

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the request for a declaratory ruling
by **THE ANN ARBOR SUSTAINABLE
ENERGY UTILITY** regarding application of
certain requirements for municipal electric utilities
and affirming that it may act as a residential
demand response aggregator.

U-22105

**THE ANN ARBOR SUSTAINABLE ENERGY UTILITY’S REPLY TO DTE ELECTRIC
COMPANY’S RESPONSE TO REQUEST FOR DECLARATORY RULING**

The Ann Arbor Sustainable Energy Utility (“A2SEU”) replies to DTE Electric Company’s (“DTE”) Response to the A2SEU’s Request for Declaratory Ruling (“DTE’s Response”), which was filed on June 5, 2026, as follows:

I. Introduction

There are many points of agreement between DTE and the A2SEU. The A2SEU and DTE agree that the A2SEU is not offering “retail distribution service” at this time. The A2SEU and DTE agree that the A2SEU’s current service offerings, like those of some private entities, only supply behind-the-meter electricity to customers. The A2SEU and DTE also agree that not offering retail distribution service may excuse it from certain requirements, as described in the A2SEU’s initial filing. It appears that neither DTE nor the A2SEU would object to a finding by the Commission that so long as the A2SEU does not offer “retail distribution service,” the A2SEU falls outside the set of entities that must comply with the requirements of MCL §§ 460.9t, 460.1028, 460.1051(4), 460.6w, and 460.1071. The A2SEU and DTE also agree that DTE, the A2SEU, and the City of Ann Arbor all benefit from regular discussions regarding the A2SEU’s operations.

There are also points on which DTE and the A2SEU disagree, largely around the question of when an entity is operating as a utility. Michigan's Constitution and statutes contain many and varied definitions and descriptions of what it means to be a utility, none of which is cited or discussed in DTE's Response. The A2SEU and DTE also disagree on whether the A2SEU can or should be prohibited from aggregating demand response of residential customers. Finally, while the A2SEU believes there is no statutory basis for the Commission to require "detailed public quarterly reports," as requested by DTE, the A2SEU welcomes opportunities for engagement and is happy to continue participating in the coordination meetings between DTE and the City of Ann Arbor ("Ann Arbor" or the "City"). These issues are discussed in more detail below.

II. What is a Utility? Michigan Law Contains Many Possible Answers.

Michigan's Constitution and statutes contain many (and varied) definitions and descriptions of when an entity is, or is not, considered to be an electric utility for various purposes. DTE's Response cites none of them. Instead, DTE claims the A2SEU is not operating as utility based on its understanding of the A2SEU's operations and its own interpretation of the "regulatory framework that exists." Response at 3.

Before discussing whether DTE's position is consistent with any of the many possible definitions Michigan law contains, it is helpful to consider a non-exhaustive list of the definitions of a utility or a utility system found in different parts of Michigan law.

An entity may qualify as a utility under one statutory provision while simultaneously not qualifying as a utility under another law. To the extent the Commission believes it needs to select a definition and apply it to the A2SEU's innovative business model in order to make a ruling on the A2SEU's request, it has a wide range of definitions from which to choose. Below is a non-exhaustive list of more than half a dozen provisions in Michigan law that provide

guidance on when an entity may or may not be considered to be a utility, or to be providing a form of utility service.

- **Michigan Constitution.** The Michigan Constitution, Article VII, Sections 24 and 25, give municipalities the power to (among other things) own facilities for “supplying” or “furnishing” light, heat or power, but also provide for certain authorizations that may be required to exercise those powers, including a supermajority vote.
- **Self-service power provision.** Under MCL 460.10a(4), a portion of the Michigan Public Service Commission Act, power that is generated and consumed at a single commercial establishment or single residence, without the use of the distribution system, does not result in the person being an “electric utility” or a person “conducting an electric utility business,” even if the generation facility is owned by an entity different from the owner of the commercial establishment or residence.
- **Electric Transmission Line Certification Act.** MCL 460.562(e), which was cited by courts as the basis for the Commission’s ability to limit demand aggregation, defines an electric utility as an entity that provides “transmission or distribution of electricity.” It also contains an explicit exclusion for municipal utilities, as noted in the A2SEU’s request.
- **Energy Employment Act.** MCL 460.804(2) and (3) define a municipality for the purpose of that act to include a city “owning a...facility for the generation...of electric power and energy for public or private use, or proposing to own such a system or facility” and defining a “municipal electric utility system” as a “system owned by a municipality...to furnish heat, power, and light.” This definition is explicitly incorporated into the Publicly Funded Health Insurance Contribution Act

and the Protecting Local Government Retirement and Benefits Act. MCL 15.562; MCL 38.2803.

- **Sales Tax Act.** MCL 205.51(1)(o) defines a utility to include “a person that operates equipment or facilities for producing, generating, transmitting, delivering, or furnishing electricity within this state for the public for compensation, regardless of the person’s owner, ownership structure, or regulation by the Michigan public service commission.”¹ A separate provision of that act discusses the application of certain tax calculations to delivery or installation charges “involving or relating to the sale of electricity...by a utility.” MCL 205.51(1)(d)(xv). That act also refers to the taxation of certain fuels (not including electricity) for use in a list of items including “building utility systems” alongside items like space heaters, water heaters, and heat pumps. MCL 205.54gg.
- **Property Tax Act.** MCL 205.54t(5)(a), in excluding certain industrial property from eligibility for a tax exemption, includes a definition of “building utility systems” that includes “electrical distribution, to the point of the last transformer, switch, valve or other device at which point usable power...is diverted from distribution circuits for use.”
- **Unmanned Aircraft Systems Act.** MCL 259.305(7)(b) defines a “public utility” as an entity “providing [...] electric, power, [...], or internet access services.”

¹ The use tax exemption for “consumption of electricity...for residential use” contains no reference to the entity that would otherwise be responsible for collecting the tax, and thus no definition of a utility or utility services is found in that exemption. MCL 205.94n.

- **Small Wireless Communications Facilities Deployment Act.** MCL 460.1307(e) defines a “municipally owned electric utility” as “a system owned by a municipality [...] to furnish power or light.”

III. DTE’s Response Contains its Own Unique Definition of a Utility.

Rather than citing one of the many existing definitions of “utility” under Michigan law, DTE attempts to create its own definition by listing actions the A2SEU could take in the future to be viewed as operating a utility for the purposes of the requirements that are the subject of the A2SEU’s request for a declaratory ruling (i.e., “install[ing] poles, wires, meters, or electrical connections of any kind between or among retail electric end use customers or otherwise engag[ing] in the wheeling of power or virtual distributed generation”). Response at 3-4. DTE’s assertion that this list represents the current regulatory regime is entirely absent of any citation to any provision of law, and a review of DTE’s list demonstrates that it does not comport with *any* of the many and varied definitions of utility found in Michigan law.

Deeper examination of just two items included in DTE’s list demonstrate the overall lack of legal foundation for DTE’s view of what would transform an entity into a utility: installing meters and engaging in “virtual distributed generation.” Ann Arbor will address each of these in turn.²

a. Installing Meters.

The A2SEU stated in its original filing that it does not plan to install its own meters, as it does not plan to charge volumetric rates. This remains true at this time. That said, some of the

² Failure to explicitly address the other items on DTE’s list should not be read as agreement that any of those activities would or would not qualify the A2SEU as a utility under any specific provision.

inverters the A2SEU has installed (and plans to continue installing) contain, as part of their programming, revenue-grade metering capabilities. It is not clear whether the existence of such capabilities in installed infrastructure would change DTE's view as to the A2SEU's legal status if such capabilities remained unused (or if such capabilities were activated).

A review of the law makes DTE's inclusion of metering as a determinative factor in whether legal compliance requirements apply more puzzling. None of the laws discussed in the prior section appear to reference metering, or lack thereof, as a relevant factor in determining whether an entity is a utility. The closest reference would be the Sales Tax Act's reference to "compensation" and sales, but that law does not require the compensation come via volumetric charges. DTE's own practice has also not shown a definitive role for metering as determinative of utility status. For example, Ann Arbor receives unmetered streetlighting services from DTE, which it has always presented as a utility service to the City subject to MPSC jurisdiction.

In short, an examination of both the law and DTE's own current offerings shows that the existence or lack of metering is unlikely to be relevant in determining whether an entity is a utility or providing utility service under Michigan law.

b. Virtual Distributed Generation.

DTE's filing does not specify what it means by deployment of "virtual distributed generation," which it believes would be determinative of utility status. There are a wide range of possibilities, but likely DTE is referring to anything that could be considered a "virtual power plant," such as a coordinated set of behind-the-meter resources (e.g. batteries charged by solar generation) that inject power into the grid when called, or the coordination of a number of non-generating devices to reduce energy usage on the grid upon demand. Such a set of resources can be competitively bid against generating resources for capacity in the MISO market (under the

right conditions), as DTE has done in the past with its programs allowing it to coordinate air conditioning load timing from participating customers.

If DTE is arguing that ownership and coordinated reduction in electrical usage (via changing the use patterns of non-generating equipment) can make an entity a utility under the law, then its contention is contrary to every provision of Michigan law discussed above. Neither Michigan's Constitution nor any of its statutes suggest that coordinated operation of non-generating assets would make an entity or person a utility. An entity coordinating non-generation devices would not be furnishing, generating, or producing power for any customer, and therefore would fall outside the Michigan Constitution's language in Article VII, Section 24 as well as the definitions in the Sales Tax Act, the Energy Employment Act, or the Small Wireless Communication Facilities Deployment Act. MCL 205.51(1)(o); MCL 460.804(3); MCL 460.1307(e). It would not own a generating resource, and thus would not be a utility under an alternative provision of the Energy Employment Act. MCL 460.804(2). Because it would neither be transmitting nor distributing electricity, it would fall outside the definition in the Electric Transmission Line Certification Act. MCL 460.562(e). It would not be providing electric power, and therefore would fall outside the definition of a public utility in the Unmanned Aircraft Systems Act. MCL 259.305(7). The closest possible definition and interpretation would be that the actual equipment being coordinated might be considered part of a "building utility system" as defined in the property and sales tax acts – but the coordination or lack thereof of furnaces, heat pumps, air conditioners, etc. is never referenced under that definition and thus would not be determinative even under those provisions. MCL 205.54t(5)(a); MCL 205.54gg. Nothing in the self-service provision (MCL 460.10a(4)) indicates that coordination of resources that do not use utility distribution service would cause them to fall outside the categories of users that are not utilities.

Even if DTE's term "virtual distributed generation" is understood to mean coordination of behind the meter generation resources only, nothing about coordination of those resources by a municipality would change whether or not it is considered a utility. The only possible law that might support this interpretation – wherein ownership and operation of behind the meter storage does not render an entity a utility under the law but coordination of those storage resources does -- is the Electric Transmission Line Certification Act, given that it has been interpreted by courts to allow the regulation of aggregated demand response by the Public Service Commission, but this act explicitly exempts municipal utilities from its definition of utilities. Therefore, there is no law that the A2SEU could find that would support DTE's contention that coordination of behind the meter resources would alter an entity's status under Michigan law.

In summary, as these two examples show, DTE's interpretation of when an entity is operating as a utility vs. not operating as a utility is not grounded in any provision of Michigan law that the A2SEU could locate, and several of the elements DTE cites as dispositive are actually contradicted by longstanding precedent and many definitions found in Michigan law. As a creature of statute, the Commission cannot adopt DTE's proposed interpretation of what constitutes a utility when offered statutory provisions that direct the use of alternative definitions.

IV. Possible Routes to Resolving the A2SEU's Request Regarding Application of Various Requirements for Municipal Electric Utilities.

There are several ways the Commission can proceed in ruling on the A2SEU's request while acting in accordance with the law. It can choose which definition of utility to apply in each statutory case when determining whether the A2SEU must comply with the provisions of law about which the A2SEU seeks clarification. For instance, the Commission could apply the self-service power provisions of 460.10a(4) and therefore determine that *for the purposes of the laws*

at issue, the A2SEU is not required to comply given that its current service offerings mean it is not the kind of utility that must comply with these provisions. On a more limited basis, regarding the application of the low-income energy assistance funding factor (“funding factor”) requirements of MCL 460.9t, the Commission could find that the question of whether the A2SEU is a “utility” is irrelevant because, pursuant to the statute, the funding factor is to be applied to “each retail billing meter payable monthly by every customer receiving a *retail distribution service* ...” MCL 460.9t(15)(b) (emphasis added). Thus, the Commission could apply the meaning of “retail distribution service” consistent with the suggested federally-used definition of distribution provider, which would be consistent with both DTE and the A2SEU’s view that the A2SEU is not offering retail distribution service at this time, and find that, for now, the funding factor does not apply to the A2SEU.

However, resolving A2SEU’s request does not necessarily require the Commission to make any of these determinations. Recognizing the A2SEU’s stated willingness to comply with these statutes, with proposed methods of compliance compatible with the A2SEU’s innovative business model, the Commission’s decision could assume *arguendo* that the A2SEU is a utility to which these statutes apply and limit its ruling to only whether the methods of compliance proposed by the A2SEU are acceptable.

V. Can and Should the Commission Limit the A2SEU’s Participation in Aggregation of Demand Response?

As stated in the A2SEU’s declaratory relief request, the Commission has already found in favor of allowing commercial aggregated demand response (“DR”) despite concerns that are identical to many of those raised in DTE’s Response (“double counting of resources, the potential for confusion, and added complexity in monitoring load being treated as retail while the

load resource is treated as wholesale.”). Request at 17-18; DTE’s Response at 7. In Case No. U-21099, the Commission weighed concerns including double counting of DR resources and the potential for confusion and added complexity in monitoring load. Case No. U-21099, Order, Dec. 21, 2022, p. 33. In that order, the Commission found that despite these concerns, the overall ban on DR aggregation could be lifted. It only retained a temporary size limit that barred residents from participating in order to allow it to address two concerns – chiefly consumer protection issues and the administrative burden on utilities. *Id.* at 34. The Commission stated specifically that concerns regarding double counting are “sufficiently address[ed]” by existing processes, which “ensure[] that double counting and double compensation is avoided.” The Commission also addressed the same administrative concerns expressed by DTE in its petition. Moreover, in that order, the Commission noted “it may revisit the ban on aggregation for bundled retail loads smaller than 1 MW as it continues to gain experience with DR aggregation of retail electric customers.” *Id.* at 34.

In DTE’s Response, DTE states that it supports the ability of the A2SEU to participate in demand response aggregation in the Bryant Neighborhood “for the limited purpose of participating in a DTE Electric VPP pilot.” Response at 7. The A2SEU wishes to note two things about such a limitation. First, DTE does not explain why the A2SEU’s ability to act as a demand response aggregator should be limited to this specific pilot (beyond the type of justifications already rejected by the Commission). Second, the Commission’s evaluation of pilots includes metrics regarding “the translation to full deployment expectations.” Case No. U-20645, Order, Feb. 4, 2021, p. 9. It would be difficult to meet such criteria if, before it was even approved, the measure in question was barred from any additional deployment beyond the pilot. A pilot program is designed to inform future decisions and provide a basis for expansion if the evidence

demonstrates success. If the A2SEU's ability to aggregate demand response is limited to the Bryant Neighborhood Pilot, even a highly successful pilot will not have a clear path to future deployment, which negates the very purpose of a pilot.

Not only does the A2SEU's structure as a municipal utility address the Commission's consumer protection concern, but it also provides a unique ability to limit the administrative burden on DTE of such a demand response program. The A2SEU is able to supply a list of participating addresses upon request, is planning to deploy standardized equipment configurations and a software solution that is compatible with such equipment (and which can be integrated with the Sonnen solution used by Veridian and DTE), and has publicly-available conditions of service, which allow DTE to be certain of the requirements being communicated to A2SEU customers.

For these reasons, the A2SEU believes DTE's concerns have already been thoroughly considered by the Commission and should not prevent the A2SEU from offering aggregated demand response programs to all its customers.

VI. Reporting Requirement.

Finally, DTE requests that if the Commission grants any portion of the A2SEU's request, that it require the A2SEU to "submit detailed public quarterly reports on the scope of its operations." Response at 8. DTE's Response cites no statutory authority for the ability of the Commission to compel a municipal electric utility to report to the MPSC regarding its operations. Such a request is notable, given DTE's normal position that in the absence of a specific grant of power in Michigan's statutory scheme, the Commission may not demand reporting even from for-profit, investor-owned utilities that it regulates. *E.g.*, Case No. U-18232, Order, July 18, 2019, p. 12, citing DTE's filings regarding *Consumers Power Co v Public Service Comm*, 189 Mich App 151,

177 and 179; 472 NW2d 77 (1991); see also Case No. U-21384, DTE Gas Company's Exceptions to the Proposal for Decision, p. 3 (citing *Att'y Gen v Michigan Pub Serv Comm'n*, 472 NW2d 53, 56, (Mich App 1991)).

Fortunately, however, DTE already has many opportunities to regularly gain insight into the scope of the A2SEU's operations – many informal, some voluntarily agreed to, and one (coordination on issues of utility infrastructure) formally imposed by this Commission. *E.g.*, Case No. U-21860, Order, Feb. 19. 2026, p. 332. As stated by Dr. Melissa Stults in her testimony in Case No. U-21860, the City and DTE have been successfully coordinating in recent years. The City and DTE Gas Company also agreed to meet at least quarterly as part of the franchise agreement adopted last year, and such meetings can easily be combined with representatives of DTE Electric Company on an as-needed basis or when coordination across multiple utilities is appropriate. Representatives of the A2SEU have attended and will continue to attend meetings with DTE when requested or appropriate, and, as a public entity, all the A2SEU's service conditions, its budget, and its contracts are available upon request.

VII. Status of A2SEU Services and Timeliness of Clarity Regarding Requirements.

The A2SEU offers an innovative business model and structure: it is a supplemental, 100% renewable municipally-owned utility that is deploying behind-the-meter solar and storage systems to customers. It does not provide retail distribution service for its customers at this time. As of this filing, it has installed several systems, and the Ann Arbor City Council has approved rates that will go into effect on July 1, 2026. It has also selected a billing software system and intends to begin billing customers for service. For now, the A2SEU is moving forward with the assumption that it will need to charge sales tax to its customers, but it will not need to charge a

surcharge for energy waste reduction. It does not plan to attempt to apply for renewable energy certificates for the energy produced by its systems and has not assumed any administrative costs associated with doing so. The A2SEU is set to receive approved funding from the City of Ann Arbor that will allow it to expand well beyond the Bryant Neighborhood in 2027 and 2028, and the Ann Arbor City Council has already approved the purchase of some of the equipment that will facilitate that expansion. As it moves to create rates for customers outside of its initial pilots, understanding what regulatory compliance mechanisms it may use is necessary for the efficient functioning of the A2SEU. The A2SEU therefore respectfully requests expedient resolution of its Request for a Declaratory Ruling.

Dated: June 25, 2026

RIVENOAK LAW GROUP P.C.

By:



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Proof of Service

VALERIE J. M. BRADER states that on June 25, 2026, she served a copy of the Ann Arbor Sustainable Energy Utility's Reply to DTE Electric Company's Response to the Ann Arbor Sustainable Energy Utility's Request for Declaratory Ruling, upon the persons listed on the attached service list.

Dated: June 25, 2026

RIVENOAK LAW GROUP P.C.

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