in place.

In its objection to *ex parte* approval and motion for a contested case proceeding, MNSC[29] raised as a concern that DTE had failed to analyze the increase in targeted EWR savings that would

[27] Order, p. 42.

[28] DTE's Response Opposing Requests for a Contested Proceeding by ABATE, MNSC, CEO, and GLREA, p. 13.

[29] MNSC Motion for a Contested Case Proceeding, p. 10, para. 11.

result from the addition of the GCV data center, nor provided any assurance that the costs of such increase would be borne by GCV rather than other ratepayers. In the Order, the Commission found that these issues should be addressed in DTE's next EWR Plan filing, stating that:

> Turning to EWR, the Staff confirmed that DTE Electric commits to addressing the increased EWR targets in its next EWR plan filing, which will be due eight months after the issuance of a final order in the company's next IRP case. The Commission finds the EWR issues associated with the special contracts to be relatively straightforward, and directs DTE Electric, in its next EWR plan filing, to provide a detailed analysis of the incremental EWR costs necessary to meet the 2% EWR savings target inclusive of the Customer, along with a thorough analysis of updated surcharges that are designed to ensure other customers are not impacted by the incremental EWR program costs attributable to the Customer.[30]

While the Order sets a path for addressing long-term compliance with EWR requirements inclusive of the GCV data center, and the incremental costs of such compliance, clarification is needed to ensure that DTE is not improperly freed of its compliance obligations during the time before its next EWR plan goes into effect.

Assuming that DTE files its next IRP between October and December 2026, its next EWR plan would be filed between June and August 2028. Presumably, such plan would go into effect at the beginning of either 2029 or 2030.[31] DTE, however, is projecting substantial amounts of increased energy sales from the GCV data center before then – approximately 5 million MWhs in 2027, and 10.9 million MWhs in 2028 and each year thereafter.[32] Such increased sales, which are

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[30] Order, p. 37.

[31] In Case No. U-21861, the Commission currently has before it DTE's proposed EWR Plan for the years 2026-2029, and an unopposed proposed Settlement Agreement regarding the same. Assuming approval of DTE's 2026-2029 EWR Plan and/or the Settlement Agreement, it is not known at this time whether DTE would propose that its next EWR Plan filed in 2028 would supplant the last year of the currently pending 2026-2029 Plan, or would start in 2030.

[32] Direct Testimony of Kevin L. Bilyeu, Ex. A-3 at p. 1 line 4.

not reflected in the 2026-2029 EWR Plan and proposed Settlement Agreement pending in U-21681 – would significantly impact the level of savings needed to achieve the statutory minimum requirements and the amount of shareholder incentives DTE may be statutorily entitled to in 2027, 2028, and potentially 2029. Amendments to the currently pending EWR Plan would be needed for those years to ensure compliance with the relevant statutory requirements, yet the Commission's finding quoted above could be (mis)read to suggest that DTE need not do anything further regarding EWR compliance until its next EWR Plan filing in 2028. As such, MNSC requests that the Commission grant rehearing and clarify that its Order does not constitute a finding that DTE would not need to amend its currently pending 2026-2029 EWR Plan if the forecasted energy sales to the GCV data center begin to materialize.

D. Petitioners seek clarification regarding whether the required affordability reporting will be discoverable in any proceeding.

The Order approving the special contract states that "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."[33] Later, the Order finds that the unredacted version of DTE's affordability model – which none of the parties who objected to *ex parte* approval had access to – "shows an affordability benefit."[34] The Order adds: "However, should it be shown in a future rate case that any particular rate class does not benefit from a reduction to the cost of service, it is the rate case that is the proper forum for ratemaking."[35]

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[33] Order, p. 32.

[34] *Id*. at 37.

[35] *Id*. at 38.

Petitioners submit that it is unclear from the Order whether and how parties will be able to determine whether the Commission's condition that "all current and future costs caused by the Customer shall be covered by the Customer or by DTE Electric and not existing customers" is met. Similarly, it is unclear how parties to future rate cases will be able to discover whether any rate classes are or are not benefiting from a reduction to the cost of service – which the Order directs be addressed in future rate cases. In terms of reporting, the Order requires the following: "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."[36] Importantly, the Order may be read as requiring DTE to file the annual reports only in the present docket, Case No. U-21990, rather than in future rate case dockets, creating a potentially significant barrier for parties accessing and utilizing such information in future rate cases.[37]

Petitioners submit that it is unclear whether parties to future rate cases or other proceedings will be able to discover the affordability reporting or other information needed to verify DTE's projected reductions to the cost of service and the Company's compliance with the Order's condition that GCV or DTE bear all costs. Among other things, Petitioners are concerned that customer privacy rules and tariffs could prevent parties from gaining access to such information – even under protective orders. Rule 53 requires utilities to adopt "a customer privacy tariff that contains a customer data privacy policy" that shall – among other things – "encompass all customer

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[36] *Id*. at 42; see also, p. 45, ordering paragraph K.

[37] See *id*. at 42 (directing DTE to file a quarterly report in this docket and, in the same paragraph, directing DTE to file an annual report with affordability information).

information or data collected or maintained by the utility" and "protect all customer information or data collected for the utility from unauthorized use or disclosure."[38]

The Commission approved DTE Energy's customer privacy tariffs in 2019.[39] The tariff defines "Customer Account Information" as "personally identifiable information including Personal Data and Customer Usage Data."[40] It defines "Customer Usage Data" as "customer specific gas and electric usage data, or weather adjusted data, including but not limited to . . . kW, kWh, voltage, var, or power factor, and other information that is recorded by the electric or gas meter for the Company and stored in its systems."[41] The tariff states that "Informed Customer Consent is necessary before collection or use of Customer Account Information for a Secondary Purpose."[42] It states that a "'Secondary Purpose' means any purpose that is not a Primary Purpose;" and defines a primary purpose as limited to needs related to the provision of service; grid and operational needs; and providing services and programs required by law.[43] The tariff includes an exception to the requirement for Informed Customer Consent "when required by law or Commission requests or rules."[44]

Petitioners seek clarification regarding whether the Commission will require DTE Electric – under the exception to Informed Customer Consent in the tariff or otherwise – to make available

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[38] Mich Admin Code R 460.153(2).

[39] Case No. U-18485, Order, January 18, 2019, adopting DTE Energy's customer privacy tariff.

[40] DTE Electric, Rule C14.1, Data Privacy, First Revised Sheet No. C-74.00.

[41] *Id*.

[42] *Id*. at C-74.01.

[43] *Id*.

[44] *Id*. at C-74.02. The same provision goes on to state: "This includes law enforcement requests supported by warrants or court orders specifically naming the customers whose information is sought, and judicially enforceable subpoenas. The provision of such information will be reasonably limited to the amount authorized by law or reasonably necessary to fulfill a request compelled by law." Petitioners believe the quoted text expands – rather than limits – the preceding sentence, but can imagine a utility or customer arguing the opposite.

the affordability model, the required annual reporting on realization (or not) of the affordability benefit, and other information necessary to evaluate the cost of service issues that the Order directs to future rate cases. Petitioners also ask the Commission to clarify that DTE must annually file its reporting on the affordability benefit in any open electric rate case dockets, in addition to this docket, in order to increase the usefulness of that reporting to future rate case review.

E. Petitioners seek clarification regarding, and granting of, their petition to intervene in this docket.

MNSC accompanied its motion for a contested case with a petition to intervene in this docket. The other entities moving for a contested case also sought intervention. The December 18 Order does not appear to rule on any of those requests for intervention. In most cases, the granting of *ex parte* approval and denial of motions for contested cases would effectively end the case and, therefore, presumably serve as a de facto denial of intervention. Here, however, the Order makes clear that this is an ongoing matter, with DTE required to submit quarterly and annual reports in this docket,[45] and the Commission specifically retaining jurisdiction and reserving "the authority to reopen this case at any time and/or to issue an order to show cause."[46] Granting its intervention petition would ensure that MNSC receives timely notification and service of DTE's quarterly reports and any action that the Commission might take in the docket, along with the ability to weigh in on the same as appropriate. As such, MNSC requests that the Commission clarify its Order and grant MNSC's November 19, 2025 Petition to Intervene in this proceeding.

[45] Order, p. 42, 45.

[46] Order, p. 43.

F. The statutes cited in the Order do not grant the Commission authority to approve a special contract for a new customer *ex parte*.

The Order relies on section 6a(3) of the public utilities statutes for the Commission's authority to approve the GCV special contract *ex parte*.[47] However, the text the Order cites does not grant such authority in this case because DTE Electric did not apply for an alteration or amendment in rates or rate schedules.

As the Order notes, MCL 460.6a(3) provides that "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."[48] For this provision to authorize *ex parte* approval, two things must be true: (1) a public utility must apply for an alteration or amendment in rates or rate schedules; and (2) that alteration or amendment will not result in an increase in the cost of service. The Order focuses solely on the second portion and ignores the first.

DTE Electric's application specifically states: "The approvals requested in this Application will not result in an alteration or amendment in rates or rate schedule and will not increase the cost of services to the Company's customers."[49] Because DTE does not request an alteration or amendment in rates or rate schedules, the text in section 6a(3) does not apply.

The Commission has no common law powers.[50] It has only the authority bestowed upon it by statute.[51] "Thus, a determination of the Commission's powers requires an examination of the

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[47] Order, p. 27.

[48] MCL 460.6a(3), cited at Order, p. 27 (emphasis added).

[49] Application, p. 4, paragraph 10 (emphasis added).

[50] *Huron Portland Cement Co v Public Service Comm,* 351 Mich 255, 262; 88 NW2d 492 (1958).

[51] *Union Carbide Corp v Public Service Comm,* 431 Mich 135, 146; 428 NW2d 322 (1988).

various statutory enactments pertaining to its authority."[52] "Authority must be granted by clear and unmistakable language, and so the wording in the PSC's enabling statutes must be read narrowly and in the context of the entire statutory scheme."[53] The Commission's authority "must be conferred by clear and unmistakable language, since a doubtful power does not exist."[54]

Section 6a(3) does not grant the Commission authority to approve a special contract *ex parte* – it does not mention special contracts at all. The provision only applies to requests an alteration or amendment in rates or rate schedules – which may be embodied in a special contract – but DTE Electric expressly states it is not making such a request here. MCL 462.11 authorizes the Commission to approve special contract rates but does not authorize the Commission to do so *ex parte*. And section 6a(1), which the Order also cites, provides the process for deciding rate cases and does not address special contracts.[55] Thus, an examination of the various statutes pertaining to special contracts and *ex parte* approvals reveals no authority for the Commission's action here.

The Order cites two *Attorney General v Pub Serv Comm* cases to support its position that "special contracts that do not result in an immediate change in rates or in the cost of service to customers qualify for *ex parte* approval . . ."[56] However, both these cases involved alterations or amendments in rates or rate schedules. The 1997 case approved Consumers Energy's application for a special contract that discounted the rates for Upjohn, one of Consumers' largest customers.

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[52] *Id.*

[53] ABATE v Public Serv Comm, 296 Mich App 101, 109; 817 NW2d 630 (2012), citing *Consumers Power Co v Public Serv Comm*, 460 Mich 148, 155-159; 596 NW2d 126 (1999).

[54] *ABATE v Public Serv Comm,* 296 Mich App 101, 110; 817 NW2d 630 (2012), quoting *Mason County Civil Research Council v Mason Co*, 343 Mich 313, 326-327; 72 NW2d 292 (1955).

[55] MCL 460.6a(1).

[56] Order, pp. 28-29, citing *Attorney General v Pub Serv Comm*, 227 Mich App 148, 155; 575 NW2d 302 (1997); *appeal den*, 459 Mich 910; 589 NW2d 282 (1998) and *Attorney General v Pub Serv Comm,* 206 Mich App 290, 295-298; 520 NW2d 636 (1994)).

The 1994 case approved a settlement between the Commission and Consumers' gas division that did not involve a special contract at all.

The Order also cites Rule 31 in the section providing conditions for its approval of the special contract.[57] Rule 31 specifically governs the process for approving special contracts but says nothing about doing so *ex parte*.

In sum, the statute the Order interprets to provide the Commission with authority to approve a special contract *ex parte* is limited to cases where the utility applies for an alteration or amendment in rates or rate schedules. DTE Electric expressly did not do so here. Therefore, the Commission lacked statutory authority to approve the GCV contract *ex parte*.

IV. RELIEF REQUESTED

For the reasons discussed above, MNSC hereby requests the Commission to:

A. Grant MNSC's Petition for Rehearing and Clarification;

B. Regarding the conditions in the Order pertaining to the allocation of costs of serving the GCV data center:

   a. Change the Order's language identifying the costs of serving the GCV data center from "including generation, transmission, distribution, *or* other costs," to "including generation, transmission, distribution, *and* other costs";

   b. Clarify how compliance with the condition that the Customer's obligations will at least cover the costs to serve the Customer would be assessed or enforced, including (1) through which process or in which docket the costs of serving the data center will be compared to payments made by GCV, (2) whether DTE will be required to

[57] Order, p. 35, citing Mich Admin Code, R 460.2031.

make an affirmative showing that actual payments being made are fully covering the costs being incurred, and (3) how the conditions would be enforced if it is determined that the costs being paid by GCV are not fully covering the costs of serving the data center;

c. Ensure that DTE is required to provide for all categories of incremental costs attributable to the GCV data center, including incremental renewable energy standard, clean energy standard, and resource adequacy standard compliance costs, analyses of allocation methodologies that "are designed to ensure other customers are not affected" by such costs;

d. Clarify the basis for the Commission's claim that the cost allocation conditions do not require amendment of the special contracts;

e. Require that the letter DTE files accepting the condition "that the Customer's obligations under Rate D11 and the special contracts will at least cover the costs to serve the Customer" be sworn to under oath and signed by someone with authority to legally bind DTE to the commitment requested;

C. Regarding the condition that DTE bears the risks associated with the sufficiency of the credit and collateral provisions in the PSA and ESA:

a. Require DTE to file a letter, sworn to under oath and signed by someone with authority to legally bind DTE to the commitment requested, accepting the condition that it bears the costs and risks of any insufficiency in the credit and collateral provisions;

b. Include such condition in the lists of things specifically ordered by the Commission in this proceeding;

c. Clarify how this condition would be enforced in the future, especially if DTE claims that requiring it to bear such costs – rather than recovering them from its other ratepayers – would undermine the financial viability of the utility;

d. Modify the quarterly reporting requirement to provide an up-to-date assessment of the credit rating and financial state of GCV, Oracle, and any affiliate providing a parent guarantee for the PSA and/or ESA, rather than just of GCV;

e. Clarify whether the Commission will require DTE to make available the quarterly reporting to parties seeking intervention in this case and to parties to future electric rate cases;

D. Regarding the condition pertaining to DTE's Energy Waste Reduction Plan, clarify that the Commission's Order does not constitute a finding that DTE would not need to amend its currently pending 2026-2029 EWR Plan if the forecasted energy sales to the GCV data center begin to materialize before DTE's next EWR Plan goes into effect;

E. Regarding the condition mandating annual affordability reporting:

a. Clarify whether the Commission will require DTE Electric – under the exception to Informed Customer Consent in the tariff or otherwise – to make available the affordability model, the required annual reporting on realization (or not) of the affordability benefit, and other information necessary to evaluate the cost of service issues that the Order directs to future rate cases;

b. Clarify that DTE must annually file its reporting on the affordability benefit in any open electric rate case dockets, in addition to this docket; and

F. Clarify its Order and grant MNSC's November 19, 2025, Petition to Intervene in this proceeding.

G. Alternatively, grant rehearing and vacate approval of the special contracts and set the matter for a contested case.[58]

V. CONCLUSION

For the reasons stated herein, MNSC respectfully requests that the Commission grant its petition for rehearing and clarification, and issue an order addressing the above-discussed matters.

Respectfully submitted,

Troposphere Legal
Counsel for MNSC

Date: January 8, 2026

By: ______________________________

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[58] As explained in Section II, MNSC reserves its right to challenge on appeal the Commission's *ex parte* approval of the special contracts and denial of MNSC's request for a contested case proceeding, but beyond addressing in Section III.F the lack of statutory authority for *ex parte* approval, the Petition does not directly challenge the *ex parte* approval.

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

Proof of Service

On the date below, an electronic copy of **Petition for Rehearing and Clarification by Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Citizens Utility Board of Michigan** was served on the following:

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

Troposphere Legal
Counsel for MNSC

Date: January 8, 2026

By:____________________________________

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