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April 13, 2026

**VIA ELECTRONIC CASE FILING**

Executive Secretary  
Michigan Public Service Commission  
7109 W. Saginaw Highway  
Lansing, Michigan 48917

**Re: Case No. U-21973 – In the matter of the application of DTE Gas Company for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of natural gas and for miscellaneous accounting authority.**

Dear Executive Secretary:

Enclosed for filing please find the **Association of Businesses Advocating Tariff Equity's Response in Opposition to MPSC Staff's Motion to Strike** and **Proof of Service** in the above-referenced matter.

Sincerely,

**CLARK HILL PLC**  
**Stephen A.**  
**Campbell**  
Stephen A. Campbell

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SAC/nb

cc: Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of	)	
<b>DTE GAS COMPANY</b> for authority	)	Case No. U-21973
to increase its rates, amend its rate	)	
schedules and rules governing the	)	ALJ Christopher S. Saunders
distribution and supply of natural gas,	)	
<u>and for miscellaneous accounting authority.)</u>	)	

**RESPONSE IN OPPOSITION TO THE  
MICHIGAN PUBLIC SERVICE COMMISSION’S MOTION TO STRIKE OF THE  
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, Clark Hill PLC, submits the following response to the Michigan Public Service Commission’s Motion to Strike (“Motion”) certain rebuttal testimony of ABATE witness Jessica York. The Motion should be denied for the reasons set forth below.

**I. INTRODUCTION**

The Commission Staff’s Motion seeks to strike rebuttal testimony which is directly and exclusively responsive to Staff’s direct case and recommendations in this proceeding. Specifically, Staff seeks to strike testimony which explicitly rebuts and explains the flaws in Staff’s recommended cost allocation methodology. As this request is inconsistent with the applicable standard for rebuttal testimony Staff’s Motion should be denied.

The testimony Staff has moved to strike addresses Staff’s proposed cost of service study (“COSS”) and its use of the Peak and Average (“P&A”) allocation methodology as part of Staff’s recommended costs allocation for DTE Gas Company (“DTE” or “Company”)’s various customer classes. In accordance with the purpose of rebuttal testimony, which is to rebut the positions put forth by other parties, ABATE filed rebuttal testimony explaining why Staff’s COSS and

recommended cost allocation using the P&A allocator (which Staff has acknowledged it used) was flawed, deficient, unreasonable, and should not be approved. In response to this testimony Staff has claimed that its recommended cost allocation is insulated from rebuttal if the mechanics of its COSS are not expounded upon in testimony and an intervenor also responded to the Company's similar recommended cost allocation.

This position is untenable and entirely inconsistent with the Commission's explanation of proper rebuttal testimony. As such Staff's Motion should be denied.

## **II. STANDARD OF REVIEW**

As the Commission has explained, “[p]roper rebuttal evidence is ‘that given by one party to contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same.’” *In the Matter of the Application of Consumers Energy Co*, order of the Public Service Commission, entered December 17, 2020 (Case No. U-20697), p 11 (internal citation omitted). Thus, the “purpose of rebuttal” is “to rebut the direct cases of the other parties.” *In the Matter of the Application of Consumers Energy Co*, order of the Public Service Commission, entered March 21, 2025 (Case No. U-21585).

Consistent with this standard, the Scheduling Memo issued in this case states the following:

Proper rebuttal evidence is the evidence given by one party to contradict, explain, or disprove evidence produced by the other party and tending to directly weaken or impeach that evidence. It should not be used for the purpose of rehabilitating or supplementing a party's direct case. Rebuttal should also be concise and to the point, presented for the purpose of rebutting specific facts, judgments of the other parties that could not have been reasonably done in a party's direct case. [Case No. U-21973, Filing No. 66 (December 15, 2015).]

## **III. ARGUMENT**

### **A. The testimony at issue explicitly and exclusively rebuts Staff's direct case.**

As Staff directly acknowledged, its testimony and recommended alternate COSS in this case utilized and incorporated the P&A cost allocator. (Staff Motion at 2.) Because the testimony

Staff moved to strike directly contradicts, explains, disproves, weakens, and rebuts Staff's recommendation, particularly the facts and judgments therein, it is proper rebuttal.

In this case Staff recommended the Commission approve a cost allocation based on an alternative COSS which utilized the P&A method to allocate the Company's costs to its various customer classes. (See Krause Direct at 4-6; Blizzard Direct at 5-12.) That COSS, and thus Staff's recommended cost allocation, utilized the P&A method. (Staff Motion at 2.) All of the testimony Staff seeks to strike was provided in response to this testimony and Staff's recommendation to allocate costs in accordance with a COSS that utilized the P&A method. Specifically, that testimony contradicts, explains, disproves, weakens, and rebuts Staff's recommendation, particularly the facts and judgments therein, by explaining the flaws in Staff's proposed allocation methodology. The assertions that Staff's recommendation "simply assumed the use of the P&A allocator, with no specific mention of such," and "did not call out the P&A allocator" are entirely irrelevant. (Motion at 2.) The standard for proper rebuttal as set out above contains no distinction between the elements or mechanics of a party's proposed cost allocation methodology which are expounded upon at length in testimony and those which are simply incorporated into its recommendations. Staff recommended the Company's costs be allocated using the P&A method; the testimony Staff seeks to strike directly and explicitly responds to and rebuts that recommendation.

As Staff stated in its Motion, rebuttal testimony's "purpose is to cut down defendant's case" and it "should be very clear in that rebuttal testimony what is being rebutted in someone else's case so that we can easily determine that it is in the nature of rebuttal." (Motion at 3-4 (internal citation omitted).) All of the testimony Staff seeks to strike explicitly states that it is in

response to Staff's recommended cost allocation and rebuts Staff's recommended cost allocation by explaining why it is unreasonable, flawed, and should not be approved.

First, Staff seeks to strike the introductory Q&A of Ms. York's rebuttal testimony which explicitly explains that she will be responding to Staff's use of the P&A allocator in its COSSs, which Staff has acknowledged it did use:

**Q** ~~WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY TO STAFF WITNESS KRAUSE?~~

**A** ~~I respond to Staff witness Krause's use of the Peak and Average ("P&A") allocator in both his primary CCOSS and his alternate high and low pressure CCOSS. I also explain why Staff's continued reliance on the P&A method, even in the alternate CCOSS, misallocates capacity-related costs to the transportation classes and conflicts with cost causation as reflected in DTE's Gas Delivery Plan.~~

Again, Staff explicitly acknowledged that it "used the P&A allocator." (Motion at 5.) How exactly this passage, which notes that the following testimony will specifically rebut that evidence and Staff's recommendation, constitutes improper rebuttal is therefore unclear.

Next, Staff seeks to strike references to "P&A" which, again, Staff acknowledged it used in its COSS, and almost the entirety of page 4 of Ms. York's rebuttal testimony which explains the flaws in Staff's proposal and weakens Staff's recommendation (i.e., rebuts it). Indeed, this portion of testimony addresses the deficiency in Staff's proposed COSS in response to the questions "How does Staff's primary CCOSS treat transmission and distribution mains costs?", "Does Staff's alternate CCOSS resolve the concerns about the P&A method that you raised in direct testimony?", and "Why is it problematic to retain the P&A allocator in [Staff's] alternate CCOSS?" This testimony is directly in response to and rebuts Staff's proposed cost allocation based on its COSS by explaining why it is flawed and unreasonable. As such it is bog-standard rebuttal testimony.

Similarly, Staff seeks to strike most of Ms. York's rebuttal testimony across pages 6 and 7, which testimony rebuts Staff's proposed cost allocation and is provided in response to the questions "Staff suggests that the alternate CCOSS is more reflective of the differing costs at each level of service. Do you agree?", "From a cost-causation standpoint, how should the Commission interpret the difference between Staff's P&A CCOSS results and your design day demand CCOSS results?", "Do you find any logical inconsistency in how Staff uses the alternate CCOS within this case?" and, finally, "Please summarize your recommendations regarding cost allocation" as they pertain to Staff's alternate CCOSS recommendation. Again, all of this testimony is in response to and explicitly rebuts Staff's recommended cost allocation methodology.

Further, Staff seeks to strike additional references to the P&A method (which, again, Staff acknowledged is part of its recommended COSS) and testimony across pages 8 through 11 of Ms. York's rebuttal testimony. Again, the subject testimony addresses Staff's proposed cost allocation in this case and is in response to the questions "How do Staff's CCOSS results compare to its proposed revenue allocation?" and "From a cost-causation perspective, are [Staff's proposed] breakeven targets appropriate for the transportation classes?" All of this testimony is in direct response to and rebuts Staff's recommended cost allocation in this case.

Thus, in accordance with the standard for rebuttal evidence, all of the testimony Staff has moved to strike is evidence given to contradict, explain, or disprove evidence produced by Staff, tending to directly weaken or impeach that evidence, and was presented for the explicit purpose of rebutting the specific facts and judgments of Staff's recommendation. As Staff acknowledged, Staff witness Krause "used the P&A allocator as presented by the Company" and "Staff witness Blizzard continues to use the COS and alternative COS used by Krause." (Motion at 5.) In other words, Staff's testimony and recommended cost allocation included and were based on the P&A

allocator. Staff's claim that a party cannot rebut Staff's recommended allocator and COSS or the method used therein because Staff was "neutral on the use of the P&A allocator," "simply assumed the use of the P&A allocator," and did not explicitly "advocat[e] for that methodology," or "call[] out the P&A allocator" are absurd. (Motion at 2, 5.) Staff's recommended cost allocation used the P&A allocator. The testimony it moved to strike is in direct and explicit response and rebuttal thereto. As such it is proper rebuttal testimony and Staff's Motion should be denied.

**B. ABATE could not have rebutted Staff's recommendation before it was filed.**

Staff also claimed that because ABATE responded to the Company's direct testimony ABATE is not permitted to respond to a similar proposal by Staff. (Motion at 3-5.) This claim has no basis in the standard for proper rebuttal.

As Staff noted, the Scheduling Order in this case stated that proper rebuttal testimony should be "presented for the purpose of rebutting specific facts, judgments of the other parties that could not have been reasonably done in a party's direct case." (Motion at 5.) The fact that Staff's recommendation contains similar deficiencies to the Company's does not prohibit a party from responding to Staff's recommendation or contradicting, explaining, disproving, weakening, and rebutting that recommendation and the facts and judgments therein. Indeed, this is exactly what rebuttal testimony is meant to do. In other words, contrary to Staff's claim, the rebuttal testimony at issue is not "offered in an effort to present supplemental and/or to rehabilitate" ABATE's testimony; it is explicitly and directly offered in response and rebuttal to Staff's recommended cost allocation methodology. (Motion at 2.)

Obviously, ABATE could not have rebutted Staff's recommended cost allocation method before Staff filed its direct testimony and made that recommendation. Staff's argument is therefore not supported by the proper standard for rebuttal and its Motion should be denied.

#### IV. CONCLUSION

For the above reasons, the presiding Administrative Law Judge should deny the Commission Staff's Motion to Strike.

Respectfully submitted,

**CLARK HILL PLC**

By: /s/ Stephen A. Campbell

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Date: April 13, 2026

Attorneys for the Association of  
Businesses Advocating Tariff Equity

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

\* \* \* \* \*

In the matter of the application of )  
DTE GAS COMPANY for authority )  
to increase its rates, amend its rate )  
schedules and rules governing the )  
distribution and supply of natural gas, )  
and for miscellaneous accounting authority.)

Case No. U-21973


ALJ Christopher S. Saunders

**PROOF OF SERVICE**

STATE OF MICHIGAN )  
 ) ss  
COUNTY OF INGHAM )

Stephen A. Campbell, being first duly sworn, deposes and says that on April 13, 2026, she did cause to be served the *Association of Businesses Advocating Tariff Equity's Response in Opposition to MPSC Staff's Motion to Strike*, as well as this *Proof of Service*, in the above docket, via electronic mail, to the persons identified on the attached service list.

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Campbell

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Date: 2026.04.13 12:48:09 -04'00'

Stephen A. Campbell

**SERVICE LIST**  
**MPSC Case No. U-21973**

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