

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of	)	
DTE ELECTRIC COMPANY for approval of	)	Case No. U-22058
special contracts and related relief.	)	
_____	)	
	)	
In the matter of the application of DTE ELECTRIC	)	
COMPANY for approval of its Integrated Resource	)	
Plan pursuant to MCL 460.6t, Clean Energy Plan	)	Case No. U-22168
pursuant to MCL 460.1051, Certificates of	)	
Necessity pursuant to MCL 460.6s, related	)	
accounting authorizations, and for other relief.	)	
_____	)	
	)	
In the matter of DTE ELECTRIC COMPANY’S	)	
application for the regulatory reviews, revisions,	)	
determinations, and/or approvals necessary to	)	Case No. U-22057
fully comply with Public Act 295 of 2008.	)	
_____	)	

At the October 1, 2026 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Shaquila Myers, Commissioner

ORDER

I. HISTORY OF PROCEEDINGS

On March 17, 2026, DTE Electric Company (DTE Electric) filed an application in this docket, with supporting testimony and exhibits, for approval of special contracts for electric service (application). DTE Electric seeks approval of a primary supply agreement (PSA) and a clean

capacity accelerator agreement (CCAA) (together, the special contracts¹), with Google LLC (Customer or Google), a subsidiary of Alphabet Inc., for supplying electric service to a 1.0 gigawatt (GW) data center facility (the facility) in Van Buren Township, Michigan, which the Customer plans to “cause to be constructed and commission” in DTE Electric’s service territory. Application, pp. 1-2. The special contracts are expected to become effective upon Commission approval in this case. *Id.*, p. 2. While asserting that this case qualifies for *ex parte* treatment per MCL 460.6a(3) and without waiving the right to that treatment, DTE Electric states that it is filing the application as a contested case. Application, p. 1, n. 1.

On April 15, 2026, a prehearing conference was held before Administrative Law Judge Theresa A.G. Staley (ALJ) at which the ALJ acknowledged the intervention of the Michigan Department of Attorney General (Attorney General) and granted the petitions to intervene filed by the Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club (together, MNS); Great Lakes Renewable Energy Association (GLREA); the Michigan Energy Innovation Business Council (MEIBC) and Institute for Energy Innovation (IEI) (together, MEI); the Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar (together, the Clean Energy Organizations or CEOs); and the Association for Businesses Advocating Tariff Equity (ABATE). DTE Electric and the Commission Staff (Staff) also participated in the proceeding. The ALJ adopted a schedule ensuring that the record in this

¹ Though the Commission defines the PSA and CCAA as the special contracts (which is how the parties refer to them), there are times in the instant order wherein the Commission uses the term “special contracts” in the generic sense, as used in Mich Admin Code, R 460.2031, which is the rule that governs “Filing special contracts.” The usage is made clear by the context. *See, e.g.*, pp. 103-105, *infra*.

matter would close no later than August 3, 2026, and she indicated that the Commission would read the record in this matter. 1 Tr 8-9.

On April 17 and 20, 2026, DTE Electric filed revised exhibits.

On April 14, 2026, DTE Electric filed a motion for a protective order. On April 21, 2026, GLREA filed a response in opposition to DTE Electric's motion, and on April 24, 2026, MNS, the Attorney General, and the CEOs each filed a response in opposition to DTE Electric's motion. On April 28, 2026, the ALJ held a hearing on the motion for a protective order and issued a ruling. 2 Tr 55-60. On April 30, 2026, the ALJ issued a protective order for use in this matter.

On June 5, 2026, direct testimony was filed by the Staff, ABATE, the Attorney General, GLREA, MNS, and jointly by MEI and the CEOs (together, MEICEO). On June 17, 2026, rebuttal testimony was filed by DTE Electric and the Staff.

An evidentiary hearing was held on June 30, 2026, at which cross examination took place and filed testimony and exhibits were admitted into evidence.

On July 20, 2026, initial briefs were filed by DTE Electric, the Staff, the Attorney General, ABATE, GLREA, MEICEO, and MNS. On August 3, 2026, reply briefs were filed by the same parties.

II. THE EVIDENTIARY RECORD

The evidentiary record consists of testimony from 18 witnesses in 1,021 pages of public and confidential transcript, along with 135 public and confidential exhibits. The docket also contains approximately 650 pages of initial and reply briefing. The docket reflects 29 public comments as of September 30, 2026, which can be viewed in the section of the docket labeled "Case Comments." The various parties' summaries of the evidence and arguments in support of their respective positions are fully set forth in the record. While the Commission has considered the

entire record in arriving at the findings and conclusions expressed in this order, only the arguments and evidence necessary for a reasoned analysis of the disputed issues will be directly addressed in this order. Additionally, the Commission provides citations to confidential material where necessary, but the order is unredacted.

In the application, DTE Electric states that the facility will begin taking service in December 2027 and maximum load will be achieved by December 2028, and the company will provide service to the Customer under Rate Schedule D11 (Rate D11) for a period of 20 years pursuant to enhanced protections provided for in the PSA that are not included in Rate D11. Application, p. 2. DTE Electric states that the CCAA “sets forth the obligations of the Customer and Company related to the development and cost recovery of up to 480 MW [megawatts] of energy storage projects, up to 1,600 MW of renewable energy projects, and the transfer of 300 MW of zonal resource credits (‘ZRCs’).” *Id.*, p. 3. DTE Electric adds that it will develop up to 480 MW of energy storage and the Customer will pay all costs for each project following its commercial operation date (COD) for its 15-year depreciable life. DTE Electric explains that:

the CCAA requires that the Customer obtain and transfer 300 MW of ZRCs for each MISO [Midcontinent Independent System Operator, Inc.] season beginning June 1, 2028 until May 31, 2033. The Customer will also pay to the Company a financial compensation mechanism [FCM or financial adder] similar to the financial incentive established under MCL 460.1028(8). In particular, the Customer will pay the Company an amount equal to the ZRCs transferred to the Company multiplied by MISO Cost of New Entry [CONE] multiplied by the Company’s pre-tax weighted average cost of permanent capital. The Company is requesting authority to record this incentive as income.

Id.

DTE Electric states that the Customer has requested that the company develop up to 1,600 MW of renewable energy projects and transfer the associated renewable energy credits

(RECs) to the Customer, and the Customer assumes certain obligations related to participation in the voluntary green pricing (VGP) program. DTE Electric further explains that:

[t]o ensure that the Customer fully pays for each storage and renewable energy project, the CCAA requires that the full costs of each project be collected from the Customer during the term of the CCAA. This means that the Customer will pay more than the revenue requirement for a project during the term of the CCAA if the project's depreciable life extends beyond the term of the CCAA. The Company is seeking authority to record this excess recovery (i.e., customer charge less revenue requirement of the project) as a regulatory liability. The regulatory liability will be used beyond the term of the CCAA to offset the remaining revenue requirement of the storage and renewable energy projects. . . . For each of the resources in the CCAA (storage projects, ZRCs, and renewable energy projects) the Customer will receive capacity credits, and for each renewable energy project in the CCAA the Customer will also receive generation credits.

Id., p. 4. DTE Electric adds that:

the Special Contracts generate a benefit for existing customers through 1) base sales under rate schedule D11, 2) incremental Power Supply Cost Recovery ("PSCR") savings (including the additional renewables to be paid for by the Customer), and 3) the pull ahead of storage resources funded by the Customer. Importantly, the Company estimates that the impact of the Customer's new load will provide a net benefit across all of its customer classes. . . . Commission approval of the Special Contracts will not impact existing rates or increase the Company's cost of service for existing customers.

Id., p. 5. DTE Electric seeks a final order on or before September 10, 2026. *Id.*

A. Direct Testimony

1. DTE Electric Company

Neal T. Foley is the Director of Electric Marketing for DTE Electric. He presents an overview of the company's direct case and sponsors Exhibits A-16 (the PSA) and A-18 (the CCAA) at 3 Tr 84-128 (Exhibit A-17 is intentionally left blank).² Mr. Foley introduces DTE Electric's witnesses and explains the structure and provisions of the special contracts and how the special

² All references in the instant order to Exhibits A-16 and A-18 are to the revised versions filed on April 17 and 20, 2026, respectively.

contracts mitigate the risk of stranded assets that may result from approval of the special contracts. Mr. Foley describes the Customer, the provisions of the PSA and CCAA, and the company's proposed regulatory treatment of the special contracts.

Steven M. Benyard is Vice President of Distribution Operations Capital Delivery for DTE Electric. He describes the projects that will be carried out by DTE Electric in order to provide safe and reliable service to the Customer and provides cost estimates for distribution and transmission system upgrades to allow for the connection of the Customer at 3 Tr 444-451. He sponsors Exhibit A-1 (the line extension agreement (LEA)).

Kevin L. Bilyeu is the Director of Renewable Energy Planning and Strategy for DTE Electric. He describes the impact of the special contracts on DTE Electric's renewable portfolio standard (RPS) compliance, REC balance, VGP program, and amended renewable energy plan (REP) at 3 Tr 271-287. He sponsors Exhibit A-2 (the RPS compliance summary).

Shawn D. Burgdorf is the Manager of the Market Strategy & Settlements team within Generation Optimization for DTE Electric. He describes the changes to DTE Electric's capacity resource mix and power supply costs resulting from the special contracts and the Rider 12 (R12) demand response (DR) agreement (Rider 12 DRA) with the Customer at 3 Tr 365-389. He sponsors Exhibits A-5 through A-15 (Exhibit A-14 is intentionally left blank).

Justin J.W. Brooks is a Project Lead at PowerGEM, a software and consulting firm. On behalf of DTE Electric, he describes the results of the resource adequacy analysis that he performed for the company covering the years 2029 and 2033 at 3 Tr 431-441. He sponsors Exhibits A-3 and A-4.

Aaron Willis is the Director of Regulatory Affairs for DTE Electric. He describes the customer benefits associated with the special contracts and how these benefits were calculated at 3 Tr 404-415. He sponsors Exhibits A-19 and A-20.

2. The Commission Staff

David W. Isakson is a Departmental Analyst in the Rates and Tariffs Section of the Regulated Energy Division. He presents the Staff's analysis of the special contracts, including the topics of the impact on and net benefit to customers, cost allocation, specific provisions and potential conditions, and the Staff's recommendations at 3 Tr 851-883. He sponsors Exhibits S-3.0 through S-3.5.

Cody S. Matthews is the Manager of the Interconnection and Distributed Energy Resources Section of the Energy Operations Division. He presents the Staff's recommendations regarding the issue of emergency reliability, including appropriate emergency electrical procedures for DTE Electric's Rate Book, at 3 Tr 815-827. He does not sponsor any exhibits.

Naomi J. Simpson is the Manager of the Resource Optimization and Certification Section of the Energy Resources Division. She presents the Staff's recommendations related to potential approval of the special contracts, including proposed conditions, at 3 Tr 829-849. She sponsors Exhibits S-1.0 through S-1.3.

Katie J. Smith is an Economic Specialist in the Energy Optimization Section of the Energy Resources Division. She presents the Staff's recommendations related to energy waste reduction (EWR) issues at 3 Tr 885-891. She sponsors Exhibit S-2.0.

3. Michigan Department of Attorney General

Sebastian Coppola is an independent business consultant. He presents an independent analysis of the application for approval of the special contracts at 3 Tr 461-515. He sponsors Exhibits AG-1 through AG-6.

4. Association of Businesses Advocating Tariff Equity

James R. Dauphinais is a Managing Principal with Brubaker & Associates, Inc. He presents his analysis of the application for approval of the special contracts at 3 Tr 520-555. He sponsors Exhibits AB-1 through AB-3.

5. Great Lakes Renewable Energy Association

John Richter is a member of the Board of Directors of GLREA. He presents his analysis of the application for approval of the special contracts and recommendations with respect to conditions at 3 Tr 558-610. He sponsors Exhibit GLREA-1.

6. Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club

Bryndis A. Woods is a Principal Analyst at Applied Economics Clinic. She presents her analysis of DTE Electric's renewable energy and energy storage capacity proposals and RPS obligations and makes certain recommendations at 3 Tr 613-653. She sponsors Exhibits MEC-1 through MEC-15.

7. Michigan Energy Innovation Business Council, Institute for Energy Innovation, The Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar

William D. Kenworthy is the Senior Regulatory Director-Midwest for Vote Solar. He presents his analysis of the potential for customer benefits and cost shifting at 3 Tr 655-699. He sponsors Exhibits MEICEO-1 and MEICEO-2.

Dr. Laura S. Sherman is the President of MEIBC and IEL. She presents her concerns regarding the ownership and sourcing of renewable energy resources as those issues relate to the application at 3 Tr 764-812. She sponsors Exhibits MEICEO-32 through MEICEO-37.

Chelsea Hotaling is a Senior Consultant at Energy Futures Group. She presents her analysis of resource adequacy issues including addressing DTE Electric's resource adequacy modeling at 3 Tr 701-728. She sponsors Exhibits MEICEO-3 through MEICEO-17.

Lee Shaver is a Senior Energy Analyst at the Union of Concerned Scientists. He presents his analysis of the impact of the application on clean energy commitments and objectives, along with his analysis of reliability risks, at 3 Tr 730-762. He sponsors Exhibits MEICEO-18 through MEICEO-31.

B. Rebuttal Testimony

1. DTE Electric Company

Mr. Foley presents rebuttal testimony in response to all six opposing parties on the issues of default, affordability, reporting requirements, the ZRC financial adder, deployment of storage and renewable energy, the Rider 12 DRA, and ZRC product alternatives at 3 Tr 129-167. He also sponsors Exhibit A-22.

Mr. Benyard presents rebuttal testimony in response to MEICEO and MNS on the issues of system studies, operating parameters, and cost estimation at 3 Tr 452-457. He also sponsors Exhibit A-21.

Mr. Bilyeu presents rebuttal testimony in response to the Staff, MNS, MEICEO, and GLREA on the issues of VGP, competitive procurement, RPS compliance, RECs, and renewable energy ownership at 3 Tr 288-314.

Mr. Burgdorf presents rebuttal testimony in response to ABATE, MEICEO, MNS, and GLREA on the issues of resource planning, transmission costs, DR, and resource adequacy at 3 Tr 390-403.

Mr. Willis presents rebuttal testimony in response to the Staff, MNS, and ABATE on the issues of cost of service, contribution in aid of construction (CIAC), distribution cost recovery, rate class, and emergency procedures at 3 Tr 416-429.

2. The Commission Staff

Mr. Matthews presents rebuttal testimony in response to MEICEO on the issue of the source of the planned ZRCs at 3 Tr 824-827.

Ms. Simpson presents rebuttal testimony in response to MEICEO on the issue of the appropriate ownership split for renewable projects at 3 Tr 847-849.

III. POSITIONS OF THE PARTIES

A. Initial Briefs and Testimony

1. DTE Electric Company

DTE Electric begins by stating that the special contracts will provide a benefit for DTE Electric's other customers of approximately \$1.7 billion and will advance Michigan's clean energy objectives and Commission precedent by causing the development of up to 1,600 MW of new renewable energy projects and up to 480 MW of new energy storage projects at the Customer's expense, thus reducing the number of RECs that the company must procure for compliance with Public Act 235 of 2023 (Act 235). DTE Electric's initial brief, p. 1. The company claims that Google's contributions to the fixed costs that would otherwise be recovered from customers through the rate case and PSCR processes provide a benefit to other customers. DTE Electric contends that the approvals requested in its application will not increase the cost of service for

other customers and thus may be granted *ex parte* pursuant to MCL 460.6a(3). However, the company adds that, without waiving its right to such treatment, it has chosen to file the instant case as a contested case. DTE Electric notes that it has an obligation to serve customers who locate within its service territory. *See*, MCL 462.4(a); MCL 460.54.

DTE Electric contends that the Commission's role in this case is to approve or decline to approve the special contracts, and that the Commission possesses no authority to reform or rewrite the contracts as negotiated between the company and the Customer. DTE Electric states that the Commission's jurisdiction over the VGP special contract which arises from the CCAA derives from MCL 460.1061 and the terms of the Commission-approved settlement agreements in Case Nos. U-20713 and U-20851, and Case No. U-21172 (together, the VGP settlement agreements). DTE Electric avers that the Rider 12 DRA is not before the Commission for approval in this proceeding but is presented solely to provide context. DTE Electric states that the December 18, 2025 order in Case No. U-21990 (December 18 order) approving similar special contracts for the construction and operation of a data center involving Oracle Corporation³ (Oracle) "provides applicable Commission precedent and an analytical framework for approving the Special Contracts." DTE Electric's initial brief, p. 7. Noting that the December 18 order resulted in a conditional approval and that special contract matters are considered on a case-by-case basis, DTE Electric asserts that the record in the instant proceeding satisfies, by a preponderance of the evidence, the standards that were applied by the Commission in the December 18 order.

³ The December 18 order addressed a request for approval of special contracts between DTE Electric and Green Chile Ventures LLC, a subsidiary of Oracle Corporation. December 18 order, p. 1. Oracle Corporation is sometimes referred to in the instant record as Oracle America Cloud Services or OACS. *See*, DTE Electric's initial brief, p. 45. For ease of reference, it will be referred to as Oracle throughout this order. Green Chile Ventures LLC and Oracle are used interchangeably in this order.

Next, DTE Electric provides an overview of the special contracts and their related agreements. As stated, Google plans to commission the facility for a maximum load of 1.0 GW which can begin taking service December 2027, with maximum load being achieved as early as December 2028. 3 Tr 93. The special contracts will become effective upon Commission approval. The PSA is Exhibit A-16 and the CCAA is Exhibit A-18 (and Exhibit A-22 reflects an amendment to Section 7.3(3) of the PSA to replace “Commencement Date” with “Load Ramp Completion Date”). DTE Electric’s initial brief, p. 11, n. 11. The PSA provides that the Customer will take service under DTE Electric’s existing Rate D11, which is the Primary Supply Rate (and which also applies to Green Chile Ventures LLC as outlined in Case No. U-21990). DTE Electric states that the PSA includes additional protections for other customers (not included in Rate D11) and ensures that “[i]f aggregate benefits do not outweigh the costs, the Customer will pay the difference.” *Id.* (citing 3 Tr 87-88).

DTE Electric states that the CCAA authorizes the company to deploy a portfolio of up to 1,600 MW of new renewable energy projects and up to 480 MW of new energy storage projects, with the full cost of these projects being recovered from the Customer. *Id.* The CCAA also authorizes the company to receive 300 MW of MISO Zone 7 ZRCs at no cost, which will be provided by the Customer from June 1, 2028, to May 31, 2033. *Id.*, pp. 11-12 (citing 3 Tr 88, 107). DTE Electric states that the Customer will receive corresponding credits that cannot be greater than the incremental market revenues that are generated by the relevant project or ZRC. DTE Electric contends that the terms of the PSA and CCAA are significantly more protective of other customers than if service was provided simply under Rate D11.

The two related agreements are the Rider 12 DRA and the LEA. DTE Electric explains that these are included for context and the company does not seek approval of these contracts. DTE

Electric's initial brief, p. 14. According to the company, the Rider 12 DRA commits Google, when called, to temporarily reduce demand from the facility to 650 MW from June 2027 through May 2033; and the LEA commits Google to pay for up to \$50 million in distribution upgrades, related to serving the facility. *Id.*

a. The Primary Supply Agreement

DTE Electric contends that the PSA is reasonable and in the public interest and consistent with the Commission's decisions in the December 18 order and in the November 6, 2025 order in Case No. U-21859 (November 6 order), wherein the Commission approved a large load customer tariff for Consumers Energy Company (Consumers). The company contends that the PSA should be approved subject only to the correction indicated in Exhibit A-22. *Id.*, p. 15.

The PSA contract duration is 20 years from the time that Google first receives service, thus extending through November 2047, with automatic renewals for up to two additional 5-year terms. 3 Tr 95. The company contends that the lengthy duration ensures that Google will make its proportionate contribution to fixed system costs for longer than the five years required under Rate D11 which is consistent with Commission precedent, and that the contract duration was uncontested. The Customer will take service under Rate D11 including applicable surcharges such as the PSCR surcharge (a cost-based rate), and thus will, per DTE Electric, contribute to the incremental fuel and purchased power costs that Google introduces to the system as well as the fixed costs of transmission and renewable energy costs. 3 Tr 96-97. The PSA contains limitations on the Customer's ability to switch rate schedules, applying four preconditions which include a notice period and no cross-subsidization. 3 Tr 96. DTE Electric states that these pricing terms were also uncontested. DTE Electric's initial brief, pp. 16-18.

DTE Electric states that the minimum billing demand (MBD) under the PSA is 80% of the Customer's contract capacity for a given billing period, which will be equal to 800 MW once the Customer reaches its full contract capacity. This is the amount that the Customer must pay under the PSA regardless of its actual usage. 3 Tr 97-99. DTE Electric asserts that, applying the Rate D11 rates approved in the company's most recent rate case (Case No. U-21860), the MBD results in a minimum monthly charge (MMC) of approximately \$13.8 million per month, or approximately \$165.1 million per year. 3 Tr 99. The company notes that the MBDs associated with Rate D11 range from 50-65% (either 50% of contract capacity or 65% of the highest monthly peak demand). 3 Tr 88-89, 98-99. DTE Electric contends that the 80% MBD reduces the risk that any portion of fixed costs associated with the facility will shift to other customers. The company notes that the Staff confirmed that the minimum bill scenario is sufficient to cover the non-production related costs of serving Google in every year of the contract term, with the lowest annual coverage being 116.64% in 2035. DTE Electric's initial brief, pp. 18-19 (citing 3 Tr 875). The company further notes that the 80% MBD comports with the Commission's decisions in the two prior data center cases, and argues that it reasonably balances utility and ratepayer interests. *See*, December 18 order, p. 33; November 6 order, p. 109.

In response⁴ to the Attorney General's proposal for a 90% MBD (based on the load factor applied by the company in its base sales benefit calculation), DTE Electric points to the two prior data center cases for support. The company also argues that the Attorney General conflates the MBD with the load factor, but the load factor is based on actual energy usage whereas the MBD is based on peak demand measured in kilowatts (kW). DTE Electric's initial brief, p. 20. The

⁴ In its initial brief, DTE Electric responds to the positions of the intervenors. Those positions are described more fully by each intervenor, below.

company contends that the Attorney General failed to show that any customers could be harmed by the 80% MBD, and notes that the Staff confirmed that this minimum bill amount would cover non-production costs in every year of the agreement. The company asserts that if there were any cost exposure, it is addressed by the affordability backstop, which makes Google responsible for any Commission-determined shortfall. *Id.*, p. 21. Finally, DTE Electric argues that the Attorney General’s request to change the MBD cannot be lawfully granted because the Commission lacks the statutory authority to rewrite the PSA per the holdings of *Union Carbide Corp v Pub Serv Comm*, 431 Mich 135, 148-149; 428 NW2d 322 (1988) (*Union Carbide*).⁵

DTE Electric notes that MNS “invokes the 80% MBD to argue that the Company’s base sales benefit may be overstated” because the base sales benefit calculation assumes that the Customer’s load is at full ramp and uses a 90% load factor. DTE Electric’s initial brief, p. 21. MNS asks the Commission to decline to predetermine the claimed benefit. 3 Tr 627-628. In response, the company argues that the MBD is a contractual floor and not a load factor prediction, and the Commission should determine the appropriate MBD based on whether it is protective of other customers or not. 3 Tr 88-89. The company again refers to the Staff’s findings with respect to the minimum bill coverage of non-production costs to argue that an 80% MBD is sufficient, and notes that the company has not asked the Commission to guarantee any specific net benefit figure. Finally, DTE Electric avers that “[a] lower-than-modeled load factor would reduce the size of the benefit; it would not convert the benefit into a cost, and it would not shift costs to other customers, who remain protected by the MBD floor and the Affordability Backstop.” DTE Electric’s initial brief, p. 23.

DTE Electric describes the termination payment as follows:

⁵ DTE Electric applies this argument to each disputed contract issue.

If the PSA is terminated before the fifteenth anniversary of the Load Ramp Completion Date, the Customer owes a termination payment equal to the MMC multiplied by the greater of (1) the number of months from the early termination date to the fifteenth anniversary of the Load Ramp Completion Date, or (2) 24 months; and if the PSA is terminated after the fifteenth anniversary of the Load Ramp Completion Date, the Customer owes a termination payment equal to the lesser of 24 months of MMCs or the number of months remaining in the contract term. (Foley, 3T 102, 136; Exhibit A-22). Based on the D11 rate approved in Case No. U-21860, the termination payment at the Load Ramp Completion Date is approximately \$2.48 billion. *Id.*

Id., pp. 23-24. (The CCAA contains a separate termination payment.) The company asserts that the Attorney General probed the mechanics of the payment and confirmed that it is transparent and rate-based in that it adjusts to the Customer's then-current tariff obligations. DTE Electric argues that the Staff established that the termination payment is sufficient to cover the non-production costs of servicing Google over the contract term. *Id.*, p. 25 (citing 3 Tr 875 and Exhibit S-3.0). The company states that the termination payment as proposed aligns with the analogous payments approved in the two prior data center cases (November 6 order, pp. 109-110, and December 18 order, p. 33), and notes that the Staff characterized the proposed termination payment as “an extended version of the exit fee” approved in the November 6 order, since it lasts longer than 15 years. DTE Electric's initial brief, pp. 25-26 (quoting 3 Tr 870).

Turning to the criticisms of the termination payment, DTE Electric refers to the Attorney General's argument that the payment should be based on 100% of total demand for the full 20-year term of the PSA. *See*, 3 Tr 473-474. The company contends that this proposal is commercially unreasonable. The company notes that the termination payment provides 15 years of MMCs calculated at the full load ramp and also “requires the Customer to pay a termination fee equal to the lesser of 24 months of MMCs or the number of months remaining in the contract term if the PSA is terminated after the thirteenth anniversary of the Load Ramp Completion Date. (Foley, 3T 136; Exhibits A-16 and A-22).” DTE Electric's initial brief, p. 26. DTE Electric contends that the

Attorney General ignores this additional payment obligation and that inflating the calculation to 100% of demand is unnecessary and unreasonable. The company invokes *Union Carbide* to argue that it is also unlawful.

Turning to ABATE, DTE Electric refers to ABATE's argument that the termination payment should be subject to evaluation and modification by the Commission based on the circumstances arising at the time that the termination of the PSA occurs. *See*, 3 Tr 543. The company argues that this proposal is also unnecessary and unlawful. DTE Electric contends that its proposal is consistent with precedent and is based on the MBD and not on the specific costs or benefits at any given moment. DTE Electric's initial brief, p. 29. The company further notes that the CCAA termination payment automatically self-adjusts to equal actual unrecovered costs, and the PSA termination payment is calculated at the time the termination occurs and is a function of the rates and tariffs in effect at that time, which are approved in a rate case. *Id.* (citing 3 Tr 138-139). DTE Electric asserts that ABATE's proposal would prevent Google from being able to assess its future liabilities in a reasonable way. Finally, the company states that:

Staff witness Isakson recommended that the collateral amount and termination payment be re-examined within three years of the Load Ramp Completion Date. (Isakson, 3T 881). The Company does not oppose providing this information for review, however, any such review cannot extend to a future reformation of the negotiated terms of the Special Contracts in this proceeding. As explained in Section III, the Commission's authority here does not extend to unilaterally rewriting or reforming the Special Contracts. Any future adjustment to the collateral amount or termination payment would occur, if at all, through the mechanisms the Commission and the contracting parties' agreements already provide — including the credit-rating-driven collateral escalation built into the PSA and CCAA.

DTE Electric's initial brief, pp. 30-31.

Next, DTE Electric describes the credit and collateral requirements contained in the PSA, and notes that they are initially based on a parent guaranty (PG):

and, as necessary based on the parent's credit rating, a letter of credit designed to protect the Company and its customers in the event of Customer default. (Foley, 3T 105–106). This structure operates dynamically over the contract term. Once the PSA is approved, “the Customer will initially provide a PG to cover a portion of the Customer's financial obligations under the PSA.” (Foley, 3T 106). Later in the contract term, the PG is reduced once the forecasted termination payment of the PSA drops below the initial PG and a larger PG becomes superfluous. *Id.* And “[i]f at any point the Customer’s parent’s credit rating drops below a pre-defined threshold, then the Customer will be required to post a Letter of Credit (‘LoC’) equal [to] the PG amount applicable at that time.” *Id.*

Id., p. 31. The company asserts that this aligns with the structure that was approved in the December 18 order, p. 41, and in the November 6 order, pp. 112–113, and notes that the Commission stated that it was open to the use of a PG on a case-by-case basis. *Id.*, p. 32 (citing the November 6 order, p. 112); *see*, 3 Tr 106–107. DTE Electric argues that the Staff, at 3 Tr 871, confirmed that the proposed approach is permissible under the framework established in the November 6 order. DTE Electric states that it has “accepted that the risk of any collateral insufficiency falls on the Company, not on its other customers. (Foley, 3 Tr 134–135).” DTE Electric’s initial brief, p. 32.

Turning to the criticisms of the credit and collateral requirements, DTE Electric refers to the Attorney General’s recommendation that the Commission remove any limit on the PSA and CCAA collateral. *See*, 3 Tr 475. The company argues that this is unnecessary (and unlawful) as the company has accepted the risk of collateral insufficiency, and notes that its proposal aligns with Commission precedent. DTE Electric’s initial brief, p. 33. DTE Electric contends that its collateral structure “already escalates to address the very credit risk” that concerns the Attorney General. *Id.*

DTE Electric also refers to ABATE’s testimony that the company is unwilling to commit to not seek any recovery of costs from other customers for any amount owed by Google under the

PSA or CCAA. *See*, 3 Tr 524-525. DTE Electric asserts that it made clear in rebuttal testimony that it will not seek to recover any amounts owed by Google under the special contracts “including any costs the Commission may have determined exceeded the benefits of serving the Customer” and that “there is no genuine dispute on this point.” DTE Electric’s initial brief, p. 34 (citing 3 Tr 134-135).

Next, DTE Electric describes Section 5.1.3 of the PSA, which the company refers to as the affordability backstop. DTE Electric states as follows:

Section 5.1.3 of the PSA provides, in relevant part, that a “goal of this Agreement and the Related Agreements is to protect other customers, other customer classes and [the] Company from funding the costs to serve [the] Customer,” and that if, at any time during the term of the PSA, the Commission “issues a ruling or order determining that the costs to serve [the] Customer exceed the combined revenues paid or payable to the Company under this Agreement and the applicable Related Agreements,” or “disallows [the] Company’s recovery of costs to the extent attributable to serving [the] Customer,” then the “Customer agrees to comply with any such ruling or order ... and, as applicable, [the] Customer shall reimburse [the] Company for any unrecovered costs, plus interest.” (Foley, 3T 103–104, quoting PSA Section 5.1.3).

DTE Electric’s initial brief, p. 35. Thus, DTE Electric argues, the affordability backstop allocates all risk associated with a Commission-determined cost shortfall to Google and not to other customers.

DTE Electric explains that the affordability benefit operates in the aggregate, by comparing the aggregate costs of serving Google’s load against the aggregate revenues and avoided costs attributable to Google over the life of the PSA and CCAA. The company further explains that, under its proposal, the costs would include any incremental expense or resource revenue requirement caused by serving Google, and the revenues would include revenues received from Google plus the “revenue requirement of resources the Company was able to avoid deploying by virtue of serving the Customer’s load. (Foley, 3T 143-144).” *Id.*, p. 36. The company indicates

that the resources will be identified via the company's upcoming integrated resource plan (IRP) proceeding (expected to be filed in 2026).⁶ The company indicates that the resources will be analyzed both with and without the addition of Google's load in order to identify those resources "caused by" that load, but no specific resource will be assigned to the Customer; rather, the resources will be compared in the aggregate. *Id.* With respect to transmission charges, DTE Electric states that it will "include the incremental transmission charge that ITC [International Transmission Company d/b/a ITC *Transmission*] allocates to DTE Electric (associated with the approximately \$308 million in ITC upgrades[;])" and, with respect to distribution charges, "no distribution costs are expected to enter the assessment because the Customer funds up to \$50 million of distribution upgrades" and the company does not expect this amount to be exceeded. *Id.*, p. 37 (citing 3 Tr 249-252). Section 5.1.3 provides that this assessment should be performed in regulatory proceedings, and DTE Electric states that it will provide combined revenues and avoided costs in general rate cases and PSCR filings along with an accounting of the aggregate benefits and costs of serving Google's load. The company contends that this information, presented in contested proceedings, can be litigated in those proceedings rather than attempting the use of hypothetical figures in the instant case. The company also notes that its annual reporting, due by April 15 of each year, will also provide this information. DTE Electric states that:

the annual report will include the Customer's load profile for the previous year; the Customer's maximum demand for the previous year (by month) compared to the expected contract capacity and MBD; the total MW of energy storage projects deployed under the CCAA that have achieved their commercial operation date ("COD") by the end of the previous year; the total MW of renewable energy projects deployed under the CCAA that have achieved their COD by the end of the previous year; [and] any changes to the Customer's or its parent's credit rating. The report will also include a presentation of the aggregate costs and benefits of serving the Customer as of the end of the previous year (similar to the presentation that will be provided in PSCR and rate cases). (3T 153). This framework ensures

⁶ DTE Electric's IRP was filed on September 24, 2026 in Case No. U-22168.

the Commission and stakeholders can monitor the Affordability Backstop's operation on a recurring basis over the life of the Special Contracts. Then, consistent with Section 5.1.3 of the PSA, during future rate cases and PSCR proceedings, the Company will present aggregate costs and benefits of serving the Customer such that the Commission can determine if benefits exceed aggregate costs. *Id.*

DTE Electric's initial brief, p. 38.

Turning to the criticisms of the affordability backstop, DTE Electric begins with MEICEO's recommendation that it be revised to include measurable triggers, a defined true-up, and a different cadence. *Id.*, p. 39. DTE Electric contends that the proposed triggers would introduce complexity and inconsistency without increasing the customer protections. *Id.* In response to MEICEO's concern regarding the fact that in four years out of 20 (that is, 2035-2038) the modeling shows a cost increase to customers (*see*, 3 Tr 677), the company argues that this does not establish a cost shift, because the affordability backstop "governing standard measures the benefit in the aggregate over the life of the Special Contracts." DTE Electric's initial brief, p. 40. DTE Electric urges the Commission to adopt this over-the-life standard rather than a year-by-year standard. *Id.* The company further notes that the:

modeled net costs in 2035–2038 reflect the assumed 2033 in-service date of the proxy CCGT [combined-cycle gas turbine] with CCS [carbon capture and sequestration], whose revenue requirement is counted against the benefit beginning when the resource is placed in service, before the offsetting benefits of the associated resources and sales are fully realized over the balance of the term. (Foley, 3T 146; Exhibit A-19).

Id. DTE Electric also asserts that the aggregate benefit remains positive and substantial even with the four-year increase, and that the Staff confirmed the existence of a net benefit even after removing the company's assumption of an annual revenue escalation for the full period. *Id.*, p. 41 (citing 3 Tr 858). DTE Electric contends that no party showed a net cost to other customers over

the life of the special contracts under any scenario. Finally, the company argues that MEICEO's no-cost-shift test is unworkable and inconsistent with the December 18 order.

DTE Electric addresses the recommendations of the Staff and GLREA for quarterly reporting modeled on the approved reporting in the December 18 order. *See*, 3 Tr 609, 844. DTE Electric responds that its proposed annual reporting will ensure transparent information and that the intervenors showed no benefit to other customers from increased reporting. The company adds that quarterly reporting is not necessary given that rate case, PSCR, IRP, and REP cases will all contain information regarding the aggregate costs and revenues. DTE Electric's initial brief, p. 42.

Turning to transmission expense tracking, DTE Electric refers to MEICEO's argument regarding the \$91 million increase in 2029 transmission expense and contends that this argument was answered directly in rebuttal at 3 Tr 396 where a breakdown of the increase is provided. *Id.*, pp. 42-43. DTE Electric responds to the Attorney General's recommendation to implement accounting procedures to track all transmission related incremental costs for each data center (Google and Oracle). *See*, 3 Tr 485-486. The company agrees that incremental transmission costs attributable to Google's load will be presented as part of the aggregate costs and benefits in support of the affordability backstop, but disagrees to the extent that the Attorney General seeks a project-by-project tracking breakdown, because DTE Electric is not billed by ITC on a project-specific basis. DTE Electric's initial brief, p. 43. The company contends that such a requirement would add unnecessary complexity and require speculation, and other customers are protected in any case by the affordability backstop. *Id.*, p. 44.

DTE Electric responds to the Staff's recommendation that, in upcoming IRP, amended REP, or clean energy plan (CEP) filings, the company analyze its large load customers collectively rather than performing individual analyses. *See*, 3 Tr 839. The company disagrees with this

recommendation on grounds that the affordability backstop relies on the analysis of the aggregate benefits and costs of serving Google's load. DTE Electric argues that in an IRP case, each large load customer's load must be analyzed individually in order to identify resource planning changes. DTE Electric's initial brief, p. 45. The company contends that the suggestion is also inconsistent with the December 18 order, p. 42, which requires annual reporting for Oracle, adding that such customer-specific reporting can be provided only if the customer can identify, through IRP modeling, the resource-planning impacts caused by the large load customer. *Id.* DTE Electric states that it will model each large load customer "individually in sequence" for its upcoming IRP. *Id.* The company contends that this comports with the Staff's own requirements:

because (i) it satisfies PSA Section 5.1.3 by measuring the Customer's incremental resource-planning impacts on top of [Oracle's] baseline, allowing the Company to isolate the costs and benefits attributable to the Customer's load; and (ii) it satisfies the December 18 Order's directive to report annually on the "realization of the projected affordability benefit" for the special contracts approved in that matter. In contrast, the aggregated modeling that Staff witness Simpson recommended would collapse the two large-load customers into a single load block, defeating the customer-specific analyses the PSA and December 18 Order require[ment].

Id., p. 46.

DTE Electric responds to the Attorney General's recommendation that the company establish a regulatory liability account "to capture the affordability benefit and ensure its annual pass-through to customers." *Id.* (citing 3 Tr 486). The company contends that this is unnecessary because the benefits already flow to customers through existing ratemaking mechanisms such as the PSCR and a lower revenue requirement, and could also be counterproductive by delaying the realization of those benefits. DTE Electric notes that the regulatory liability would need to be addressed in a rate case or separate accounting application, unnecessarily adding complexity to the process of receiving the benefit. DTE Electric's initial brief, pp. 46-47 (citing 3 Tr 148-149).

Next, DTE Electric addresses the issue of load ramp flexibility, and explains that the PSA permits the company to temporarily delay its load ramp by up to 18 months in the aggregate, thus potentially pushing the load ramp completion date from December 2028 to mid-2030. DTE Electric's initial brief, p. 48 (citing 3 Tr 99-100). The company contends that this accommodates the realities of construction but does not impact any of the core financial commitments. The company adds that:

if circumstances arise in which the Company is unable to achieve or maintain the Customer's load ramp or maximum load, the Company and the Customer will seek a mutually agreeable solution. If the Company and the Customer cannot agree on a solution, the Company can unilaterally propose an adjustment to the Customer's load ramp or max load, which the Customer can accept or terminate the agreement and pay all applicable termination payments. (Foley, 3T 101).

DTE Electric's initial brief, p. 48. The company asserts that this ensures that it is not forced to over-commit its system.

DTE Electric responds to ABATE's recommendation to require that the company commit to fully utilizing the discretion afforded to it under this provision. *See*, 3 Tr 547. The company argues that this recommendation is unclear and unnecessary, and that ABATE provided no detail on what the recommendation means since the discretion is already part of the PSA. DTE Electric's initial brief, pp. 49-50.

Next, DTE Electric addresses the issue of EWR and explains that Google, in the PSA, commits to participate and comply with the self-directed EWR plan requirements contained in MCL 460.1093. The Staff recommended that DTE Electric be directed to work with Google to establish the EWR plan consistent with the directives of Case No. U-21627, to bring an awareness of the reporting requirements, and to communicate the expectations that are associated with self-direction; and DTE Electric responds that it does not oppose these recommendations and expects to meet them in the normal course of business. *Id.*, pp. 51-52.

b. The Clean Capacity Accelerator Agreement

Next, DTE Electric turns to the CCAA, explaining that:

[t]he CCAA enables the Company to deploy up to 480 MW of energy storage and up to 1,600 MW of renewable energy, and to receive 300 MW of ZRCs, with the Customer paying the full cost of all projects and providing the ZRCs at no cost — such that no CCAA costs are shifted to other customers. The VGP Special Contract [VGPS] arising from the CCAA is authorized under MCL 460.1061 and the VGP Settlement Agreements. Approval is sought for the CCAA and two related accounting authorizations (the CCAA Regulatory Liability and the ZRC financial adder).

Id., p. 52.

Beginning with the VGPS, DTE Electric explains that this is the renewable energy component of the CCAA, requested by Google, which is presented in this case for approval under MCL 460.1061 and the VGP settlement agreements, as stated above. The company notes that in the December 18 order, p. 42, the Commission stated that VGP programs may provide a vehicle for data center customers to comply with the requirements necessary to qualify for the sales and use tax exemptions available in MCL 205.54ee(10)(e)(ix)(C) and MCL 205.94cc(10)(e)(ix)(D). DTE Electric's initial brief, p. 53. DTE Electric states that Google has elected to enroll 40% of its load in the VGPS and has requested that DTE Electric build up to 1.6 GW of renewable energy projects and Google will pay the full cost for those resources, with any early termination or default resulting in a termination fee designed to ensure that all costs are still borne by Google. *Id.*, pp. 53-54 (citing 3 Tr 279-296). DTE Electric notes that the VGPS is subject to ongoing Commission oversight, and that every project will be submitted to the Commission for review and approval. DTE Electric argues that the VGPS advances Michigan's clean energy goals while ensuring that other customers bear none of the cost.

Turning to the criticisms of the VGPS, DTE Electric refers to MEICEO's recommendation that renewable energy instead be procured through Rider 17 which would allow for the 50% third-

party-owned/50% company-owned ownership split of renewable resources that was established in DTE Electric's IRP. *See*, 3 Tr 774. The company responds that the opportunity for the VGPSC was established by the Commission in the VGP settlement agreements that allow for a customer-specific renewable energy resource procurement framework, which the company refers to as a "bespoke procurement framework." DTE Electric's initial brief, p. 55. DTE Electric adds that no ownership split is required in the VGPSC because Google bears the full cost of the resources. In response to MEICEO's assertion of capital bias, the company notes that the VGPSC is a result of negotiated terms and conditions and that the special contracts are structured to protect other customers from any related cost recovery by the company. DTE Electric argues that:

[g]iven that risk allocation, it is reasonable for DTE Electric to maintain sufficient control over the development, procurement, timing, and integration of resources needed to satisfy the Customer specific VGP Special Contract. Third-party suppliers do not assume the same obligations to the Customer, the Commission, or DTE Electric's other customers under the Special Contracts. (Bilyeu, 3T 307).

Id., p. 56. The company further contends that third-party resources are not cheaper than company-owned according to recent request for proposal (RFP) data. *Id.* (citing 3 Tr 307-308). DTE Electric notes that the Staff has consistently opposed a 50/50 split, preferring that the Commission's Competitive Procurement Guidelines be met instead. *See*, 3 Tr 848.

Finally, DTE Electric explains that the Competitive Procurement Guidelines will be applied to the 2026 Energy Storage RFP, but selection of resources under the VGPSC will be governed by the terms adopted in the VGP settlement agreements. DTE Electric's initial brief, pp. 58-59.

Next, DTE Electric turns to the issue of the potential for cost shifting under the CCAA. DTE Electric asserts that the defining feature of the CCAA "is that it holds the Company's other customers harmless through layered contractual and regulatory protections. The Customer pays the full cost of every resource deployed under the CCAA and provides the 300 MW of ZRCs at no

cost[.]” *Id.*, p. 59. DTE Electric notes that Google pays the full cost of every CCAA project over the project’s depreciable life and the revenue requirement associated with serving Google will be calculated in the same manner that it is for a rate case, and will be subject to an annual reconciliation trued up to actual costs. *See*, 3 Tr 88, 111-114. The costs for energy storage will be presented in rate cases and in annual REP reconciliation cases for renewables, which are both contested proceedings. DTE Electric states that Google’s credits are capped at market revenues, explaining that:

[f]or each project and billing period, the Company provides the Customer the lower of 1) the calculated capacity credit, or 2) the capacity market revenues, and the same lower-of methodology applies to Renewable Generation Credits (the lower of the calculated credit or the energy market revenues). (Foley, 3T 120–123). This cap protects other customers in both directions. When market revenues exceed the calculated credit, the Customer receives only the calculated credit, and the difference (i.e., market revenues less calculated capacity credit) is a benefit to the Company’s other customers that will be realized through the PSCR mechanism. (Foley, 3T 118). On the other hand, when market revenues are less than the calculated credit, the Customer receives only the market revenues, so the Company’s other customers are protected because the credits being provided to the Customer will never be more than the market revenues generated by that project. (Foley, 3T 119, 123).

DTE Electric’s initial brief, pp. 60-61. The company avers that this structure delivers to other customers, through the PSCR, any market revenues that exceed the credits; and the company notes that no CCAA project will be deployed prior to Commission review.

DTE Electric contends that this accelerated recovery and the CCAA regulatory liability accounting prevent any cost shift from occurring after the term of the contract, even though some projects will have depreciable lives longer than 20 years, because the Customer fully funds each project. *Id.*, p. 61 (citing 3 Tr 113-114). DTE Electric explains that it will calculate the revenue requirement that applies beyond the term of the contract and will collect it from Google, “recording the excess recovery as a CCAA Regulatory Liability that will grow throughout the term

of the CCAA and can then be used beyond the term of the CCAA to offset the remaining costs of the projects.” DTE Electric’s initial brief, p. 61. Moreover, the CCAA termination payment is set at “the remaining amount that the Company would have collected had the agreement not been terminated.” 3 Tr 124.

Finally, DTE Electric argues that the CCAA includes credit and collateral requirements that protect other customers from any impact from a Google default through the PG and, if necessary, the LoC. DTE Electric’s initial brief, pp. 62-63. As with the PSA, DTE Electric contends that it “has accepted that the risk of any collateral shortfall under the CCAA falls on the Company. (Foley, 3 Tr 133-134).” *Id.*, p. 63.

Turning to the criticisms of the protections against a cost shift, DTE Electric refers to ABATE’s recommendation that the affordability backstop be subject to modification at the time of the termination (discussed above with respect to the PSA). *See*, 3 Tr 543. Again, the company notes that the termination payment is already self-adjusting because the CCAA termination payment is set equal to the remaining revenue requirement of the deployed energy storage and renewable energy projects. Thus, the company argues that ABATE’s concern has been addressed. DTE Electric’s initial brief, p. 63.

DTE Electric refers to the Attorney General’s recommendation that the Commission remove any limit on the CCAA collateral and again (as discussed above with respect to the PSA) argues that this is commercially unreasonable. DTE Electric concludes that:

[b]ecause the Customer pays the full, reconciled cost of every CCAA project, receives credits capped at market revenues, funds any post-term revenue requirement through the CCAA Regulatory Liability, remains obligated upon any default to pay a termination payment equal to the unrecovered revenue requirement of the deployed projects, and secures its obligations through a parent guaranty and, as necessary, a letter of credit, the CCAA does not shift any costs to the Company’s other customers.

Id., pp. 64-65.

Next, DTE Electric addresses its regulatory liability request, and asks the Commission to authorize the company to record a regulatory liability to Account 254 to effectuate cost recovery under the CCAA. *See*, 3 Tr 113-114, 127-128. The company states that no party opposed this request. DTE Electric's initial brief, p. 65.

Next, DTE Electric addresses the ZRC transfer and the financial adder terms included in the CCAA. DTE Electric explains that Google commits to transfer 300 MW of MISO Zone 7 ZRCs to the company at no cost for each MISO season from June 1, 2028, to May 31, 2033. 3 Tr 115. The company argues that this provides a direct benefit to other customers because the ZRCs can be used to meet the company's capacity needs. DTE Electric's initial brief, p. 66. DTE Electric adds that Google has agreed to pay a financial adder in the form of "an amount equal to the ZRCs transferred to the Company multiplied by MISO Cost of New Entry ('CONE') multiplied by the Company's pre-tax weighted average cost of permanent capital ('financial adder'). (Foley, 3T 116)." *Id.* The company asks to be allowed to record this amount as non-refundable income, similar to the treatment accorded to an FCM, since both the adder and an FCM account "for the opportunity cost of the Company forgoing the development of a Company-owned resource." *Id.*, p. 67.

Turning to the criticisms of the ZRC transfer and financial adder, DTE Electric refers to the recommendations of the Staff, ABATE, MEICEO, and GLREA that the request to record the adder as pre-tax net income should be denied and "the adder should instead either be rejected or treated as ordinary revenue used to offset the Company's future revenue deficiencies. (Simpson, 3T 843-844, Dauphinais, 3T 550, Sherman, 3T 808-811 Richter, 3T 587)." *Id.* DTE Electric notes that these arguments are based on the fact that the CCAA is not a power purchase agreement

(PPA) (which is the subject of MCL 460.1028). DTE Electric responds that it does not seek approval under MCL 460.1028 or any statutory provision, and characterizes the adder as a “modest negotiated benefit” that holds customers harmless. *Id.*, p. 68. The company asserts that revision of the contract term is unlawful under *Union Carbide*. The company adds that it is amenable to ABATE’s recommendation that any holding on this issue not be considered precedential. *Id.*, p. 69.

DTE Electric refers to MEICEO’s recommendation that a portion of the 300 MW ZRC transfer be instead met through the expansion of the company’s Smart Savers program or a new virtual power plant (VPP) program. *See*, 3 Tr 791-807. DTE Electric responds that this recommendation reflects a misunderstanding of the ZRC product and the terms of the CCAA and is unreasonable. DTE Electric’s initial brief, p. 69. The company argues that the “obligation to provide the ZRCs is the Customer’s, and the source of those ZRCs is at their discretion.” *Id.* DTE Electric asserts that this proposal would add performance and reliability risk to its customers and remove those risks from Google, where they are currently placed. The company avers that this suggestion would also introduce program costs that defeat the no-cost nature of the company’s proposal. DTE Electric adds that this contract revision is unlawful and this is not the appropriate forum for the agenda of new resource programs put forth by MEICEO. *Id.*, p. 71.

DTE Electric refers to ABATE’s and MEICEO’s recommendation that both the ZRC transfer under the CCAA and the Rider 12 DRA be extended beyond May 31, 2033. *See*, 3 Tr 547-548, 717. The company notes that the ZRC transfer is voluntary and argues that the intervenors again ask the Commission to rewrite the contract. DTE Electric further contends that these recommendations rest on unverified assumptions about future resource planning and should be addressed in the IRP. DTE Electric’s initial brief, pp. 72-73.

Next, DTE Electric addresses the claimed system benefits associated with the CCAA that arise from reducing the number of RECs the company must procure. The company notes that Google has elected to enroll 40% of its load in the VGPS, which means that this load will be removed from DTE Electric's total retail sales for purposes of RPS compliance, which thus reduces the company's RPS target and mitigates the increase to that target that results from adding Google's load. *Id.*, p. 73 (citing 3 Tr 279-283). DTE Electric notes that Google is also "positioned to claim 100% renewable energy usage once the Company reaches its 60% RPS target. (Bilyeu, 3 Tr 279-280)." DTE Electric's initial brief, p. 73. DTE Electric maintains that Google effectively pays for 140% of the cost of renewables by "funding 100% of its load through the PSCR while simultaneously reducing the RPS target for other customers through its VGP enrollment[.]" *Id.*, p. 74 (citing 3 Tr 346). DTE Electric states that its analysis:

demonstrates that, with the 1.6 GW enrolled in the VGP Special Contract, the Company can maintain a positive REC balance and meet the RPS requirements under [Act] 235. (Bilyeu, 3T 284). The Company has substantial experience developing and integrating renewable resources, with over 2,600 megawatts of renewable energy currently online, and maintains a robust development pipeline, competitive RFP processes, and acquisition capabilities sufficient to meet the renewable build associated with the VGP Special Contract. (Bilyeu, 3T 298-300). The detailed renewable build strategy will be further developed and reviewed in the Company's forthcoming 2026 IRP and Amended REP, to be filed concurrently later this year. (Bilyeu, 3T 300).

DTE Electric's initial brief, p. 74.⁷

Turning to the criticisms of the REC plan, DTE Electric refers to MNS's argument that the company's forecasted REC surplus does not align with historical trends. *See*, 3 Tr 644. DTE Electric responds that historical trends are not relevant because the resource planning environment

⁷ The 2026 IRP was filed on September 24, 2026, in Case No. U-22168, and the amended REP was filed on September 24, 2026, in Case No. U-22057. The Commission directs the company to consolidate these cases, as discussed below.

and the statutory requirements have fundamentally changed, such as the 50% RPS requirement by 2030 in Act 235. Regarding MNS's assertion of a calculation error, DTE Electric responds that even under MNS's adjusted calculation, the forecasted RECs remain compliant. DTE Electric's initial brief, p. 75 (citing 3 Tr 303-304). Turning to GLREA's contention that the Commission should issue a warning in the instant order regarding future RPS compliance (*see*, 3 Tr 600), DTE Electric maintains that the CCAA will support the company's RPS compliance efforts, and that RPS compliance will be thoroughly evaluated in the upcoming IRP and amended REP proceedings and the instant case is not the appropriate forum. DTE Electric's initial brief, p. 76.

DTE Electric refers to the Staff's recommendation that the Commission require that RECs be retired in the year that the company is subtracting the related VGP sales from its RPS calculation in order to prevent double-counting of RECs. *See*, 3 Tr 842-845. DTE Electric responds that double-counting should not occur, but the company disagrees that mandatory utility retirement of the REC is the only way to protect against double-counting. DTE Electric's initial brief, pp. 76-77. DTE Electric contends that the VGP sales may be removed from the RPS compliance calculation even if the utility is not the entity that retires the REC. *Id.* (citing 3 Tr 290-295). The company argues that the prevention of double-counting:

can be fully achieved through appropriate REC ownership, tracking, assignment, transfer, and reporting, as it comes down to a tracking and verification issue, not a requirement that DTE Electric be the entity that retires every REC associated with VGP sales. (Bilyeu, 3T 292, 295). Second, neither MCL 460.1061 nor Commission precedent require utility retirement as the exclusive means of demonstrating that renewable energy is attributable to a VGP customer. (Bilyeu, 3T 291-292). The statute requires that participating customers be able to specify the amount of electricity attributable to them that will be renewable energy, but does not require that DTE Electric retire the RECs on the customer's behalf. *Id.*

DTE Electric's initial brief, p. 77. DTE Electric also notes that the Commission has found that some large commercial and industrial (C&I) customers may want the option "to own and retire

any RECs generated under the [VGP] program.” *Id.* (quoting the July 12, 2017 order in Case No. U-18349, p. 8). Thus, DTE Electric argues, the Staff’s proposal adds a requirement that does not appear in the statute and conflicts with Commission precedent. The company asserts that a transferred REC is still a REC and that, in light of Google’s economic interest in the renewable energy and its attributes, Google should have the flexibility to manage the attributes. DTE Electric indicates that it has historically offered participating VGP customers the flexibility to have the RECs retired by the company on the customer’s behalf or have the RECs transferred to the customer. DTE Electric’s initial brief, p. 79 (citing 3 Tr 295). Finally, DTE Electric contends that it will maintain appropriate REC records sufficient to ensure there is no double-counting.

Next, DTE Electric addresses the procurement and deployment of the CCAA resources, moving directly to the criticisms. DTE Electric refers to MNS’s argument that the “up to” language used with respect to the 1,600 MW of renewables and 480 MW of storage ensures that the company will actually deploy less than those amounts, and thus argues that the amounts should be converted to floors. *See*, 3 Tr 621. DTE Electric asserts that it intends to deploy the full amounts. DTE Electric’s initial brief, p. 80. The company confirms that its modeling assumes that only 450 MW of the storage are deployed in order to account for the likely variability in the size of the projects that are bid in response to the RFP, but states that it intends to deploy the full amount of renewables. The company argues that the “up to” language simply reflects the fact that renewable and energy storage projects “are developed in discrete project sizes[.]” *Id.*, p. 81. Noting that the affordability backstop will be in effect, DTE Electric contends that, in any case, other customers are protected and the language should not be converted into mandating a floor (which, DTE Electric argues, is also unlawful). *Id.*

DTE Electric refers to MNS's recommendation that the Commission impose best practice procurement, feasibility study, distributed energy resource (DER), and mitigation requirements in this proceeding. *See*, 3 Tr 631-632. DTE Electric responds that this would convert the instant case into a resource-planning and procurement proceeding and argues that these considerations properly belong in the IRP and amended REP proceedings that will be filed concurrently later this year. DTE Electric's initial brief, p. 82. DTE Electric maintains that there is no evidence on this record showing that the company will be unable to meet Google's future renewable needs, and the company again refers to its substantial experience in renewable development. *Id.*, p. 83.

DTE Electric refers to MEICEO's recommendation that the Commission increase the cap on energy storage and renewable energy projects, based on energy storage accreditation concerns. *See*, 3 Tr 722-723. DTE Electric responds that the CCAA "is not designed to match the Customer's individual capacity needs." DTE Electric's initial brief, p. 84. The company notes that it deploys a portfolio of resources to serve its total load rather than assigning resources to individual customers, and states that MEICEO's proposal is:

commercially unreasonable since removing the caps would force the Customer to accept uncapped liabilities and prevent it from reasonably assessing its potential future obligations. [3 Tr 160.] Finally, the accreditation concern underlying the recommendation belongs in the Company's IRP, where its full resource-adequacy outlook will be studied, not in tracking the accreditation of individual CCAA resources — which would not reveal what resources are attributable to the Customer's load.

Id., p. 84. Lastly, the company points to the affordability backstop.

DTE Electric refers to the Staff's recommendation that the Commission direct the company to prioritize resources for compliance with the IRP initially, and consider resources for Google secondarily, in order to ensure that Google is not paying less for generation than other customers are paying. *See*, 3 Tr 840. The company responds that this is unnecessary because resource

procurement for the VGPSC is governed by the VGP settlement agreements, and also unworkable because the resource comparison that the Staff envisions is not straightforward. DTE Electric's initial brief, pp. 85-86. DTE Electric argues that "[i]mposing a resource-sequencing mandate on the VGP renewables in this special contract proceeding would modify the previously negotiated and approved VGP Settlement Agreements" and that a "price-comparison condition that rests on a flawed apples-to-oranges premise would generate disputes without protecting other customers." *Id.*

c. Cost Allocation and Rate Design

DTE Electric notes that it is not seeking approval of any cost allocation or rate design methodology in this case, arguing that these are properly addressed in general rate cases which is consistent with the Commission's holding in the December 18 order, pp. 37-38, finding that the approval of a special contract does not include a guarantee of any particular ratemaking treatment or cost allocation method. *Id.*, p. 87. The company notes that the Staff agrees, and DTE Electric commits to providing the six cost of service (COS) and rate design studies that were mandated in the December 18 order for Google as well. Thus, the company disputes recommendations made by the Staff, ABATE, and MNS addressing cost allocation issues or CIAC policy.

Beginning with the Staff, DTE Electric notes that it has already provided the six COS studies in its pending general rate case, Case No. U-22046, and these six studies include both the Oracle and Google loads and assume their full load ramp. *See*, 3 Tr 420-421. DTE Electric adds that it also agrees to a proposed change to Study #6 involving direct assignment that was made by the Staff. However, the company disagrees with the Staff regarding "forum and cadence." DTE Electric's initial brief, p. 89. DTE Electric refers to the Staff's recommendation that the Commission direct the company to provide the six studies in every future case involving a large

load customer, and responds that this mandate should be set in a general rate case as it is a general requirement that would apply to all large load customers. The company also argues that the pending rate case should be completed first “because it may be that following the conclusion of Case No. U-22046 there are targeted or specific areas of continued exploration and investigation the Commission finds important. (Willis, 3T 421).” *Id.*

DTE Electric states that it also disagrees with the Staff’s “suggestion that the IRP is a proper venue for deciding how the costs of resources associated with the Customer’s load should be allocated.” *Id.*, p. 90. DTE Electric points to testimony from the Staff recommending that “[i]n the Company’s next and subsequent IRPs, the Commission should consider how to eventually assign production costs to the Customer, or to the Customers’ rate class if it is separated, so that any marginal cost of new capacity resources will not be passed on to other customers unfairly.” *Id.*, p. 91 (quoting 3 Tr 880). DTE Electric argues that such considerations are not appropriate for an IRP proceeding and notes that the Staff also acknowledges that costs are not allocated in an IRP proceeding. The company contends that the IRP record is not adequate and that this is not the purpose of an IRP case.

Next, DTE Electric refers to ABATE’s recommendation that the Commission modify the PSA to place Google into its own customer class, where Google would be separated from the Rate D11 class but would be charged Rate D11 rates. *See*, 3 Tr 548-549. DTE Electric avers that this is a rate design question that should be addressed in a rate case and not in this special contract case, which is consistent with the Commission’s holding in the December 18 order, p. 38; and the company notes that the Staff agrees. DTE Electric’s initial brief, p. 93 (citing 3 Tr 864). DTE Electric contends that ABATE’s concern is already being addressed in Case No. U-22046 where

the company presented the six COS studies, one of which evaluates the possibility of a new rate class and presents a more complete record for that decision.

d. Other Issues

i. Rider 12 Demand Response Agreement

DTE Electric explains that it included information regarding the Rider 12 DRA on this record for context and in order to complete the description of how the company will serve Google's load, but that the Rider 12 DRA is not before the Commission for approval. *Id.*, p. 94. DTE Electric adds that the agreement:

is for a reduction in load to a Firm Service Level ("FSL") of 65% of the customer committed capacity ramp during the load ramp period as well as when the Customer is at full load (65% of the full 1000 MW). The agreement is one of the additional resources needed to meet the MISO resource adequacy requirements for the increase in load from the Customer discussed by Company Witnesses Burgdorf and Brooks. Specifically, the Rider 12 DR Agreement is for an amount of approximately 250 MWs of DR with the corresponding accredited ZRCs for MISO's resource adequacy construct. (Burgdorf, 3T 387). The agreement begins on June 1, 2027, and ends on May 31, 2033, and requires a firm service level of 650 MW.

Id., pp. 94-95. DTE Electric argues that the instant case is not a forum for altering tariffs and thus urges the Commission to reject proposals to do so.

Turning to said proposals, DTE Electric refers to the Attorney General's recommendation that penalties for non-performance under the Rider 12 DRA should be separately accounted for and credited to other customers. *See*, 3 Tr 483-484. DTE Electric responds that the company:

agrees with [the Attorney General] that the penalties, if any, should be credited to other customers. (Burgdorf, 3T 399). However, because the Rider 12 DR Agreement is a standard tariff arrangement and non-performance amounts are handled through the existing PSCR process, no special condition is necessary or appropriate, and the matter is in any event outside the scope of the Special Contracts submitted for approval.

Id., p. 96.

DTE Electric refers to ABATE's recommendation that both the ZRC transfer and the Rider 12 DRA be extended beyond May 31, 2033 (which is also addressed above). *See*, 3 Tr 547-548, 717. DTE Electric contends that the Rider 12 DRA is a voluntary DR obligation that cannot be unilaterally extended by the Commission in this proceeding and is not, in any case, submitted here for approval.

ii. Line Extension Agreement

DTE Electric explains that it likewise presents the LEA on this record for context and completeness, but not for approval. Regarding the LEA, DTE Electric describes its benefits to other customers as follows:

Under DTE Electric's current CIAC policy, the Customer's allowance would be approximately \$550 million — more than ten times the Company's \$29.1–\$44.3 million estimate for the distribution upgrades — so absent the Special Contracts, those costs would be added to rate base and recovered from other customers. (Benyard, 3T 456-457; Willis, 3T 423-424). By committing the Customer to fund the first \$50 million of Customer-caused distribution costs, and to build and own its own substation, the LEA shifts to the Customer costs that other customers would otherwise bear. (Willis, 3T 424–425).

Id., p. 98.

Turning to the criticisms of the LEA, DTE Electric refers to MNS's recommendation that the Commission condition approval of the special contracts on the prohibition of any cap on Google's commitment to pay all infrastructure costs associated with connection of the facility. *See*, 3 Tr 628, 651. DTE Electric contends that this would rewrite the LEA and is thus unlawful; but also argues that this conflicts with current CIAC policy and is not in the interests of other customers, since Google's CIAC allowance would be more than ten times what the company estimates is required for distribution infrastructure. DTE Electric's initial brief, p. 99 (citing 3 Tr 424, 457). The company avers that the LEA commitment is an incremental benefit to other customers and Google bears all cost-escalation and site-condition risks. DTE Electric adds that prospective large

load customer CIAC policy is currently under review in Case No. U-22061 and this question should be addressed in that proceeding. DTE Electric's initial brief, p. 100.

DTE Electric refers to the Staff's recommendation that, if the Commission approves a large load tariff with a CIAC provision in Case No. U-22061, then the same CIAC provision should apply to Google for costs beyond the \$50 million commitment in the LEA. *See*, 3 Tr 869. DTE Electric responds that this recommendation should be rejected because Google has already committed to pay an amount that is beyond what the company estimates for distribution costs. DTE Electric's initial brief, p. 101. The company adds that "it is inappropriate to apply a tariff provision from a pending, unresolved proceeding retroactively to a contract that has already been executed." *Id.* The company notes that the special contracts and the LEA comport with the currently approved Rate Book, and argues that CIAC policy should not be changed on a retroactive basis.

iii. Scarcity Fee

DTE Electric refers to GLREA's recommendation that the Commission consider adoption of a temporary scarcity fee to address the scarcity of supply that may result from the introduction of data centers which drive up the price of equipment, energy, and capacity. *See*, 3 Tr 606-607. GLREA does not propose a specific fee or calculation mechanism. 3 Tr 606-607. DTE Electric responds that GLREA purports to base its recommendations in this case on cost causation (while acknowledging that such costs are indirect), but "made no attempt to identify the requisite causal relationship between the Customer and the alleged indirect costs and offers no evidence that the Company's agreements with the Customer have or will increase prices of power equipment or MISO energy and capacity. (Burgdorf, 3T 401)." DTE Electric's initial brief, p. 104.

e. Customer Benefit Analysis

DTE Electric spends the remainder of its initial brief explaining how the customer benefit analysis was calculated, and how that analysis and the affordability backstop demonstrate that approval of the special contracts will not result in any shift of costs associated with the facility to other customers. *Id.*, pp. 105-131. DTE Electric argues that:

the Special Contracts hold other customers harmless and are projected to produce a substantial benefit of approximately \$1.7 billion to the Company's other customers over the 2028–2047 contract term. The benefit was quantified through a rigorous, transparent with-and-without modeling analysis, was independently replicated by Staff, and remained positive under the sensitivities presented by the other parties. Notably, no party placed an analysis in the record showing a net cost to other customers over the life of the Special Contracts.

Id., p. 105. The company notes that the December 18 order, pp. 32-33, mandated that a large load customer should not be cross-subsidized by other customers and must demonstrate that its service will not impose costs on other customers. DTE Electric argues that it has made this showing for the special contracts.

DTE Electric describes how it derived the base sales benefit, the PSCR benefit, and the storage pull-ahead benefit, as well as the proxy CCGT cost, the CCS direct cost, and the other non-fuel and purchased power O&M costs, in arriving at the \$1.7 billion projected benefit over 2028-2047. DTE Electric's initial brief, pp. 107-113. DTE Electric avers that the projected benefit:

is the output of a rigorous, transparent “with-and-without” modeling analysis sponsored by Company Witness Burgdorf (Burgdorf, 3T 373-381; Exhibits A-5 through A-13), who discusses changes in the capacity resource mix and the power supply cost impacts from the addition of the Customer's load, with the resulting customer-impact quantification presented by Company Witness Willis. (Willis, 3T 409-415; Exhibits A-19 and A-20).

Id., p. 109. DTE Electric contends that it reasonably used a proxy 727 MW CCGT with CCS “to represent the incremental capacity addition in the Customer Datacenter Case [the scenario with Google's load], with capital and fixed-cost inputs drawn from Wood Mackenzie. (Burgdorf, 3T

375-380; Exhibit A-5).” *Id.*, p. 110. The company notes that the proxy resource has a useful life beyond 2047 and the company accounted for this remaining net revenue in Exhibit A-15; and that non-fuel variable and O&M costs for storage were based on the National Renewable Energy Laboratory’s Annual Technology Baseline (NREL ATB). *Id.*, p. 111 (citing 3 Tr 378-379). The base sales benefit analysis uses the company’s currently approved COSS updated with Oracle’s load and, DTE Electric argues, “demonstrates that the addition of the Customer’s load reduced the revenue requirement borne by the Company’s other rate classes.” DTE Electric’s initial brief, p.

112. DTE Electric concludes that:

[t]aken together with the customer benefit analysis, the base sales benefits analysis provides the Commission with two independent, mutually reinforcing analyses — one measuring the estimated net dollar benefit and the other testing the reallocation of cost responsibility — each of which supports the same conclusion: the Special Contracts hold the Company’s other customers harmless and do not shift costs to them. The Company respectfully submits that this dual showing satisfies, by a preponderance of the evidence, that no-cost-shift will occur as a result of the Special Contracts.

Id.

DTE Electric notes that the Staff replicated the benefit analysis and the company argues that the Staff confirmed the existence of a substantial positive net benefit to other customers, citing Exhibits S-3.0, S-3.1, S-3.2, and S-3.3. DTE Electric states that the Staff confirmed the revenue calculation and confirmed that the net benefit remains significantly positive even after removing the company’s assumption of a 1.5% annual revenue escalation, showing a net benefit of \$860.3 million even under those conditions. DTE Electric’s initial brief, p. 113 (citing 3 Tr 857-871 and Exhibit S-3.0). The company states that no intervenor produced a quantitative analysis showing that the special contracts would leave other customers worse off over the life of the contracts and the intervenors simply argue over the size of the benefit to other customers, pointing to MEICEO’s

testimony indicating that the modeling is legitimate and the structure of the benefit calculation is reasonable. DTE Electric's initial brief, pp. 113-114 (citing 3 Tr 691).

Next, DTE Electric turns to the criticisms of the benefit calculation. The company refers to MEICEO's and ABATE's arguments that the \$1.7 billion benefit is overstated. *See*, 3 Tr 676, 540. The company asserts that its calculation is transparent and reasonable, measures actual revenues and avoided costs, and remains positive even under the intervenors' present-value recalculations, with ABATE calculating, on a present value basis, a net benefit of \$1.0 billion; and MEICEO calculating, on a present value basis, a net benefit of \$984 million. *See*, 3 Tr 540, 678.

DTE Electric refers to MNS's criticisms of the use of the hypothetical CCGT with CCS. *See*, 3 Tr 630-633, 679. The company notes that the Commission is not being asked to approve this proxy resource and that it forms a reasonable assumption for the purpose. DTE Electric's initial brief, p. 116.

DTE Electric refers to MEICEO's and MNS's argument that the Commission cannot approve the special contracts until the resources necessary to serve Google have been approved in an IRP, and that the alleged benefits of the CCGT plus CCS proxy resource should be ignored. *See*, 3 Tr 651, 679-680. The company contends that nothing in MCL 460.6a or 460.6t requires preapproval of the resources prior to the approval of a special contract, noting that the Commission approved the special contracts at issue in the December 18 order without such preapproval. *Id.* DTE Electric avers that use of a proxy is reasonable and part of standard modeling, and that the company's selection was a conservative one. The company argues that the proxy resolves a capacity need for 2023 that was identified by the modeling, and states that the fact that the same proxy:

both addresses the modeled 2033 reliability need and carries the associated cost is not 'double duty' in any improper sense, as MEICEO witness Kenworthy suggests

(Kenworthy, 3T 679). To the contrary, it is the natural consequence of modeling a single resource to meet a modeled need and then charging its full cost against the benefit in Exhibit A-19.

DTE Electric's initial brief, p. 118. DTE Electric acknowledges that modeling results may change over time, but refers to the affordability backstop and its ability to measure the benefit.

DTE Electric refers to MEICEO's criticisms of the CCS cost line with regard to the federal 45Q carbon-capture tax credit. *See*, 3 Tr 680-681. Again, DTE Electric asserts that the proxy is not being put before the Commission for approval and the modeling inputs are reasonable. DTE Electric's initial brief, pp. 119-120. The company notes that even if MEICEO's figures are accepted "the net benefit remains substantial and positive" and any risk is addressed by the affordability backstop on an aggregate basis. *Id.*, p. 120. DTE Electric concludes that its:

45Q assumption reflects a correct application of current law to a modeling proxy that the Commission is not being asked to approve; its elimination would not convert the substantial benefit into a net cost to other customers; and, in all events, the Affordability Backstop ensures that other customers are held harmless from any net cost of serving the Customer's load, on an aggregate basis and without assigning any specific resource to the Customer.

Id., p. 121.

DTE Electric again refers to MNS's recommendation that the Commission decline to predetermine that the special contracts will produce the projected benefit. *See*, 3 Tr 626-628.

DTE Electric states that it does not ask the Commission to make such a determination and repeats the arguments made above with respect to the MBD, including the Staff's confirmation of the base sales benefit. *Id.*, pp. 121-123.

DTE Electric refers to ABATE's recalculation of the post-2047 value analysis which assumes a 0% growth in capacity and energy prices across the 2048-2067 period, and which thus converts that net present value benefit to a net present value cost. *See*, 3 Tr 539-540; Exhibit AB-2. DTE Electric contends that a 0% growth rate is an unreasonable assumption on its face, particularly

when applied to two decades. DTE Electric’s initial brief, pp. 123-124. The company argues that it used a conservative analysis and notes that, even under ABATE’s sensitivity, customer benefits can still be expected. *Id.* (citing 3 Tr 393-394). DTE Electric argues that it “reasonably declined to perform an exhaustive sensitivity analysis for the post-contract period because this is not an IRP filing and performing resource-type sensitivities over that horizon (two to four decades into the future) would require speculative assumptions about resource availability, technology costs, and market structures that cannot be reliably forecasted today. (Burgdorf, 3T 394).” DTE Electric’s initial brief, p. 125.

DTE Electric refers to MEICEO’s argument that the benefit may be overstated if the storage is deferred beyond the 2047 window rather than permanently avoided. *See*, 3 Tr 682. DTE Electric responds that the storage pull-ahead “reflects a real, modeled avoided cost to other customers” and argues that the benefit is the revenue requirement of that storage that other customers would otherwise have had to fund. DTE Electric’s initial brief, p. 126. The company contends that, in any case, the net benefit remains substantial and positive even if the storage pull-ahead is removed, even under MEICEO’s analysis which shows that the benefit is reduced to \$531 million. *Id.*, pp. 126-127 (citing 3 Tr 678).

DTE Electric refers to MEICEO’s recommendation that the Commission decide whether the special contracts represent the most cost-effective way to serve Google’s load. *See*, 3 Tr 688-689. The company responds that MEICEO cites no law which requires such a finding for the approval of a special contract and argues that this improperly introduces IRP-type decisions into this proceeding. DTE Electric’s initial brief, p. 127. DTE Electric avers that “MEICEO’s objective is simply to impose mandatory ownership splits and favor witness Sherman’s preferred resources.” *Id.*, p. 129. DTE Electric notes that its 2024 all-source renewable RFP does not support the

ownership split that MEICEO advocates and the Staff agrees with the company. Thus, the company contends that MEICEO's position does not result in increasing cost effectiveness and is contrary to Michigan's statutory scheme.

DTE Electric concludes by requesting approval of the special contracts, the request to record regulatory liabilities to Account 254, and the request to record the financial adder to income. *Id.*, p. 131.

2. Association of Businesses Advocating Tariff Equity

ABATE begins by noting that DTE Electric bears the burden of proof in this proceeding to show that the PSA and CCAA are reasonable and prudent, and argues that the company has not demonstrated that the special contracts are in the public interest as filed and so has not met that burden. ABATE's initial brief, p. 3.

ABATE states that DTE Electric's total current full service load "on Rate D11 is approximately 1.8 GW with a 73.4% load factor spread over 2,079 customers." 3 Tr 527-528. ABATE contends that Google's and Oracle's load, together, would make up about 57% of the total full service demand in the Rate D11 class and this is a profound transformation of the company's load. ABATE's initial brief, p. 3. ABATE avers that, against this background, DTE Electric's net benefit analysis "does not include any analysis of impacts related to a delayed ramp, failure of the load to fully materialize, or a failure of the load to remain fully materialized. (Dauphinais 3 Tr 539-40.) Such occurrences will limit the revenue benefit of this Customer while still leaving DTE with the costs associated with service." *Id.*, p. 4. ABATE states that the cost of the CCGT with CCS will be borne by all of the company's customers and LEA costs above \$50 million may also end up in rate base if the full load does not materialize. 3 Tr 534-541. ABATE argues that for the period of 2048 through 2067, an analysis that assumes 0% growth shows a net

present value cost to existing customers of \$129.55 million. 3 Tr 540; Exhibit AB-2. ABATE notes that prices for capacity and energy vary over time and contends that DTE Electric should have included “additional reasonably potential circumstances as part of its analysis.” ABATE’s initial brief, p. 6. ABATE argues that the net benefit analysis should have been conducted on a present value basis and states that, using a discount rate of 7.05%, the net benefit to other customers drops to \$1.0 billion. 3 Tr 539-541.

ABATE also contends that the affordability backstop is inadequate as filed because it does not extend beyond the termination of the PSA, and it does not allow the termination payment to be modified in the event that costs exceed benefit. 3 Tr 541-543. ABATE contends that the termination payment must be open to modification at the time of termination and this should be a condition of approval of the special contracts.

ABATE argues that DTE Electric must bear all risk of insufficient collateral as in the December 18 order and this should be contractually binding. ABATE maintains that DTE Electric has reserved the right to seek recovery from other customer of reasonable and prudent costs “attributable to utility service provided to customers generally.” ABATE’s initial brief, p. 9 (quoting Exhibit AB-1, p. 26). ABATE seeks a condition on approval that any unrecovered costs “related to termination, default, or other relevant event” are borne by DTE Electric. ABATE’s initial brief, p. 9.

ABATE contends that DTE Electric should be directed to fully utilize its ability (provided in the PSA) to limit Google’s load ramp when applicable resource adequacy triggers occur. *Id.* Referring to the firm load shedding tariff revisions proposed in Case No. U-22059 and the load limiting options in the PSA, ABATE states that:

neither of these potential safeguards can adequately address the May 31, 2033 resource adequacy cliff that will occur when Google ceases to transfer 300 MW of

ZRCs to DTE under the CCAA, and approximately 250 MW of ZRCs under the Rider 12 DR Agreement. (*Id.*) This approximately 550 MW loss of ZRCs is likely the cause of DTE's projected 677 MW need for "perfect capacity" in 2033. (*Id.*) Because the 727 MW proxy CCCT [sic] with CCS that DTE modeled to fill that need is not part of the CCAA, DTE assumes its multibillion-dollar revenue requirement would be recovered from all of DTE's full-service customers rather than just Google, whose load created the need. (Dauphinais 3 Tr 545-48.)

Id., p. 10.⁸ Thus, ABATE recommends that approval of the special contracts must be conditioned on the following:

- DTE committing (i.e., not simply retaining discretion) to limit the load ramp and maximum demand of Google as necessary to ensure resource adequacy for DTE's other customers.
- DTE modifying its emergency procedures to subject Google to firm load shedding prior to other customers, provided that such customer load shedding does not: (i) compromise system reliability; and (ii) can prevent shedding firm load of other DTE Electric Customers, until such time all of the resources necessary to serve the Google data center load are in service.
- Modification of the CCAA and the Rider 12 DR Agreement such that: (i) Google is required beyond May 31, 2033 to continue to transfer 300 MW of ZRCs to DTE; and (ii) Google's facility is required beyond May 31, 2033 to continue to be curtailable down to a demand of 650 MW, to the extent DTE has been unable to bring 550 MW of ZRCs of new capacity online in MISO Zone 7 to replace the ZRCs that were being provided by Google.

Id., p. 11.

⁸ Quotes are provided verbatim. All references to "DTE" or "DTEE" in quotes are to DTE Electric. Additionally, with respect to the reference to "perfect capacity," DTE Electric explains that:

[p]erfect capacity (sometimes referred to as PCAP) is defined as capacity with no outages. Perfect capacity helps planners compare very different technologies on a common basis, determine how much new capacity is needed to maintain resource adequacy (such as 0.1 LOLE [loss of load event]), and understand how resource mixes affect the probability of outages. The modeling identified a need of 677 MW of perfect capacity to bring the DTE Electric system back to 0.1 event-day per year LOLE.

3 Tr 440. Thus, perfect capacity is a useful planning concept but does not exist in the real world.

ABATE argues that Google should be placed in its own rate class for large data center loads, because otherwise Google and Oracle will overwhelm the load characteristics of the traditional C&I customers in Rate D11, resulting in cost subsidies from those customers. *Id.* ABATE explains that under Rate D11 production plant is allocated based on each customer's monthly peak demand and energy consumption, making it likely that Google's massive load will result in other customers in the class paying some costs to serve Google. 3 Tr 548-549. ABATE contends that a new rate class can easily be established for large data center loads initially using the same rate as Rate D11, and that it should be done in the instant case rather than waiting for a rate case or other proceeding. ABATE's initial brief, p. 12.

ABATE objects to DTE Electric's proposal to earn a financial incentive for ZRCs because they are not a PPA but rather a self-supply of capacity. ABATE argues that the proposal amounts to "DTE extracting monopoly rents from its customers for supplying their own capacity and energy." 3 Tr 550. ABATE contends that if the incentive is approved it should be treated as additional revenue and should not constitute precedent. ABATE states that:

DTE has already conceded the substance of this alternative condition, agreeing that "[i]f the Commission approves the accounting treatment, the Company does not intend to rely on such approval as precedent for mandating a financial adder from future customers" and stated that "[a]ny such proposals would be addressed on a case-specific basis." (Foley 3 Tr 156-57.) The Commission need only memorialize that concession as an express condition of any approval.

ABATE's initial brief, p. 13.

3. Great Lakes Renewable Energy Association

GLREA contends that data centers are driving an extreme growth in demand for electrical energy and, for DTE Electric specifically, the addition of Oracle and Google will increase the company's sales by 47%. 3 Tr 568-572. GLREA argues that this growth in demand has caused residential rate increases in Virginia and throughout the entire PJM Interconnection LLC (PJM)

footprint. GLREA's initial brief, pp. 2-3. GLREA argues that the Commission should condition any approval of the special contracts such that any costs resulting from a failure by Google to make payments or from collateral insufficiency will not be recoverable from ratepayers. *Id.*, p. 3.

Regarding the financial treatment of the ZRCs, GLREA argues that "a gift of ZRCs from a customer does not qualify for the added profit." *Id.*, p. 4. GLREA recommends that the incentive be treated as ordinary income. GLREA contends that DTE Electric's justification based on lost opportunity was introduced only on rebuttal, and responds that the company offered no legal support for the concept that the incentive is like an FCM under Act 235 and thus entitles the company to these unique profits. Regarding the alleged lost opportunity, GLREA avers that DTE Electric:

fails to provide any support for its implied assertion that getting free ZRCs from the Customer will result in the Company's loss of the opportunity to own a resource. The Customer could have built on-site generation to supply their own electrical energy, as dozens of data centers are choosing to do. The Company's monopoly status does not grant it a legal right to own all power generation equipment in its service territory nor to meet all electric power needs in its service territory. Therefore, there is no opportunity cost to "account for."

Id., pp. 5-6 (internal citation omitted). GLREA adds that the incentive is not similar in concept to a PPA and that the Commission is not required to provide the company with profits beyond those provided by law. Regarding DTE Electric's assertion that the incentive compensates for default risk, GLREA contends that "the Company has provided no evidence that the amount of the proposed adder is in any way proportional to the asserted financial risk to the Company, nor did the Company make any attempt to quantify the financial risk they believe they are exposed to."

Id., p. 7. GLREA argues that the special contracts are very advantageous to DTE Electric without the ZRC financial adder, and that other ratepayers will benefit if the requested accounting treatment is denied and the fee is treated as ordinary income.

GLREA urges the Commission to issue a warning to DTE Electric regarding future RPS compliance because “there exists some kind of limit on how fast renewable generation can be built and interconnected.” *Id.*, p. 9. GLREA explains that data centers (with their massive load) increase the amount of renewable energy that the utility must acquire, and that the tax-break incentive for data centers to join VGP programs also increases the renewable requirement. GLREA states that the special contracts call for an additional 400-700 MW per year of renewables over the amount built into the company’s last IRP. Thus, GLREA posits that the company will require one or more 2-year extensions on its RPS compliance date, as provided in MCL 460.1032. GLREA argues that the Commission should issue a warning that any such application must show that the company has “taken every reasonable and prudent measure to meet the RPS mandate.” *Id.*, p. 10; 3 Tr 598-600.

Next, GLREA addresses grid transients. GLREA posits that data center load can “spike or plunge by hundreds of megawatts in microseconds . . . causing power quality problems for other customers” and describes examples in Virginia and Texas. GLREA’s initial brief, pp. 10-11. GLREA states that uninterruptible power supply (UPS) systems on data centers can trip off-grid, and that Texas is considering rules requiring data centers to configure their UPS systems for “ride through” to prevent such incidents. *Id.*, p. 11 (citing 3 Tr 590-595). GLREA notes that MEICEO raised similar concerns and DTE Electric responded with certain information regarding studies. GLREA adds that:

[s]pecific and enforceable rules need to be in place before either data center (Saline Twp. or Van Buren Twp.) are energized. Some of these rules, such as ramp rates and UPS ride-through settings, will require significant work on the part of the customer to comply; dropping them on the customer shortly before energization would be problematic. We note with alarm that DTEE’s response made no specific mention of UPS ride-through requirements, though they might be included in the generic “operating parameters” category. The stakes are high; no one wants cascading power failures. We support [MEICEO] witness Shaver’s

recommendations for specific rules aligned with MISO's proposed, but unadopted requirements; this will prepare the customer for the eventual MISO rules (though they may change in part), minimizing the new rules disruption to the Customer's operations. Delaying contract approval (as recommended by witness Shaver) would be an appropriate lever to ensure these critical matters are addressed before they can become a threat to grid reliability. . . . [T]he Commission should adopt, MEI/CEO witness Shaver's recommendations on operating parameters, including ramp rates and UPS ride-through. Additionally, the ALJ should recommend [sic] and the Commission order that the Company shall have power quality monitoring equipment in place to verify the Customer's compliance with the operating parameters.

Id., pp. 12-13.

Returning to the topic of whether data centers will increase residential rates, GLREA recommends that the Commission create a separate rate class for large load customers, as well as a separate rate, "with terms and conditions customized to the unique load profile of data centers."

Id., p. 14. GLREA also proposes a scarcity fee to be applied to data center customers until the market has had time to adjust to the new demand levels. 3 Tr 607-609. Regarding the scarcity fee, GLREA argues that:

[i]t appears to us that the customer is perfectly willing to pay all costs that they impose on the grid. This is demonstrated by the backstop provision in the contract. But the customer does not know, and cannot know, the dollar amount of their impact on the grid. That is the responsibility of the regulatory process, and of the MPSC in particular.

GLREA's initial brief, p. 15. GLREA notes that in traditional ratemaking, costs are not allocated to individual customers but are instead allocated to a class of customers; and GLREA argues that the Commission may need to consider new methods of allocation. Though GLREA does not present an actual proposal for the Commission to consider in this proceeding, GLREA requests:

that the Commission's order include a statement that the Commission will consider and weigh evidence concerning the manner in which both direct and indirect costs of providing data centers' energy service will affect the utility's cost of service and to impose remedies to protect other customers from cross-subsidizing data centers, and to require the recovery of those costs from data center customers as a group or customer class in concurrent and future proceedings. Such a statement will give

future data centers fair notice that electric rates in the future may differ significantly from those today[.]

Id., p. 16.

GLREA contends that the Commission should require quarterly reporting during the ramp up period, consistent with what the Commission mandated in the December 18 order. *Id.*, p. 17.

GLREA indicates that quarterly reporting need not be required beyond the ramp up period, but that it will be necessary during that period in order to indicate progress towards meeting the schedule.

4. The Commission Staff

a. Revenue Analysis

The Staff states that it audited the billing determinants and rates used by DTE Electric to calculate the annual revenue to be generated by Google. Regarding the company's assumed 1.5% annual revenue escalation applied throughout the contract term in the company's analysis, the Staff contends that:

[i]t is not reasonable to assume increasing revenues from the Customer without considering that those revenues are actually increasing to offset new cost recovery. (3 TR 858.) Staff posited that additional revenue collected from Oracle via base D11 rates may put downward pressure on rates prior to Google taking service, which means that general rate increases may not necessarily be so certain. (*Id.*) Without rate escalation the net benefit using the Company's other assumptions results in a total net benefit of \$860.3M (this compares to \$1.697B as filed by the Company). (*Id.*)

Staff's initial brief, p. 3. Thus, the Staff posits that, without the assumed rate escalation, the net benefit to other customers of the special contracts is \$860.3 million. *Id.*

The Staff states that it used the result of three cost of service studies (COSSs) to isolate the revenue impact of Oracle and Google and argues that:

[n]ot all customers will be better off if the Customer's sales and revenue are added to the COSS because of the increase in distribution revenue requirement. Choice customers do not pay for power supply from the Company and thus would not receive the benefit of the downward pressure on rates caused by the Customer.

Instead, choice customers would only be affected by the increase in distribution revenue requirement and thus would be the only customer type that would be harmed overall.

Id., p. 4. Thus, the Staff notes that choice customers will not be sharing in the claimed net benefit. The Staff states that the cap on choice will increase due to the increased sales, and argues that the downward pressure on power supply rates may make full service more attractive than choice service as a result of the implementation of the special contracts. *See*, 3 Tr 860-863; Exhibit S-3.2.

The Staff states that Exhibit S-3.3 provides an analysis of the minimum bills, the termination payment, and the collateral as provided in the PSA under two scenarios. With regard to the scenario where Google pays only its minimum bill, the Staff assumed that production resources such as the proxy plant would not be necessary, and concluded that “the minimum bill revenue is sufficient to cover the estimated non-production costs to serve the customer. (3 TR 875.) The total cumulative non-production costs in fact equals the total cumulative minimum bill revenue under the proposed PSA.” Staff’s initial brief, p. 6. The Staff notes that the largest cost drivers for serving Google will be the production related ones such as the proxy CCGT with CCS. The Staff further states that “the Commission already found that the Company will be responsible for any shortfall if collateral is not sufficient to recoup costs. (3 TR 877).” *Id.*

The Staff takes issue with the Attorney General’s argument that the MMC will not collect 100% of demand costs, stating that this “is not an accurate description of the costs imposed by nor the minimum revenues to be collected from the Customer. The minimum monthly bill in the PSA sets the floor at 80% of the Customer’s demand *revenue*, not 80% of total costs.” *Id.*, p. 7 (emphasis in original).

Turning to the second scenario, the Staff states that it evaluated a potential worst-case scenario where Google reaches full load ramp and the company builds the new resources, but Google pays

only its minimum bills thereafter. The Staff found that this scenario produces a total net cost to DTE Electric. *Id.* (citing 3 Tr 878-879); *see*, Confidential 3 Tr 1015-1016. Regarding the sufficiency of the collateral, the Staff contends that:

the Company could face significant risk from the Customer being uncollateralized, but the affordability backstop may prevent the Company from facing that risk should the Commission find that the Company may not pass on stranded costs to its other customers. As previously explained, the Commission has already cautioned the Company that other customers would not be responsible for any unrecovered costs associated with serving the Customer. (3 TR 879.) Staff again recommends that the Commission make the same finding in the instant case.

Id., p. 8.

b. Contract Terms

The Staff notes that DTE Electric has a currently-pending case, Case No. U-22061, wherein the company proposes a large load provision tariff. The Staff states that the terms of the PSA are similar to the company's proposal in that case with the exception of a longer contract term under the PSA (20 years as opposed to 15 years under the tariff), the collateral amount, the terms of the CCAA, and the CIAC allowance. *Id.* The Staff states that:

[t]he proposed tariff in Case [No.] U-22061 provides a CIAC allowance equal to two years of distribution revenue, with the customer paying for all connection costs above that allowance. Staff calculated that using the proposed tariff method would result in a CIAC allowance of approximately \$30M. (3 TR 869.) Under the [LEA] of the PSA the Customer agrees to pay up to \$50M toward infrastructure upgrades needed to serve the Customer. (3 TR 450-451.) The Company intends to include any remaining connection costs via base rates as it would for any other new business. (3 TR 451.) Staff recommended that if and when the tariff in Case [No.] U-22061 is approved, that the CIAC allowance from that tariff be applied to the Customer as well. Specifically, any infrastructure costs beyond the initial \$50M plus \$30M (the two years of distribution revenue) should be paid for by the Customer. Any infrastructure costs that exceed \$50M by less than 2 years of distribution revenue should be included for recovery in future rate cases. (*Id.*)

Id., pp. 8-9. The Staff refers to DTE Electric's disagreement with this proposal. *See*, 3 Tr 423-434. The Staff responds that its proposal will not apply if the Commission rejects the CIAC

provision proposed by the company in the tariff case; but adds that, under the special contracts, DTE Electric will:

serve the customer on different terms and conditions compared to the current Rate D11 tariff, which the Company is also proposing to alter. Staff asserts that it is not reasonable to request special terms via contracts and also change the standard terms from which the contracts are an alternative. Essentially the Company is requesting different rules for the Customer but also requesting to change those rules. Staff argues that it is reasonable for the Customer to be subject to the CIAC provision of the proposed tariff in Case [No.] U-22061 because the Customer has not yet begun to be served by the Company.

Staff's initial brief, p. 10. The Staff notes that the instant case and the tariff case were filed only four days apart.

The Staff refers to the large load tariff approved for Consumers in the November 6 order and notes certain differences in the PSA with respect to the issue of collateral. *Id.*, pp. 10-11 (citing 3 Tr 869-870; *see*, Confidential 3 Tr 1007). The Staff states that the termination payment matches the exit fee approved in the November 6 order. Staff's initial brief, p. 10.

The Staff argues that DTE Electric must bear the risk associated with allowing the collateral to be supported by a PG (which also represents a difference from the Consumers tariff approved in the November 6 order). The Staff notes that in the December 18 order, p. 41, the Commission found that all risk associated with the sufficiency of the collateral must be borne by DTE Electric. The company agreed to this condition and the Staff recommends that the Commission make the same finding in the instant case and require express agreement to all conditions. The Staff further notes that in the December 18 order, p. 33, the Commission found 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.” Staff's initial brief, p. 12 (quoting the December 18 order, p. 33). The Staff opines that this condition, in tandem with the affordability backstop, “should prevent adverse outcomes for existing customers.” Staff's initial brief, p. 12 (citing 3 Tr 872).

The Staff notes the company's agreement to these terms where DTE Electric testifies that the company "bears the risk of collateral insufficiency for costs that the Commission ultimately determines in excess of revenues received under the PSA, CCAA, and other related agreements." 3 Tr 135.

The Staff refers to the Attorney General's recommendation to set the MBD at 90%. *See*, 3 Tr 473. The Staff responds that the assumed load factor and the MBD are not related, and argues that the Staff's analysis found that the 80% MBD is sufficient to cover the non-production costs. *See*, 3 Tr 875. Thus, the Staff argues that the Attorney General's recommendation should be rejected. Staff's initial brief, p. 13.

c. Future Proceedings

The Staff contends that cost allocation, including the question of whether a new rate class should be created, should be determined in future rate cases. The Staff argues that the instant case is concerned with the appropriateness of the special contracts and "approval or disapproval in the instant case will not affect cost allocation or rate design until the Customer's load is expected to appear during the test year of a general rate case. (3 TR 864.)" *Id.*, pp. 13-14. The Staff adds that:

there will likely be an aggregate positive impact on rates by serving the Customer, but how that impact lands among the various customer classes is yet to be determined. For example, the other cost and benefit components integrated into the overall affordability benefit are still projections and have not yet been allocated among customer classes. (3 TR 865.)

Id., p. 14. The Staff notes that DTE Electric, GLREA, MNS, and MEICEO all agree that cost allocation must be considered in a rate case and not in the instant case. *Id.* (citing 3 Tr 419-420, 609, 619, and 675). The Staff recommends that the Commission continue to require the six COSSs in rate case applications with the various scenarios, and adding the Staff's suggestion that

the direct assignment be made to each large load customer individually. *See*, 3 Tr 865-866. The Staff also recommends tracking any cost data that may be directly attributable to Google. 3 Tr 868. The Staff does not recommend that the studies be required annually but rather in the company's next general rate case, similar to the December 18 order. Staff's initial brief, p. 15.

The Staff notes that the actual production resources needed to serve Google will be determined in a future IRP, and argues that the Commission should, in the IRP, "consider how to eventually assign production costs to the Customer, or to the Customers' rate class if it is separated, so that any marginal cost of new capacity resources will not be passed on to other customers unfairly." *Id.*, p. 16. The Staff opines that the Commission "may be able to identify costs specific enough to the Customer to be able to use in future rate cases in case Staff's worst-case scenario comes to be." *Id.* The Staff contends that this could be valuable to support future determinations, and notes that the Commission routinely retains jurisdiction of matters such as the instant case.

The Staff also recommends that the Commission review the collateral amount and the termination payment within three years of the load ramp completion date. *Id.*, p. 17. The Staff adds that a periodic review of the affordability benefit "should be made in future rate cases and require the Company to confirm that the special contracts are contingent on the Customer's rate revenue and [the] special contracts will cover the cost to serve the customer including generation, transmission, distribution, and other costs." *Id.* The Staff agrees with MEICEO that the costs and revenues should be re-evaluated once they are known. Noting that DTE Electric has committed to reporting aggregate costs and benefits in future rate case and PSCR proceedings, the Staff adds that "[a]s part of this reporting an evaluation should also be made regarding collateral and termination payments per Staff's recommendation to re-examine those items within three years of

a Customer's completed load ramp and may occur in one of the types of proceedings described by the Company (e.g. general rate cases)." *Id.*, p. 18.

d. Other Issues

The Staff contends that the company should be directed to make Google aware of the requirements and obligations related to DTE Electric's EWR goals and compliance, and requests that "the Commission Order the Company to communicate the requirements of Case No. U-21627, Section 93 (9) of the Act [Act 235], and expectations of self-directing an EWR plan to the Customer. (3 TR 891.)" *Id.*, p. 19.

Turning to the issue of emergency load shedding, the Staff notes that DTE Electric has proposed amendments to its Emergency Electric Procedures in Case No. U-22059 that would address this issue, if approved. 3 Tr 822. The Staff recommends that "if the Commission does not approve the proposed amendments in Case No. U-22059, that DTE either amend the special contract to incorporate equivalent reliability protections or amend its emergency procedures in a manner that ensures those protections apply to the customer served under the special contract. (3 TR 822.)" Staff's initial brief, p. 20. The Staff notes that the Commission recognized the reliability implications of large load customers in the November 6 and December 18 orders and recommends that, if the proposed amendments are not approved, the PSA should be amended to be consistent with the December 18 order, or the company should amend its emergency procedures to ensure that any procedure language that ends up in the tariff also applies to the PSA. *Id.*, p. 21.

The Staff takes issue with some of the proposals made by MEICEO. The Staff refers to MEICEO's recommendation that a portion of the ZRCs be provided through DR programs, VPP programs, and behind the meter (BTM) battery storage resources. The Staff opposes adding these requirements. 3 Tr 825-826. The Staff notes that the ZRCs are already being provided at no cost

to the company and argues that MEICEO did not demonstrate why these additional requirements are necessary. Staff's initial brief, p. 22. The Staff contends that the proposed DR, VPP, and BTM programs are uncertain and would require "utility administration, coordination, and operational infrastructure" at an unknown cost. *Id.* The Staff avers that MEICEO's recommendations would constrain the parties without providing a benefit. The Staff recommends that, if BTM storage resources are mandated, "the Commission should first require DTE to update its interconnection procedures to allow those resources to export energy to the grid." *Id.*, pp. 23-24. The Staff supports the use of a solicitation process for procuring the ZRCs, rather than prescribing a particular technology or program. *Id.*, p. 24.

The Staff also opposes MEICEO's recommendation for a 50% third-party-owned/50% company-owned split for VGP procurement purposes. Again, the Staff recommends that resource selection be competitive in order to ensure that the most economic resources are chosen. 3 Tr 848-849. The Staff avers that MEICEO's recommendation would limit competition and potentially result in the selection of higher cost projects. Staff's initial brief, p. 25. The Staff notes that it will be reviewing and auditing costs in future cost recovery proceedings.

The Staff does not contest DTE Electric's proposal to analyze each large load customer separately, however, "Staff still recommends that an analysis that looks at the impact of the Company's large loads in aggregate, as specified in witness Simpson's testimony, also be completed." *Id.*, p. 26 (citing 3 Tr 837-839).

The Staff supports the company's proposal for reporting, but adds that any "changes in the publicly available credit ratings that would impact the credit and collateral requirements of the PSA and CCAA be noted in its annual report." Staff's initial brief, p. 27 (citing to 3 Tr 844).

The Staff recommends that the Commission direct DTE Electric to follow the Competitive Procurement Guidelines to the extent practicable, and recommends that DTE Electric prioritize the resources necessary to achieve the proposed course of action (PCA) approved in the IRP to serve all customers prior to selecting resources for Google under the CCAA. Staff's initial brief, p. 27. The Staff notes that the VGP settlements relied upon by the company, taken as a whole, reference the Commission's Competitive Procurement Guidelines. *Id.*, p. 28. The Staff states that it "does not believe that resources procured for the Large Load Customers should cost less than similar resources contracted for other customers. Staff's position comports with recent VGP settlements, such as in [Case No.] U-21172." *Id.* The Staff adds that it "would support a framework whereby the Company complied with the Competitive Procurement Guidelines as modified by the aforementioned settlement agreements and ensured that ratepayers for resources to fulfill the IRP/REP requirements did not pay a premium as compared to the CCAA." *Id.*, p. 29. The Staff urges the Commission to ensure that the Competitive Procurement Guidelines are used as much as possible, recognizing that all resources are "still ultimately backstopped by other ratepayers[.]" *Id.*, p. 30.

The Staff opposes DTE Electric's request to book the financial adder associated with the ZRCs as non-refundable income. *See*, 3 Tr 115-116. The Staff contends that this amount should either be rejected or treated as ordinary income. Staff's initial brief, p. 31. The Staff argues that approving the company's request:

creates a future incentive for the Company to seek out future large customers that are willing to pay more than is necessary to have their load served. Staff recognizes that the Customer in question is of a size that requires special consideration and the resources that will be developed to fulfill the special contract will do that. The ZRC's are simply a short term stop gap that does not need to be further incentivized.

Id., p. 32. The Staff notes that DTE Electric will receive a return of and on all new resources that are necessary to serve Google and states that:

Staff views the risk of serving this customer as a risk to other ratepayers if for some reason the Customer does not fulfill its load obligations, or if the ZRC's don't come to fruition as they should at the time of need, or that the resources not covered in the CCAA that are needed to serve this customer's load are more costly than expected. . . . [T]he risk is to that of other customers, not the Company, and therefore the financial adder should be used for the benefit of all customers. (3 TR 844.)

Id. (emphasis in original).

In light of DTE Electric's plan to transfer RECs to Google, the Staff raises concerns that RECs could be double-counted or could be insufficiently tracked. Regarding the company's renewable energy compliance calculation, the Staff notes that this calculation:

excludes both distributed generation outflow and voluntary green pricing. Staff finds that this exclusion is appropriate because both of those generation sources are presumed to be renewable and cover the load that is enrolled in the associated tariff. However, this only results in a logical conclusion if the RECs are either retired by the Company on behalf of the customer or transferred to the customer and then retired by the customer in the year that the enrolled load is being excluded from retail sales. Any other treatment results in a mismatch between the amount of load being removed from the compliance calculation and the amount of RECs, and the renewable energy attribute, being retired which is illogical.

Id., pp. 33-34. The Staff contends that if the renewable attribute of the REC is separated from the load that is enrolled in the program, then that program is not a VGP program. *See*, 3 Tr 841-842. The Staff argues that "the renewable energy can only be claimed to cover the associated load and subsequent retail sales if the RECs are indeed retired in the year they are claimed" and that "[a]bsent the Company's commitment to comply with the Commission's previous direction to assign and retire RECs for VGP enrolled load associated with the CCAA, the Commission should clarify that the CCAA is not a VGP program." Staff's initial brief, pp. 34-35. The Staff urges the Commission to reject the argument that transferred RECs are not available to the company. The

Staff adds that there are no concerns regarding implications for other large companies. *See*, 3 Tr 292-293.

Finally, the Staff argues that the Commission should affirm the finding that VGP RECs must be retired in order to be counted towards compliance with a CEP and argues that the CEP may not align with the REP if VGP RECs are not retired. Staff's initial brief, p. 36. *See*, 3 Tr 842; Exhibit S-1.1. The Staff notes that:

although the REP compliance calculation removes VGP from the retail sales, the CEP compliance calculation does not. Therefore, it isn't a tracking issue, the only means to count renewable generation that covers VGP is to retire the REC associated with it because that is the only mechanism that the Commission has approved to date. Therefore, Staff recommends that the Commission reaffirm its previous finding that one REC can be retired to meet one MWh [megawatt-hour] of Clean Energy which allows for the VGP load to be covered by the retirement of RECs that were generated from VGP resources.

Staff's initial brief, pp. 36-37.

In conclusion, the Staff summarizes its recommendations thus:

- Issues of cost allocation should be addressed in future rate case proceedings.
- Recommend the Commission continue to require the Company to submit the six cost of service studies required in Cases [Nos.] U-21859 and U-21990 in future proceedings.
- Recommend the Commission require the Company to track any costs that may be directly tied to the Customer so that it is possible to determine the effect of directly assigning costs to either the Customer or a potential new large load customer class.
- If a CIAC allowance is approved in Case [No.] U-22061, then it should be applied to the Customer for any costs in excess of the line extension agreement.
- Recommending the Commission consider re-opening the instant case if and when potential new power supply costs are approved in the Company's next IRP or within at least 3 years following the Customer's load ramp completion date.
- Recommending the Commission require the Company to submit a letter to the docket accepting all conditions deemed by the Commission as necessary for approval of the special contracts.

Id., pp. 37-38.

5. The Michigan Department of the Attorney General

The Attorney General argues that the MBD should be set at 90%. She contends that, at 80%, if Google does not take its full load then DTE Electric will have to sell 200 MW of excess capacity at a cost that would potentially be lower than the cost of acquiring that capacity. Attorney General's initial brief, p. 6; *see*, 3 Tr 472-473. She further notes that in evaluating various cost scenarios the company assumed an average load factor of 90% of contracted maximum capacity, and she contends that a 90% MBD has been approved in Kentucky and 100% has been used Wisconsin. The Attorney General states that the Commission mandated a case-by-case review for large load customers in the November 6 order while also requiring that none of the costs associated with interconnecting the large load customer may be paid by other customers. Attorney General's initial brief, p. 7; *see*, November 6 order, p. 117. She argues that the company has failed to meet its burden of proof on the MBD, since it has failed to include any discussion of transmission upgrade costs for connecting the storage and new renewable energy projects, or for recharging the batteries. 3 Tr 484-485; Exhibit AG-7. The Attorney General contends that, in light of these omissions, "the Company does not dispute that a 90% MBD would better track with the Google Data Center's expected load factor. And a 90% MBD term would categorically be better suited to ensure against cost shifting[.]" Attorney General's initial brief, p. 9. She rejects the notion that the December 18 order sets a precedent for 80%, arguing that that order was the result of a "secretive process with minimal public disclosure of key terms or financial impacts on other customers." *Id.*

The Attorney General contends that the termination payment does not include the full duration of the contract because the maximum duration for the calculation is 16 years; and the 80% MMC

could mean that the remaining 20% would be collected from other customers if DTE Electric is not able to find a replacement customer to take the capacity. 3 Tr 473; Attorney General's initial brief, p. 10. She also avers that the termination payment calculation changes after the 13th anniversary of the load ramp completion date in the event of default by Google. *Id.*, p. 11. She argues that this differs from the terms approved by the Commission in the November 6 order which set an exit fee based on the remaining months in the contract term. *See*, November 6 order, pp. 109-110. The Attorney General avers that DTE Electric has failed to meet its burden of proof on this issue as well, as it "provides no analysis to explain how its proposed calculation using 80% MBD and a lesser duration-calculation might in fact account for the caused-costs of the Google Data Center." Attorney General's initial brief, p. 12.

Turning to transmission costs, the Attorney General argues that the MMC calculation used in the termination payment does not appear to have a PSCR surcharge component and as such the termination payment "would not contribute towards transmission upgrade costs" and she adds that "DTE did not design its termination payment calculation around achieving incremental cost coverage." *Id.*, p. 13. She recommends that the Commission "direct DTE to require a termination payment calculation using 100% MBD in calculating [MMC]" and "direct DTE to require that the termination payment be calculated by multiplying the monthly charge (using 100% MBD) by the remaining months in the entire 20-year contract term, rather than a shorter period as proposed by DTE." *Id.*, p. 14. The Attorney General posits that this will better ensure against cost shifting and also against the risk of an industry-wide overcapacity scenario in the event that all of the expected data center demand fails to materialize.

Turning to the PG, the Attorney General contends that if the facility fails to launch or underperforms, triggering the termination payment, the PG "needs to be at the level that ensures

full payment of the Customer's total obligations." 3 Tr 475. In confidential testimony, the Attorney General argues that the termination payments under both the PSA and the CCAA could exceed the PG cap, and thus the cap on the PG and the bank LoC must be removed in order to ensure payment of Google's total obligations. 3 Tr 480; Confidential 3 Tr 909-915; Attorney General's initial brief, pp. 16-17. The Attorney General again mentions the possibility of an industry-wide overcapacity risk, and argues that her concern is even more important with respect to the CCAA because those actual full costs are unknown. She urges the Commission to reject the PG cap and argues that simply requiring the company to bear the risk of collateral insufficiency is not enough. *Id.*, pp. 17-18. The Attorney General avers that the company has not presented any evidence as to how it would absorb any amount of Google's credit risk and that such a scenario (a utility credit backstop) may result in the utility seeking recovery from ratepayers. She posits that DTE Electric failed to show on this record that the PG will be sufficient.

Turning to the Rider 12 DRA, the Attorney General argues that the 250 MW load reduction commitment seems overly aggressive for a data center that must run 24/7. She contends that if Google cannot "meet its commitment to shed load when called upon by MISO under the DR program, it is necessary for the Company to ensure that other customers are made whole for any payments made to the Customer for participation in the DR program" and that any penalties assessed to Google for non-performance should be accounted for separately and credited to other customers' rates. *Id.*, p. 20; 3 Tr 483-484. The Attorney General states that the company agreed to the separate account and committed to tracking any such non-performance penalties through the PSCR rather than in a rate case. *See*, 3 Tr 398. The Attorney General states that she "does not necessarily disagree" but recommends that the Commission direct the company to identify "any DR non-compliance and applicable credits in testimony as well as to provide supporting exhibits

to allow proper tracking of DR costs versus credits as to the Google Data Center.” Attorney General’s initial brief, p. 21.

The Attorney General expresses concern that DTE Electric failed to include certain transmission costs in its application including costs for interconnection of the energy storage locations and the new renewable energy projects, and for delivering power to recharge the batteries. 3 Tr 484-485. She argues that “transmission capital costs associated with incremental resources need to be tracked and reported separately, along with ITC O&M costs related to all of the new transmission facilities installed to supply power to the Google data center from resource origin to the data center delivery point.” Attorney General’s initial brief, p. 22. She notes that DTE Electric did not oppose this recommendation but indicated that it “may not be able to provide the precise project-by-project billing traceability” that seemed to be implied. *Id.*, p. 23; *see*, 3 Tr 146; Exhibit AG-7. The Attorney General reiterated her recommendation that the Commission direct DTE Electric:

to implement appropriate cost accounting tracking procedures to allow complete and accurate reporting of all transmission-related incremental costs for each new data center for presentation of the aggregate costs and benefits that are impacting other customers. Such tracking procedures should include accounting for transmission upgrade costs associated with generating and storage projects developed to serve the customer and/or included within the scope of the CCAA, along with other incremental MISO transmission-related oversight and system management costs pertaining to the new data centers.

Attorney General’s initial brief, pp. 23-24 (internal citation omitted).

Turning to the company’s proposal for cost and benefit tracking, the Attorney General states that this mechanism “has merit.” *Id.*, p. 25. The Attorney General also acknowledges the language in Paragraph 5.1.3 of the PSA (the affordability backstop language), but argues that the Commission should direct the company to establish a regulatory liability account “to capture the annual financial benefits from the Google data center, and any other data centers, for inclusion in

future rate cases as a reduction to future base rate increases or as a direct passthrough of the financial benefits to customers through a separate credit refund.” *Id.*, pp. 25-26; 3 Tr 486-487.

The Attorney General argues that this requirement is made more necessary by the company’s testimony that it may defer filing a new rate case for two years. *See*, 3 Tr 487. She maintains that the “better approach is to capture the financial benefits in a regulatory liability account and for the utility to take those benefits into consideration when deciding whether or not to file a rate case.” Attorney General’s initial brief, p. 27. She also proposes an annual benefit/cost reconciliation including costs and revenues under the CCAA. Without these proposed mechanisms, the Attorney General argues that DTE Electric has failed to meet its burden to show that its tracking plan will result in passing the benefits on to ratepayers. *Id.*, p. 28.

Finally, as in the December 18 order, the Attorney General recommends that the Commission “require that DTE at all times serve as a backstop for the incremental costs of serving the Google Data Center, should aggregate costs exceed benefits.” *Id.*, p. 29.

6. The Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club

MNS begins by noting that Act 235 requires DTE Electric to achieve a REC portfolio of 50% by 2030 and 60% by 2035. MNS’s initial brief, p. 1; *see*, MCL 460.1028(1) and (2). MNS further notes that sales of electricity to customers participating in a VGP program are subtracted from the provider’s total retail sales in making these percentage calculations and the provider receives no RECs from the renewable energy used to serve a VGP customer. *See*, MCL 460.1028(2)(b)(i); MCL 460.1061; MCL 460.1039(1)(b).

MNS contends that the Commission should not make a finding that the special contracts will result in the claimed \$1.7 billion benefit. MNS’s initial brief, p. 5. MNS complains that this proceeding has been expedited and thus provided little opportunity for “robust, independent, third-

party expert review of DTE's estimated customer costs and benefits." *Id.* MNS argues that this number should not be endorsed or relied upon because it overestimates the base sales benefit which was derived through "a simplistic, non-rigorous methodology" rather than through modeling costs and revenues for each contract year. *Id.* MNS avers that the alleged base sales benefit of \$4.85 billion simply consists of DTE Electric adding Google's load to its 2025 COS model and increasing the result by 1.5% annually for 20 years. 3 Tr 414. MNS also questions certain assumptions behind this calculation including the assumption that Google's load is at full demand and using a 90% load factor and assuming that Rate D11 will have that annual 1.5% increase. As to the first assumption, MNS avers that this has not been achieved among existing data centers and the MBD is only 80%. 3 Tr 627. As to the second assumption, MNS notes that the Staff indicated that this is not a reasonable assumption because it fails to recognize that the increase is an offset to costs. *See*, 3 Tr 858. MNS also points to ABATE's argument about present value.

MNS also contends that the net benefit calculation improperly includes avoided costs related to reduced renewable compliance builds. MNS's initial brief, p. 7. MNS states that these amounts are not identified explicitly but are included purportedly in the PSCR charge benefit. *See*, 3 Tr 410-411. MNS argues that DTE Electric's explanation of the determination of the avoided 250 MW (by 2034) seems to be unsupported. MNS contends that:

[a]t the most basic level, the Special Contracts with Google increase DTE's requirements under the RPS. Google has requested that DTE build "up to" 1.6 GW of renewable energy projects through the VGP program, thus removing 40% of its load from DTE's RPS obligations. However, that leaves 60% of Google's load subject to the RPS; witness Bilyeu thus calculated that Google's load increases DTE's RPS target by 10.8%. When asked how the addition of Google affects the amount of RECs needed for compliance with the RPS, witness Bilyeu further conceded that Google's load "requir[es] an increase in the RECs needed for the RPS target." While Google is paying for "up to" 1.6 GW of renewable energy, this amount only *reduces the increase* in the number of RECs DTE needs. That 1.6

GW of renewable energy does not increase the number of RECs that the Company has available to serve the 60% of non-VGP load that Google would be adding to the system. Thus, DTE's hand-waving attempts to explain how the Special Contracts can somehow result in an overall reduction in DTE's required renewable builds are unavailing.

Id., p. 8 (citing 3 Tr 279, 283, 336, 333, and 327) (emphasis in original). MNS also rejects DTE Electric's assertion that it will maintain a surplus of RECs even with Google's load. MNS states that:

Exhibit A-2 projects that in the scenario with the Google data center online, the Company's ending year REC balance would drop from nearly 6.8 million in 2030 to less than 700,000 in 2032, and remain below 6 million in each year through 2037. By contrast, the RPS Compliance Summary that witness Bilyeu sponsored in the Amended REP case, [Case No.] U-21662, projected an ending year REC balance of approximately 15.7 million in 2030 increasing every year to more than 49.5 million in 2037.

MNS's initial brief, p. 9 (citing Exhibits A-2 and MEC-29). MNS contends that the drop is due to the addition of the non-VGP Google load and argues that "[i]t strains credulity to suggest that because a small projected surplus remains in this proceeding, Google can somehow be credited with the reduction of 250 MW of renewable builds that were selected in the face of the much larger projected surpluses found in the Amended REP proceeding." MNS's initial brief, p. 9. Finally, MNS notes that the REC surplus shown in Exhibit A-2 is due to the 1.8 GW of renewables associated with Oracle. *See*, Exhibit MEC-28; MNS's initial brief, pp. 9-11.

MNS also argues that DTE Electric underestimates costs in its net benefit calculation. *Id.*, p. 11. MNS notes that the stability studies for the transmission projects necessary to connect Google's load are not complete and thus costs that may be revealed by those studies are not included in the benefit analysis. Additionally, MNS contends that DTE Electric does not consider the potential retirement of the company's REC surplus as an incremental cost of serving Google. *See*, 3 Tr 343-345. MNS avers that "this proceeding comes on the heels of claims in [Case No.]

U-21990 that, thanks to banked RECs, only 443 MW (now apparently 1.8 GW) of renewables will be needed to ensure RPS compliance after the addition of the 1.4 GW Oracle data center” and that “DTE’s REC bank has been declining[.]” MNS’s initial brief, p. 12 (citing 3 Tr 647, 649-650, and Exhibit MEC-14). MNS proposes that “DTE’s ability to achieve RPS compliance with the addition of the Google load but with no non-VGP renewable additions or incremental costs to other ratepayers needs to be carefully scrutinized.” MNS’s initial brief, p. 13. MNS argues that these are costs that are not accounted for in the net benefit equation. Finally, MNS contends that DTE Electric has failed to provide a full analysis of the resource needs that will be caused by Google’s load. Noting the hypothetical addition of the CCGT with CCS, MNS asserts that this is too preliminary to be relied upon without fuller IRP modeling. *Id.*, p. 14.

MNS contends that the affordability backstop is fundamentally flawed and the Commission should carefully consider direct assignment in the ongoing rate case. MNS argues that the affordability backstop also relies on the faulty assumptions just described with respect to the net benefit including the improper inclusion of avoided costs. MNS notes that the affordability backstop has not been tried before and thus it is unclear what will be included in the analysis and how much review will be open to interested parties. *Id.*, p. 15. MNS contends that distribution costs above \$50 million will be added to rate base and the tracking will be difficult. *See*, 3 Tr 450-451, 252. MNS states that Google should instead pay all infrastructure costs required for connection without any cap and cost recovery from other customers should be prohibited. MNS’s initial brief, pp. 16-17. MNS contends that the affordability backstop should be strengthened with the following measures:

- RPS compliance costs – Rather than using the “challenging” approach identified by witness Bilyeu of identifying potential incremental RPS compliance costs associated with Google’s load, DTE should provide in its next IRP and REP proceedings a comparison of renewable energy resources necessary to meet RPS

obligations without Google's non-VGP load and the resources needed with Google's non-VGP load. The revenue requirement of the difference in resources should be attributed to Google in the affordability backstop.

- “Avoided costs” – The Commission should require that avoided costs can be credited to Google only upon a showing that such cost avoidance is directly attributable to the addition of Google. As discussed previously, the Commission should also make clear that no such showing has been or could be made with regards to the 250 MW of renewable energy builds in 2033 and 2034 that DTE claims are avoidable.
- Transmission costs – MNS supports the additional transmission cost reporting recommendations of MEI-CEO witness Kenworthy and Attorney General witness Sebastian Coppola.
- Distribution costs – Google should pay all distribution-related costs for interconnection without the \$50 million cap.
- Generation costs – DTE currently plans to compare the resources selected with Google's load to resources selected without Google's load during IRP proceedings. The revenue requirement of the additional resources selected with Google's load will be included in the affordability backstop. MNS agrees with this general approach, but reserves the right to challenge its application in upcoming proceedings.

Id., pp. 17-18 (citing 3 Tr 349, 687-688, 628, and 243-245). MNS adds that Google should be required to switch to a different rate schedule in the future, should the Commission approve a different rate schedule for large loads.

MNS also urges the Commission not to endorse the purported benefits of the proxy resource, which are irrelevant to this proceeding. 3 Tr 633. MNS states that the Commission should affirm that any such resource will be assessed in an IRP. MNS's initial brief, p. 20.

MNS asserts that the Commission should require DTE Electric to deploy the full 450 MW of energy storage and 1,600 MW of renewable energy projects as a condition of approving the special contracts. *Id.*, p. 21. MNS is concerned by the words “up to” and argues that the CCAA lacks an obligation to deploy the full amount. *See*, 3 Tr 634; Exhibit MEC-7. MNS argues that this deployment will be critical to the company's ability to comply with Act 235 and that any lesser

amount will require DTE Electric to retire more RECs. MNS asserts that this condition will help reduce DTE Electric's risk of RPS noncompliance. MNS's initial brief, p. 23.

MNS adds that the Commission should not endorse the company's claim that Google will be served by 100% renewable energy when DTE Electric meets its own renewable energy requirement of 60% of total retail sales in 2035. *See*, 3 Tr 280. MNS avers that MEICEO showed that by 2035 only about 76% of the energy needed to serve Google will be renewable. *See*, 3 Tr 740-741; MNS's initial brief, p. 24.

Finally, MNS argues that the Commission should direct DTE Electric to take additional steps to ensure that the renewable energy goals contained in the special contracts are met. *Id.*, p. 25. MNS notes that the 1.6 GW of renewables that Google agrees to fund in the CCAA along with the 1.8 GW of renewables that are assumed for the Oracle data center in the December 18 order more than quadruples the 443 MW of renewables assumed in the company's most recent amended REP case, Case No. U-21662, and these two sets of new renewables are projected to come online in 2030-2032. *Id.*; Exhibit MEC-10. However, MNS contends, DTE Electric's evidence provides few details on how the company will achieve this energy build; and, further, the company indicated that it has not conducted any project-specific analyses regarding the acquisition of land, interconnection rights, permitting, construction, or contracting, but that it has confidence in its development pipeline. Exhibit MEC-8; 3 Tr 350-351. MNS makes the following recommendations with respect to ensuring that the renewable energy goals are met:

- Require the Company to issue RFPs that seek more renewable energy and energy storage resources than the proposed annual build amounts to help ensure that the targets are met in the most cost-effective manner possible and that annual deployment targets are achieved.
- Require the Company to pursue behind-the-meter and distributed energy resources (DERs) as part of its renewable energy and energy storage goals.

- Require the Company to conduct analyses and/or studies of the feasibility of acquiring sufficient land, obtaining interconnection rights, receiving permitting approvals, and completing the construction and/or contracting needed to achieve the annual renewable energy and energy storage plans.
- Require the Company to make specific commitments regarding how it will respond to each potential situation under which the Company would deploy less than its renewable energy and energy storage resource deployment.
- Require the Company to amend its RPS compliance assessment in its forthcoming REP as part of the Company's IRP such that the Company identifies the amount of additional renewable capacity that would be required in each year to achieve RPS compliance (e.g. 100 MW in 2030, 75 MW in 2031, etc.) rather than assume renewable energy capacity amounts that are not firm numbers (i.e., the 1,600 MW for Google and 1,800 MW for Oracle).

MNS's initial brief, pp. 27-28. MNS observes that DTE Electric appears to have brought approximately 1,100 MW of renewables online in the past four years, indicating that this new goal may be problematic even if the company has a fully developed renewables pipeline. *Id.*, p. 29.

MNS contends that if these recommendations are ignored in the instant case and these issues are delayed until the upcoming IRP and amended REP cases, they will not be resolved until the fall of 2027 at the earliest, less than three years before the date when multiple GW of renewables will be necessary. *Id.*, p. 30.

7. Michigan Energy Innovation Business Council, Institute for Energy Innovation, Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar

MEICEO contends that the special contracts prevent Google from deploying innovative solutions to its energy needs and that this does not serve the public interest. MEICEO urges the Commission to "instead preserve and encourage the ability of large, financially capable customers such as Google to develop and fund innovative, distributed solutions that can support grid reliability, accommodate load growth, and advance Michigan's clean-energy objectives[.]"

MEICEO's initial brief, p. 2.

MEICEO notes Google's 100% clean energy by 2030 goal and the fact that Act 235 requires an RPS of 50% renewables by 2030 and 60% by 2035. 3 Tr 736-737, 276. Thus, MEICEO argues that if DTE Electric's grid is only 60% renewables, then "this approach is only valid if the customer is purchasing 100% of its energy from the utility and then additionally purchasing renewable energy credits equivalent to 40% of its load (i.e., 'the nonrenewable portion of what it receives' from the utility). Shaver Direct, 3 TR 741." MEICEO's initial brief, p. 8. MEICEO contends that despite Google's goals, the facility will "result in increased emissions on DTE's grid" and that "the CO₂ [carbon dioxide] emissions attributable to the facility still average 800,000 short tons annually[.]" *Id.*; *see*, 3 Tr 747-749.

MEICEO notes that DTE Electric's evidence shows that the company will not be resource adequate in 2033 without additional capacity. 3 Tr 436-441. Thus, the company identified a need for 677 MW of perfect capacity and modeled the 727 MW proxy CCGT with CCS. 3 Tr 440, 375. However, MEICEO explains, DTE Electric plans, in its upcoming IRP modeling, to evaluate the incremental impact of Google's load on its system resource needs by comparing portfolios with and without that load. MEICEO's initial brief, pp. 9-10; Exhibit MEICEO-14; 3 Tr 714-716. Thus, MEICEO contends that it is Google's load plus the expiration of the Google-provided ZRCs and DR obligation that causes the capacity need in 2033. 3 Tr 714-716; MEICEO's initial brief, p. 10.

MEICEO asserts that hyperscale data centers pose unique risks to the stability and reliability of the grid. MEICEO states that data centers are highly sensitive to fluctuations in voltage and frequency, and that their operational and performance details are often confidential. *See*, Exhibits MEC-29, MEC-28. MEICEO states that:

NERC [the North American Electric Reliability Corporation] recently determined that "few utilities are appropriately responding to the reliability risks from large

loads,” noting a general lack of specific procedures for handling large loads and standardized operational requirements.” [sic] Shaver Direct, 3 TR 754. Accordingly, NERC recommended that federal and state regulators “should consider” these gaps and “coordinate with utilities to assess whether incorporating additional interconnection requirements and/or studies are appropriate to reliably support integration of large loads.” Ex. MEICEO-30 at 8.

MEICEO’s initial brief, p. 11.

MEICEO avers that the Commission has broad authority to impose conditions on the special contracts, as it did in the December 18 order, and those conditions must ensure that all costs incurred to serve large load customers are fully covered by the customer and not shifted to other ratepayers. *Id.*, pp. 12-14. MEICEO argues that the net benefit projection and the affordability backstop require enforceable verification and true-up conditions and do not alone “support a Commission finding that no cost-shifting to other ratepayers will occur *over the life of the contracts.*” *Id.*, p. 15 (emphasis in original). MEICEO observes that the projected net benefit relies on the use of resources that may or may not actually be selected in a future IRP and many other unknowns, including resource modeling, capacity accreditation, transmission and distribution costs, and the actual load factor. *Id.*, p. 16; 3 Tr 679-692, 718-722, 627-630. For example, MEICEO argues, the benefit projection necessarily relies upon the assumed benefits of the proxy resource that was selected, which could be overstated. MEICEO’s initial brief, pp. 17-18. Moreover, MEICEO notes that the benefit is calculated as a nominal value rather than a present value, which makes it appear greater than it actually is. MEICEO avers that, applying a 7% discount rate to 2028, the present value of the net benefit drops from \$1.7 billion to \$984 million; and, if the storage pull-ahead benefit is also removed, the present value of the net benefit drops to \$531 million. 3 Tr 676-678.

MEICEO also observes that much of the affordability benefit relies on a shift of fixed production and transmission costs to Google and away from residential customers (rather than on a

reduction of total system costs) and from a lower PSCR factor than would otherwise have been applied to other customers. MEICEO's initial brief, pp. 19-20; 3 Tr 671-672. MEICEO asserts that the company did not rebut most of these uncertainties illustrated in MEICEO's testimony.

MEICEO argues that the Commission must impose adequate reporting requirements to ensure that the affordability benefits are realized and there is no cost shifting. In addition to the reporting that DTE Electric commits to providing in PSCR and rate cases (3 Tr 143-144), MEICEO recommends that:

the Company's presentation of aggregate costs and benefits must include "a properly maintained counterfactual baseline"—essentially a "without-customer" scenario that identifies "what DTE's system, costs, and resource selections would have looked like absent the data center load." Kenworthy Direct, 3 TR 696. "Without a maintained baseline, the actual cost impact on other customers cannot be correctly identified." *Id.*

MEICEO's initial brief, p. 22. MEICEO adds that the Commission should include the IRP and CEP application requirements that were included in the December 18 order, p. 35, and should direct the company to include a modeling run to "evaluate whether any incremental resources are needed above the ZRCs and demand response" along with the annual report required in the December 18 order which includes "the Customer's load materialization and accreditation for resources under the CCAA." 3 Tr 716, 720; MEICEO's initial brief, pp. 22-23.

Finally, on the issue of the affordability backstop, MEICEO contends that it must be tied to the cadence of DTE Electric's rate cases rather than remaining a single analysis provided at the end of the contracts. *Id.*, p. 23. MEICEO suggests that there is confusion on this issue, because the company states that it will present information on the costs and benefits of serving Google in rate cases and PSCR plan and reconciliation filings (3 Tr 143) but also states that the affordability benefit will be satisfied over the life of the special contracts in aggregate (3 Tr 147). MEICEO avers that DTE Electric's evidence shows that during the period of 2035-2038 the special contracts

will impose approximately \$172 million in costs on other customers. 3 Tr 679, 858-859.

MEICEO argues that the Commission must address whether a no-cost-shift showing must be made annually, cumulatively, or through some other defined period. 3 Tr 679; MEICEO's initial brief, p. 23. MEICEO states that both benefits and costs will be passed to other customers through rate cases and PSCR cases (3 Tr 148-149, 675) and argues that "[a] rate benefit that materializes five or ten years in the future is no assurance to a family struggling to pay higher utility bills every month. Additionally, DTE's customer base is not static; residential and business ratepayers come and go." MEICEO's initial brief, p. 24. MEICEO contends that a single true-up payment to customers from the company 20 years from now is not reasonable, and urges the Commission to make the affordability backstop an ongoing obligation rather than a single, aggregated true-up. MEICEO contends that this request is supported by the language of the PSA which, at Section 5.1.3, begins the affordability provision with "[i]f, at any time during the Term . . ." *Id.* (quoting Section 5.1.3 of the PSA, Exhibit A-16, p. 8 of 49). MEICEO recommends that the Commission "evaluate whether the no-cost-shift requirement is being met and the status of the Affordability Benefit on the same cadence as the Company's rate cases; and . . . clarify that [the] PSA's Affordability Backstop can be triggered prior to the end of the 20-year contract duration." MEICEO's initial brief, p. 25.

Next, MEICEO advocates for a condition requiring DTE Electric "to procure roughly equivalent amounts of Company-owned and third-party owned projects for CCAA renewable energy resources." *Id.* (emphasis removed). MEICEO notes that the customer requested offering (CRO) in the CCAA (under the VGP program) does not have an established ownership split, but the company is apparently proposing to own 100% of the projects; and, further, notes that the ownership split established in the current IRP is approximately 65% company owned and 35%

third-party owned. 3 Tr 774. MEICEO argues that the company's proposal in the instant case will be harmful to the competitive market, and the Commission should require DTE Electric to procure roughly equal amounts. MEICEO's initial brief, pp. 25-31. MEICEO contends that third-party ownership helps control costs because these resources are generally less costly than company owned resources and their timing may be advantageous because they are generally already being developed. *Id.*, p. 26; 3 Tr 780-786. MEICEO argues that this timing issue is important in light of the sheer quantity of projects that will be necessary. Noting the company's intention to issue an RFP for a minimum of 50% of build to transfer agreements (BTAs), MEICEO argues that this is not a sufficient substitute for MEICEO's proposal due to the "extended negotiation timelines typically associated with BTAs." 3 Tr 782. MEICEO asserts that it is not reasonable or prudent for the Commission to authorize DTE Electric to own 100% of the 1.6 GW of CCAA energy resources. MEICEO's initial brief, p. 28.

MEICEO goes on to argue that company owned projects are not cheaper than third-party owned projects (as asserted by DTE Electric at 3 Tr 307). MEICEO argues that the company relies on the project costs for a single RFP in making this assertion and there are flaws in the company's calculation of the \$92 per MWh value for third-party ownership. MEICEO's initial brief, pp. 29-30 (citing Exhibit MEICEO-38; 3 Tr 808, 786). MEICEO contends that it is reasonable and in the public interest to require procurement of third-party owned projects because it will promote competitive third-party markets, adding that what may be best for DTE Electric "is not what is best for the public interest. Rather, '[o]pportunities for third-party ownership and third-party competition reduce the risk that customers and ratepayers will pay elevated monopoly prices that benefit utilities and their shareholders rather than customers and ratepayers.' Sherman Direct, 3 TR 786." MEICEO's initial brief, p. 31.

Additionally, MEICEO recommends that the Commission encourage the company to procure a greater proportion of capacity for third-party owned energy storage projects. *Id.* MEICEO notes that the company has referred to the 65% company owned/35% third-party owned split established in the IRP case (Case No. U-21193) for the ownership of energy storage projects under the CCAA, but MEICEO characterizes this as the bare minimum requirement and argues that DTE Electric should be encouraged to take third-party ownership above 35%. MEICEO's initial brief, pp. 31-32.

MEICEO recommends that the Commission direct DTE Electric to allow for DERs and other innovative energy resources to be used to procure the ZRCs, arguing that the CCAA unreasonably limits the procurement options. *Id.*, pp. 32-38. MEICEO contends that it is in the public interest for all "solutions and alternatives for serving a new load of Google's size to be on the table—not just the ones preferred by DTE." *Id.*, pp. 32-33. MEICEO states that the company has taken the position that the CCAA prohibits Google from procuring the ZRC from DERs, DR, or VPPs, while claiming to be agnostic about how the ZRCs are procured by Google. MEICEO argues that Wisconsin has recently allowed such resources for a data center customer. *See*, Exhibits MEICEO-35, MEICEO-28. MEICEO contends that these types of customer-sited resources would create additional reliability and affordability benefits while allowing Google to achieve its ZRC transfer obligation. MEICEO's initial brief, p. 34. MEICEO asserts that use of these innovative resources would add new clean capacity to the company's system, whereas the use of existing MISO Zone 7 resources will not. MEICEO maintains that the Commission could mandate these benefits by requiring DTE Electric to:

- 1) work with Google to provide at least 100 of the needed 300 ZRCs from expanded participation in DTE's existing Smart Savers program including through an OEM-led [original equipment manufacturer-led] pathway and the subsidized installation of new programmable controllable thermostats ("PCTs," i.e., smart

thermostats); 2) to establish an initial virtual power plant (“VPP”) program with stakeholder input within nine months of the Commission’s final order in this case; 3) work with Google to provide enrollment and pay-for-performance incentives to enroll at least 50% of the existing behind-the-meter battery energy storage plus solar customers (approximately 4.5 MW) in the VPP program to provide peak load reduction and ZRCs; and 4) work with Google to provide Google-funded incentives (scaled to income) to install at least 2,000 new customer-owned behind-the-meter battery energy storage plus solar systems.

Id., p. 35; *see, id.*, pp. 36-38, and 3 Tr 792-807.

MEICEO also recommends that the Commission direct the company to extend the ZRCs or other DR commitments beyond 2033 in order to address the resource adequacy deficiency that comes with the expiration of the ZRCs and DR. MEICEO’s initial brief, pp. 38-40. MEICEO argues that:

the expiration of these resources, combined with Google’s load: 1) creates the “resource adequacy cliff” in 2033 driving the need for additional resources; and 2) forecloses the continuation of Google’s ZRC or DR commitments as one pathway to meet DTE’s incremental capacity need. While MEI/CEO agree that the IRP is the correct place to identify and select specific resources, the Commission should require DTE to be proactive and flexible in how it addresses that upcoming need rather than foreclosing alternatives at this point. . . . [T]he Commission should direct DTE to 1) provide a modeling run in its upcoming IRP docket evaluating whether any incremental resources are needed in 2033 above Google’s current ZRC and DR commitments; and 2) modify the CCAA (with respect to the ZRC transfer obligation) and/or DR Agreement to allow Google to extend these resources beyond 2033.

Id., p. 39.

MEICEO recommends that the Commission reject the financial adder for the transfer of the ZRCs proposed by DTE Electric. *Id.*, p. 40. MEICEO avers that this financial adder has no connection to the FCM provided for in the statute and would simply create an incentive to charge excessive rates to large load customers. *Id.*, p. 41 (citing 3 Tr 844, 810, 587, and 550). MEICEO argues that if the financial adder is approved then it should not be recorded as nonrefundable income for the reasons explained by several parties’ witnesses. MEICEO notes that DTE Electric

is not placing any incremental capital at risk and argues that this proposal simply provides shareholders with duplicative earnings. 3 Tr 811.

Turning to grid reliability, MEICEO notes that “MEI/CEO witness Shaver testified that ‘large data centers create material risks to grid reliability and resource adequacy, and that utilities, system operators, and regulators are still developing the planning tools, modeling practices, and reliability requirements needed to manage those risks effectively.’ Shaver Direct, 3 TR 756; *see also* MEICEO-30.” MEICEO’s initial brief, pp. 41-42. MEICEO posits that NERC, MISO, and the Federal Energy Regulatory Commission (FERC) are all currently considering various operational requirements for large loads. *Id.*, p. 42. MEICEO argues that these pending agency actions, along with MEICEO’s evidence:

supports the need for the Company to put into place specific operational requirements consisting of ramp rate limits, data sharing, ride-through capabilities, and stability assessments to address these risks. Shaver Direct, 3 TR 758–59. Indeed, DTE “has indicated it is aware of the importance of establishing such requirements.” Shaver Direct, 3 TR 761. Specifically, “[t]o safeguard the electric system, DTE is developing a set of operating parameters which the customer must abide by. This includes but is not limited to ramp-rate, load oscillation limitations, ride-thru requirements and harmonics.” Ex. MEICEO-28. However, the Company has not yet finalized specific operating parameters for Google’s facility, because it is waiting on the completion of certain studies. Benyard Rebuttal, 3 TR 455–56. Without the finalized parameters, it is impossible for MEI/CEO, other intervenors, and the Commission to determine whether the Company’s requirements are sufficient to protect customers from the reliability risks associated with the interconnection of Google’s 1 GW data center. Shaver Direct, 3 TR 759.

Id., p. 43. While stating that the company “appears to be taking the proper steps” to address grid reliability, MEICEO urges the Commission to direct DTE Electric to:

1) provide all completed studies and finalized operating parameters, when available, to the Commission and parties in this docket; 2) host a public, virtual workshop to provide parties in this docket an overview of the study results and parameters and to take questions; and 3) confirm that DTE can update or modify the operating parameters applicable to the facility at any time up to or after DTE begins providing electric service, if necessary to comply with requirements imposed by the Commission, NERC, FERC, MISO, or ITC.

Id., p. 44.

B. Reply Briefs and Testimony

1. DTE Electric Company

DTE Electric states that its reply brief “addresses issues not otherwise preemptively covered in the Company’s Initial Brief in the ‘Other Issues’ section below.” DTE Electric’s reply brief, p. 2. The “Other Issues” section of the reply brief includes two topics that were not extensively addressed in the company’s initial brief: (1) emergency electric procedures and priority load shedding, and (2) grid reliability and operational protections. *Id.*, pp. 145-160.

Beginning with emergency procedures and load shedding, DTE Electric states that the Staff, ABATE, and the company all agree that “during a qualifying system emergency, the Customer should be subject to firm load shedding before other customers when shedding the Customer’s load can prevent shedding other firm load and would not compromise system reliability. Staff Initial Brief, pp. 19-21; ABATE Initial Brief, pp. 9-10.” DTE Electric’s reply brief, p. 145. The company notes that the amended procedures that it has proposed in Case No. U-22059 propose this standard and apply to all customers who begin service after October 1, 2025, and have capacity of at least 500 MW, which would include Google. *See*, 3 Tr 427-429, 821-822. DTE Electric avers that it only disagrees with the Staff and ABATE about whether other requirements should be adopted in the instant case while Case No. U-22059 remains pending. The company argues that ABATE’s position is internally inconsistent because ABATE appears to argue that the proposed standard should only apply to Oracle. DTE Electric’s reply brief, p. 147. The company states that the Staff asks for alternative relief in the instant case only if the proposed amendments are not approved in the other docket. *Id.*

DTE Electric contends that the special contracts should not be modified because Case No. U-22059 was specifically established to address this topic and to amend Section C3 of the company's Rate Book. The company argues that emergency load shedding requirements should reside in the Emergency Electric Procedures and not in a customer-specific requirement adopted in this proceeding. DTE Electric asserts that ABATE's requested condition is duplicative of the procedures pending in the other docket. DTE Electric objects to ABATE's language as it does not identify which resources are considered necessary or how the additional requirements would interact with the emergency procedures that are eventually adopted in the other docket. DTE Electric concludes that:

there is no gap requiring an additional Special Contract condition. The Company agrees that the Customer should be subject to priority firm load shedding under the identified circumstances; the amendments proposed in Case No. U-22059 apply to the Customer; Staff agrees that those amendments would provide the requested protection if approved; and the PSA independently provides an earlier mechanism for adjusting the Customer's load ramp or maximum load when resource limitations arise. DTE Electric Initial Brief, pp. 48-50; (Foley, 3T 101; Willis, 3T 427-429; Matthews, 3T 821-822).

Id., pp. 149-150.

Next, DTE Electric responds to MEICEO and GLREA on the issues of grid reliability and operational protections. *Id.*, pp. 150-160. DTE Electric states that it agrees with these intervenors that:

the Facility must operate under enforceable requirements that protect system reliability and other customers. . . . The dispute concerns whether the Commission should prescribe particular technical requirements in this special contract proceeding before the Customer-specific studies and technical coordination needed to establish those requirements are complete. It should not. The PSA already requires the Customer to comply with operating parameters established for the Facility before energization, and the Company, ITC, MISO, and the Customer are completing the technical work necessary to finalize those parameters. (Benyard, 3T 454-456; Confidential Exhibit A-21).

Id., pp. 150-151.

Turning to MEICEO's proposals for a fixed 30 MW per minute operating ramp limit and ride-through requirements derived from MISO's proposed requirements, the company notes that MISO's proposals are not final and argues that MEICEO's witness does not, in his qualifications, "identify experience conducting the types of transmission-system stability, short-circuit, or electromagnetic-transient studies being performed for this Facility; operating a bulk electric or transmission system; or establishing final operating parameters for a 1,000 MW transmission-connected load." *Id.*, p. 151, n. 10. DTE Electric argues that MEICEO's witness has experience in microgrids. *See*, Exhibit MEICEO-18; 3 Tr 733. DTE Electric urges the Commission to decline to adopt operating parameters from a litigation-based proposal rather than from technically derived studies. DTE Electric's reply brief, pp. 151-152. Referencing Confidential Exhibit A-21, DTE Electric states that:

[t]he final parameters can therefore reflect the Facility's actual equipment, observed or modeled electrical behavior, interconnection configuration, transmission-system conditions, and applicable requirements. An order in this special contract proceeding that prescribes a fixed numerical limit or generic standard before that work is complete could displace a more appropriate Customer-specific requirement ultimately supported by the studies.

Id., p. 152.

DTE Electric posits that this special contract proceeding should not be used to "create a parallel large load reliability regime" as this is not "a federal transmission-planning proceeding, a generic large-load interconnection standards docket, or a technical rulemaking or docket establishing requirements for computational loads generally." *Id.* (emphasis removed). The company argues that:

NERC has issued guidance and assessments concerning emerging large loads; FERC has instituted a proceeding under Section 206 of the Federal Power Act concerning whether MISO's existing tariff adequately addresses large-load interconnection; and MISO is using its Large Load Working Group and stakeholder process to develop MISO-wide requirements addressing data and modeling,

ramping, ride-through performance, stability assessments, and related criteria. (Shaver, 3T 753-755); Midcontinent Independent System Operator, Inc., 195 FERC ¶ 61,212 (2026). MISO describes its ongoing effort as developing a clear and consistent framework for the reliability review and integration of large loads throughout its transmission system.

Id., p. 153. DTE Electric asserts that, as a matter of orderly regulation and technical coordination, the Commission should avoid adopting witness-proposed operating parameters in this proceeding, which could result in creating overlapping requirements and uncertainty. *See*, 3 Tr 454-456; Confidential Exhibit A-21. DTE Electric notes that the PSA already requires that “Customer-specific operating parameters be finalized before the Facility is energized.” DTE Electric’s reply brief, p. 154. The company states that it is completing the necessary studies with ITC (which also requires coordination with Google and MISO), and notes that MEICEO stated that the company “appears to be taking the proper steps” in its initial brief, p. 44. Finally, DTE Electric contends that a fixed 30 MW per minute ramp limit is not adequately supported on the record, noting that MEICEO’s witness acknowledged that MISO’s proposed requirements are not final and that customer-specific requirements may be necessary. *See*, 3 Tr 759-760; DTE Electric’s reply brief, p. 157.

Turning to GLREA’s proposal for separate power quality monitoring conditions, DTE Electric states that this was first posited in GLREA’s initial brief and that it is unnecessary. *Id.*, p. 158. DTE Electric argues that “GLREA identifies no specific equipment, placement, technical standard, data requirement, ownership responsibility, or evidence demonstrating that the monitoring and data provisions being developed through the Customer-specific operating framework are inadequate.” *Id.*, pp. 158-159. Referencing Confidential Exhibit A-21, DTE Electric contends that “the Company is not relying on unenforceable requirements incapable of verification; monitoring, data, mitigation, and operational response are components of the framework being

developed.” *Id.*, p. 159. The company asserts that the instant case should not be converted into a continuing technical review docket.

Returning to the topics that were preemptively addressed by DTE Electric in its initial brief, the company adds certain arguments. Regarding the standard of review, DTE Electric contends that, contrary to MEICEO’s assertions, MCL 460.6a does not require the company to prove a net affirmative benefit or to show that the special contracts are the most beneficial alternatives available. *Id.*, p. 7. DTE Electric reiterates its *Union Carbide*-based arguments regarding the Commission’s authority to revise the special contracts.

Regarding the Attorney General’s argument that the PG caps are lower than the potential termination payments, DTE Electric contends that the existence of those gaps does not support the need for an uncapped PG because the company has assumed all of the risk associated with collateral insufficiency and, moreover, because “the guaranty structure is deliberately calibrated to the Company’s declining exposure over the contract term.” *Id.*, p. 41. The company also notes that the “Staff reviewed the same confidential collateral terms the AG relies upon and did not recommend uncapped collateral or a rewriting of the guaranty structure.” *Id.*, p. 45.

Regarding MEICEO’s arguments addressing the cadence of the affordability backstop, the company states that “[t]o the extent MEICEO seeks a clarification that the Commission retains authority to invoke the Affordability Backstop during the contract term, the Company does not oppose it, because it reflects the plain language of Section 5.1.3 and the Commission’s retained jurisdiction.” *Id.*, p. 47. DTE Electric continues:

[t]he Company’s testimony that the no-cost-shift requirement is measured “over the life of the special contracts” and “not an annual retroactive reconciliation” (Foley, 3T 147; Exhibit MEICEO-38, p. 17) refers to the standard of measurement, not to a bar on interim Commission action. There is no tension between the two: Section 5.1.3 authorizes the Commission to act “at any time during the Term,” and the

standard it applies when it does is whether, in the aggregate, the costs to serve the Customer exceed the combined benefits.

Id., pp. 47-48.

DTE Electric contends that MNS prefers direct assignment but this does not mean that there is a defect in the affordability backstop. The company argues that “MNS’ objection to the treatment of distribution costs above the LEA’s \$50 million threshold is a matter for the LEA and rate cases, and in any event those costs are captured by the Affordability Backstop.” *Id.*, p. 52.

DTE Electric responds to the Attorney General, arguing that her premise that residual costs under the PSA will fall on to other customers is incorrect because the affordability backstop places that burden on Google and the company itself has accepted the risk of the insufficiency of the collateral. *Id.*, p. 54. Regarding the Attorney General’s concern about post-contract-term costs, DTE Electric states that:

[t]he Affordability Backstop is a during-term protection, and the termination payment governs the consequences of exit; neither mechanism was designed to impose an open-ended, post-expiration cost guarantee on the Company. Any question concerning the recovery of costs after the Special Contracts expire would be a matter for a future rate case, on a future record, not a condition properly imposed in this special contract proceeding.

Id. In response to the intervenors, DTE Electric also states that its aggregate costs and benefits presentation will include network upgrade revenue requirements and Google’s load related transmission expenses. *Id.*, p. 55. The company contends that this will account for both transmission investments required to serve Google as well as the effects of Google’s load on the “transmission expenses allocated to DTE Electric under the applicable MISO schedules” and, in any case, the presentations will be based on updated transmission cost information. *Id.* DTE Electric adds that “[t]he absence of a separate ITC invoice for each Customer-related facility does not mean the associated revenue requirement is excluded from the aggregate assessment; it means

the amount must be determined using the best information available and the transmission-cost structure actually applicable to DTE Electric.” *Id.*, pp. 57-58.

Regarding the Attorney General’s proposal for regulatory liability treatment, the company maintains that this should be rejected because “[t]he interaction among forecasted sales, actual sales, regulatory lag, future costs, and base-rate treatment cannot properly be determined from this record.” *Id.*, p. 60. The company adds that MEICEO’s concerns are addressed by the affordability backstop. *Id.*, pp. 63-65.

Turning to the ZRCs and in response to the intervenors’ recommendation to use the adder as an offset to rates, DTE Electric argues that:

[t]he adder is an incremental payment the Customer agreed to make in addition to the full revenue requirement of the CCAA resources and in addition to transferring 300 MW of ZRCs at no cost. Because other customers bear no cost associated with the adder, treating it as a cost offset would not “hold customers harmless” — it would transfer to other customers the benefit of a payment the Customer negotiated to make to the Company in exchange for the Company’s assumption of risk under the Special Contracts.

Id., p. 78. DTE Electric also rejects GLREA’s idea that the adder must be “mathematically calculated to a single identified risk before it may be recorded as the Company proposes.” *Id.*, p. 79. The company also contends that the way that it has structured this entire proposal rebuts the Staff’s argument that the risk of underperformance is a risk that falls on other customers. *Id.*

Regarding the intervenors’ arguments that the ZRC transfer must be extended, DTE Electric states that:

[n]either the modeled 677 MW “perfect capacity” need nor the 727 MW proxy used to assign a cost to that need supports compelling the Customer to extend its ZRC transfer beyond the negotiated term. The customer benefit analysis already includes a modeled cost for the reliability need; the IRP will determine the actual resource portfolio; future rate cases will determine the appropriate allocation and recovery of actual resource costs; and the Affordability Backstop will address any Commission-determined aggregate shortfall.

Id., p. 88.

Regarding MNS's discussion of the forecasted REC surplus, DTE Electric contends that:

MNS' argument conflates the source of the Company's projected REC balance with the incremental effect of the Customer's VGP enrollment on the Company's RPS requirement. The forecast necessarily reflects the Company's broader load and resource assumptions, including other large-load customers and associated renewable builds. But those background assumptions do not eliminate the effect of subtracting the Customer's enrolled VGP sales from the RPS calculation. The Company maintained the assumptions from Case No. U-21662 and other then-current planning information to permit an apples-to-apples comparison of the incremental effects associated with this Customer. (Bilyeu, 3T 302-304). Within that common planning baseline, the Customer's VGP enrollment reduces the RPS requirement, and the resulting compliance analysis showed that the Company could reduce compliance-side renewable additions by 200 MW in 2033 and 50 MW in 2034 while retaining a positive REC balance. Exhibit MEC-22; DTE Electric Initial Brief, pp. 73-75.

Id., p. 94. DTE Electric reiterates its position on the Staff's recommendation for mandatory utility retirement of RECs. *Id.*, p. 97. The company argues that any CEP implementation issues belong in a CEP proceeding. DTE Electric asserts that "Staff's double-counting theory should not be extended to treat every subsequent use or transfer of a REC as a second use of the same attribute. The relevant inquiry is whether the same renewable attribute is claimed more than once for the same compliance or environmental purpose." *Id.*, p. 99. The company adds that whether Google characterizes its energy as 100% renewable or not does not affect the decision on the special contracts in this proceeding. *Id.*, pp. 102-103.

2. Association of Businesses Advocating Tariff Equity

ABATE notes in its reply that the burden of proof does not shift to other parties to disprove the company's positions, and the Commission's authority to issue a conditional approval is well established, citing Mich Admin Code, R 460.2031(2) (Rule 31(2)) which provides that "If the commission specifies any modifications to the proposed special contract with its approval order, then within 30 days, the utility shall file a copy of the executed special contract, modified as

required by the commission's order.'" ABATE's reply brief, p. 2 (quoting Rule 31(2)). ABATE points out that the December 18 order was a conditional approval. *See*, December 18 order, p. 35.

ABATE reiterates its position on the net benefit analysis which, ABATE argues, contains too many unknowns. ABATE contends that its present value analysis does not prove that there will be a net benefit of \$1 billion to other customers, and adds that the company's own analysis shows four years in which the costs of serving Google exceed the benefits. ABATE contends that its 0% growth assumption is just as reasonable as DTE Electric's 3% growth assumption, which are both just two possible future scenarios. ABATE's reply brief, p. 5. ABATE argues that the proxy resource will only be 74% paid off by the end of the contract term on a net present value basis and that "[o]n the Company's own figures, then, several hundred million dollars of the proxy resource's revenue requirement remains unrecovered at the expiration of the PSA and unmatched by any offsetting market value. Again, these costs would fall to DTE's other customers, not to Google." *Id.*, p. 6. ABATE adds that if "Google ceases to be a DTE customer when the PSA expires, other customers will be left to pay the undepreciated remaining net book value." *Id.*

ABATE contends that the affordability back stop must be subject to modification to account for any additional costs. ABATE argues that the termination payment as proposed exposes customers to risk by not extending beyond the termination date of the PSA and by not being modifiable if costs are found to exceed the benefits of the termination payment. *Id.*, p. 7.

Regarding DTE Electric's contention that the termination payment is subject to revision by virtue of changes to rates or tariffs, ABATE responds that it is not reasonable to rely simply on adjusting underlying rates, but that instead the payment itself should be subject to revision at the time of termination, which would be consistent with the December 18 order. *Id.*

Regarding the sufficiency of the collateral, ABATE asserts that:

[w]hile the Company has asserted its commitment to “not seek to recover amounts owed by Google under the PSA and CCAA, including any costs the Commission may have determined exceeded the benefits of serving the Customer,” this commitment must be formalized as a condition of PSA and CCAA approval. (DTE Initial Br at 34; ABATE Initial Br at 8-9.) The Company’s non-binding commitment is appreciated, but it is simply not enough considering the costs at issue. The Company’s reservation at the Application stage that “if at a later date the Commission determines such costs to be reasonable and prudent and appropriately attributable to utility service provided to customers generally, the Company may seek recovery at that time” has never been withdrawn. (Exhibit AB-1 at 26.)

Id., p. 8. Thus, ABATE recommends conditioning approval on ensuring that any unrecovered costs are not borne by ratepayers, consistent with the December 18 order.

Turning to the issue of resource adequacy, ABATE notes that the company has the discretion to adjust Google’s load ramp when needed, but it is not a requirement. ABATE recommends that the Commission:

direct that DTE shall exercise its Section 2 right to limit the Customer’s load ramp or maximum load whenever, on a forward-looking basis, DTE cannot satisfy its planning reserve margin requirement in MISO Zone 7 without doing so. Thus, the Company’s discretion should be an obligation triggered by the very circumstance that places other customers at risk, without displacing the Company’s judgment as to how any limitation is implemented. The Company’s reliance on its amended Emergency Electric Procedures cannot fill this gap.

Id., p. 9. ABATE notes that Google will be subject to the amended Emergency Electric Procedures that are eventually adopted in Case No. U-22059, but notes that they are still pending. ABATE further argues that the ZRC transfer and the Rider 12 DRA should be extended beyond the 2033 end date in order to avoid an unreasonable capacity shortfall. *Id.*, p. 10.

ABATE reiterates its proposal that Google be placed in a separate rate class for large data center loads and argues that this issue is appropriate to address in the instant case because it is a tariff issue and not a cost of service or allocation issue. ABATE notes that the class “in which a special contract customer is placed is a term of the very contract” which is under review. *Id.*, p.

11. ABATE again argues that serving Google and Oracle under Rate D11 will overwhelm the load characteristics of the traditional C&I customers in that rate class. *See*, 3 Tr 548-549. ABATE states that under the PSA, if Case No. U-22046 (the rate case) results in the creation of a large load rate class, then migration of Google will be up to Google. ABATE argues that “[p]lacing the Customer in its own rate class imposes no rate consequence on the Customer, on the Company, or on any other class; its entire effect is to foreclose an intra-class subsidy that would otherwise arise if data-center-specific costs are later allocated to Rate D11” and adds that a condition “that costs nothing and guards against a risk the Company is itself studying should be imposed.” ABATE’s reply brief, p. 12.

ABATE repeats its argument that DTE Electric should not earn a financial incentive for the ZRCs as it is already permitted to earn a reasonable return on its investments and “there is no reason why it should also extract a monopoly rent for a customer supplying its own capacity and energy.” *Id.* ABATE contends that this proposal should be withdrawn by the company, or at a minimum the Commission should indicate that its approval does not set a precedent, to which the company agreed. *Id.*, p. 13 (citing DTE Electric’s initial brief, pp. 72-73).

3. Great Lakes Renewable Energy Association

GLREA continues to recommend quarterly reporting during the ramp period. GLREA’s reply brief, p. 1.

GLREA supports the Staff’s recommendation to direct the company to provide an analysis of resource requirements both with and without the large load customers in aggregate in the next IRP filing and in the first CEP filing. *See*, 3 Tr 838. GLREA states that “these two customers are so large that their grid impacts will interact with each other” and adds that this analysis will help to determine whether they should be treated as a separate rate or customer class. GLREA’s reply

brief, p. 2. GLREA reiterates its position on the ZRC fee, noting that the accounting treatment is not part of the special contracts. GLREA argues that DTE Electric has not cited any legal basis for the proposal, whereas the Staff pointed out that such an approval would provide an incentive to seek out customers who are willing to pay more than what is necessary to serve their load. *Id.*, p. 3.

Regarding RPS compliance, GLREA states that it has never questioned DTE Electric's commitment to compliance but rather its ability to comply without needing additional time. GLREA notes that in the period of 2030 through 2032 the company's three renewables plans (from Case Nos. U-21662, U-21990, and U-22058) will require it to acquire more than 1,800 MW of renewable capacity in each of those years, "yet the Company has previously insisted that it would not be 'feasible to implement' more than 1,000 MW in any given year." *Id.*, p. 6. GLREA states that it "now believes that the MNS-MEC list of specific directives provides a superior remedy to the risk of noncompliance with the RPS, compared to GLREA's prior recommendation of a warning. GLREA endorses the MNS-MEC recommendation." *Id.*, p. 7.

GLREA reiterates its support for the notion that the Commission should consider the adoption of a scarcity fee in pending and future rate cases, and argues that a review of both direct and indirect costs caused by data centers "is relevant for purposes of cost causation determinations and to establish just and reasonable rates." *Id.*, p. 8.

4. The Commission Staff

The Staff reiterates its arguments regarding the potential for double counting of RECs and its recommendation that RECs "generated by the CCAA renewable resources be retired in the year that the Company is subtracting those VGP sales from its renewable portfolio requirement calculation. (3 TR 842, 845)." Staff's reply brief, pp. 1-2. The Staff notes that the only

alternative solution suggested by the company is recordkeeping, but argues that this is not sufficient because:

the Company has acknowledged that the RECs delivered to the Customer are not necessarily going to be retired by the Customer or on the Customer's behalf. (3 TR 841.) Not only does this conflict with the Commission's July 12, 2017, Order in Case No. U-18349, but Staff also contends that the Company's proposed solution does nothing to alleviate Staff's concern because RECs can be double counted in ways beyond just being used by the Company.

Staff's reply brief, p. 2. The Staff rejects DTE Electric's assertion that even a transferred REC remains renewable, arguing that:

[t]his results in an absurd outcome because it would allow for energy to be counted as renewable without the certified renewable attribute that makes it so. The Company's argument boils down to allowing counting a REC as covering load that gets subtracted from its RPS without ensuring that either the Company or Customer retires the REC at the time the energy is accounted for, thereby allowing it to be used, sold, or counted again in the future. This is effectively double counting. Furthermore, the Company's proposal to prevent this through proper accounting to ensure that DTE does not use the REC in the future does not alleviate the potential for the REC to be sold to or accounted for by some other entity. Any scenario where a REC and the associated renewable attribute it represents is used more than once is a form of double counting. Staff contends that transferring RECs from the Company to the Customer does make the underlying energy non-renewable because the renewable attribute has been removed. However, if the Company were to conduct the transfer and then ensure the Customer retired the RECs immediately, Staff is satisfied that double counting would be avoided while also allowing the Customer to claim being served by some percentage of renewable or clean energy.

Id., pp. 2-3. Thus, the Staff argues that the company must be directed to ensure that the RECs are retired in the year that the VGP load is removed from its RPS compliance calculation. The Staff contends that Act 235 removes the VGP RECs because they are assumed to be renewable.

Regarding the CEP, the Staff notes that the Commission found that one REC could be retired to meet 1 MWh of clean energy in the December 18, 2025 order in Case No. U-21867, and asks the Commission "to confirm its requirement to ensure REP and CEP alignment by requiring that a REC be retired in the year it is used to meet CEP compliance." *Id.*, p. 5.

The Staff reiterates its position on the ZRC financial adder and notes that all intervening parties opposed it. The Staff again notes that it is not mandated by statute and argues that recording it as nonrefundable income simply provides a benefit to shareholders. *Id.*, p. 6. The Staff contends that it should be recorded as revenue used to offset other revenue deficiencies as the risk is “ultimately being borne by DTE’s other customers.” *Id.*, p. 7.

Regarding the Staff’s recommendation that the selection of resources be prioritized such that resources to serve all customers via the IRP are selected first, the Staff responds to DTE Electric’s observation that such a condition would modify the VGP settlement agreements. The Staff argues that:

any such modification is appropriately determined in this case as it directly impacts the procurement of VGP resources for this Customer that will take place as part of the CCAA. It will not impact DTE’s previous large load filing in Case No. U-21990 because that Special Contract was not for the procurement of VGP resources. Staff has a long-standing concern about DTE’s procurement practices related to VGP resources and cost parity between resources procured for VGP and those procured for all customers. DTE also routinely issues Requests for Proposals (RFP) for the procurement of resources. Therefore, the Company should be able to show project bids transparently, allowing comparability for Staff audits. This ensures projects prioritize all customers rather than potentially allowing only Large Load resources to be picked as the most reasonable and prudent solution under an RFP.

Id., pp. 8-9.

The Staff states that the company is aligned with the Staff on the issue of the need to re-examine the collateral and the termination payment within three years of the load ramp completion date, citing DTE Electric’s initial brief, p. 30. The Staff argues that:

[b]ecause the termination payment will change over time as base rates change and the collateral requirement may change depending on the Customer’s parent company’s credit rating it is important for the Commission to understand how engaging the affordability backstop may affect the Company, the specific Customer, and other customers. For this reason, the Commission should direct the Company to provide updated data for the collateral and termination payment

amounts within three years of the Load Ramp Completion Date in either a general rate case or another filing at the Company's [convenience].

Staff's reply brief, pp. 9-10. The Staff states that it is also aligned with the company on the issue of using IRPs to inform future cost allocation decisions, stating that:

the intention of Staff's original recommendation is better described in the Company's initial brief as "the IRP will inform the record by identifying the changes in the Company's resource mix attributable to serving the Customer's load, and the subsequent general rate case will use that information... to make any cost-allocation and cost-recovery determinations..." (DTE Initial Brief, p 92.)

Staff's reply brief, p. 10.

5. The Attorney General

Regarding DTE Electric's burden of proof arguments, the Attorney General contends that "the Commission must deny approval of these contracts under DTE's asserted legal framework. However, in doing so, the Commission should provide details for what would need to be included in revised contracts, such that they might be approved." Attorney General's reply brief, p. 8. She also argues that the December 18 order does not provide precedent for the instant proceeding because that was not a contested case. *Id.*

Regarding the MBD, again, the Attorney General argues that consistency with the December 18 order is irrelevant because this is the first contested data center case and "the world and the details surrounding these data centers is evolving in real time, so what the Commission approves in one case or for one utility may not be appropriate in another." *Id.*, p. 10. She also refutes the Staff's emphasis on distinguishing the MBD from the load factor and argues that she uses the 90% projected load factor as a proxy "for a discount on Google's added capacity costs" but that, ideally, Google's demand factor would be 100%. *Id.* The Attorney General describes her 90% proposal as a compromise and argues that "the fact that DTE uses a 90% load factor in its modelling for this case makes a 90% MBD term a better candidate for a compromise below 100%

than DTE's proposal of an 80% MBD term." *Id.*, p. 11. She adds that, in her view, "if Google's demand matches its load factor, then there is no incremental cost to Google of having a 90% MBD. However, if Google underperforms, other customers are not backstopping Google for 20% of the capacity but only half of that amount, or 10%." *Id.* The Attorney General asserts that the affordability backstop should not be relied upon to address this issue because it is based on too many assumptions about what will happen. The Attorney General argues that the special contracts should be rejected based on the company's failure to adopt a 90% MBD in its calculation of the MMC in the PSA. *Id.*, p. 13.

The Attorney General reiterates her position that the termination payment should be based on 100% of total demand for the full 20-year PSA term. She asserts that DTE Electric's discussion in its initial brief, pp. 26-27, on this issue is "incomprehensible and fails to answer the question of how short DTE's arrangement with Google comes from covering the entire term of the contract." *Id.*, p. 14. She now argues that, based on the company's explanation, the maximum termination fee is for only 15 years of the 20-year term rather than the 17 years she originally posited, which she now calls an error in the company's favor. *Id.*, p. 15. The Attorney General contends that:

Section 7.3(1) of the contract specifies that if the agreement is terminated after the Effective Date but prior to the 15th anniversary of the Load Ramp Completion Date, Google will pay DTE MMCs for each month between that early termination and the 15th anniversary of the Load Ramp Completion Date. As the maximum time before conclusion of the Load Ramp is two and a half years (if the full 18 month grace period is applied), that means if Google terminates the agreement the day after the Effective Date, the maximum termination payment will be 17 years. Thus, DTE's first contention is incomprehensible and should be rejected.

Id., p. 16 (internal citations omitted). The Attorney General again argues that the December 18 order does not provide precedent for the instant case as none of the parties to the instant proceeding had the opportunity to test the evidence in that prior case. The Attorney General urges

the Commission to reject the special contracts based on the failure to use a 100% MBD in calculating the MMC. *Id.*, p. 18.

Turning to the credit and collateral requirements, the Attorney General reiterates her position that any limit on either the PSA or CCAA collateral should be removed. Arguing that the company failed to rebut this position, the Attorney General adds that DTE Electric:

ignores the very real concerns of what happens to DTE itself, in an instance where it is forced to absorb tremendous amounts of a shortfall or stranded costs related to an early exit or insolvency of the customer. . . . [T]he problems and economic impacts reverberating from such a situation would still eventually be borne by ratepayers.

Id., p. 19. The Attorney General notes that all of these credit and collateral issues are novel. Regarding the strength of the PG, she contends that the company has failed to address what happens if Google defaults or goes bankrupt before there has been a change in the credit rating, and what happens if there is an industry-wide overcapacity scenario. *Id.*, p. 20.

Regarding the affordability backstop, the Attorney General reiterates her recommendations with respect to tracking and reporting and responds to DTE Electric's indication that it may not be able to provide project-by-project billing information by arguing that this "is simply a hedge that they might not be able to track with precision and an admission that the Company has not done the necessary research and legwork to accurately calculate these costs." *Id.*, p. 22. She emphasizes the tenuous nature of any claimed benefits and:

reiterates her recommendation that the Commission direct the Company to implement comprehensive cost accounting tracking procedures to allow complete and accurate reporting of all transmission-related incremental costs for each new data center for presentation of the aggregate costs and benefits that are impacting other customers. Such tracking procedures should include accounting for transmission upgrade costs associated with generating and storage projects developed to serve the customer and/or included within the scope of the CCAA, along with other incremental MISO transmission-related oversight and system management costs pertaining to the new data centers.

Id., p. 23. The Attorney General asserts that DTE Electric's opposition to the proposal for a regulatory liability account to capture the affordability benefit is simply an attempt to avoid transparency, and she argues that if the company does not file a rate case then the company will retain "any financial benefits from additional revenues billed to the data center customers." *Id.*, p.

24. The Attorney General:

reiterates her recommendation that the Commission order DTE to establish a regulatory liability account to capture the annual financial benefits from the Google data center, and any other data centers, for inclusion in future rate cases as a reduction to future base rate increases or as a direct passthrough of the financial benefits to customers through a separate credit refund. A benefit/cost reconciliation should be completed annually based on actual costs, including costs and revenues under the CCAA.

Id., pp. 25-26.

In response to the Staff's criticisms of her 80% demand cost argument and her 90% MBD proposal, the Attorney General states that the Staff's analysis is flawed because it does not account for transmission upgrade costs that were omitted from the supporting evidence and the Staff did not consider the full scope of Google's added costs. *Id.*, pp. 27-29.

6. The Michigan Environmental Council, Natural Resources Defense Council, and Sierra Club

MNS contends that any approval of the special contracts should be conditioned on requiring Google to move to a different rate schedule if one is eventually approved by the Commission in Case No. U-22061 (DTE Electric's large load tariff case) or elsewhere. MNS's reply brief, p. 7. MNS argues that the terms of the special contracts (that differ from Rate D11) should not factor into the Commission's decision on this issue. Rather, "approval of the Special Contracts should be conditioned on Google switching to a different rate schedule approved by the Commission if one is approved in subsequent proceedings." *Id.*, p. 8. MNS states that this is the process that the Commission required in the November 6 order, p. 116. *Id.*

MNS reiterates its arguments addressing multiple faulty assumptions at work in the net benefit calculation. *Id.*, pp. 9-11. MNS adds that the Commission should also disregard any purported benefits claimed for the proxy resource, since it is a proxy being used purely as a “placeholder to calculate monetary costs for the benefit analysis.” *Id.*, p. 11.

MNS contends that the Commission has the authority to condition its approval of special contracts on compliance with its directives (as it did in the December 18 order), and that the Commission should require DTE Electric to deploy the full 450 MW of storage and 1,600 MW of renewable energy projects as a condition of approval. *Id.*, p. 12. Regarding the 100% renewable energy claim, MNS states that:

DTE clarified in response to a discovery request by MEI-CEO that Google will be “purchasing 100% of its energy needs through the PSA and outside of the VGP Special Contract,” so the renewable energy from the VGP program will be in addition to 60% of the 100% of Google’s load served through the PSA. Still, MNS maintains that the Commission should not endorse Google’s 100% renewable energy claim, which remains inaccurate to the extent that it relies on annual rather than hourly matching, ignores the six years between when Google begins operating and when DTE is required to meet the 60% renewable energy standard (RES), and neglects to consider DTE’s use of banked and purchased RECs to meet the RES.

Id., pp. 13-14 (internal citation omitted). Thus, MNS urges the Commission to refrain from endorsing either the net benefit calculation or the 100% renewable energy claim.

MNS asserts that DTE Electric’s initial brief (and evidence) is silent on the issue of how the company will calculate the revenue requirement associated with renewable energy projects deployed to meet the RPS obligation that are not covered by the CCAA. *Id.*, p. 15 (citing DTE Electric’s initial brief, p. 36 and 3 Tr 349). MNS argues that:

DTE should, as it has agreed to do for generation costs, provide in its next IRP and REP proceedings a comparison of renewable energy resources necessary to meet RPS obligations without Google’s non-VGP load and the resources needed with Google’s non-VGP load. The revenue requirement for RPS compliance caused by the difference in needed resources should be attributed to Google in the affordability backstop.

MNS’s reply brief, p. 16 (internal citations omitted). MNS supports the Staff’s recommendation with respect to the retirement of RECs in the year that the enrolled load is being excluded from retail sales. Finally, MNS reiterates that the Commission should adopt the safeguards proposed by MNS “to ensure that DTE can meet the large amounts of renewable builds required by the Google and Oracle data centers.” *Id.*, p. 17 (citing 3 Tr 642-643, 652-653).

7. Michigan Energy Innovation Business Council, Institute for Energy Innovation, Ecology Center, Environmental Law & Policy Center, Union of Concerned Scientists, and Vote Solar

MEICEO argues that the Commission has broad authority to impose conditions on the approval of special contracts to protect the public interest, and notes that the Commission has done so in several cases and that:

[t]he Michigan Court of Appeals has upheld the Commission’s authority to “impos[e] an unsolicited condition upon its approval” of a special contract. *Consumers Power Co v Mich Pub Service Comm*, 226 Mich App 12, 22; 572 NW2d 222 (1997). The Commission’s authority to reject a special contract for specific reasons or to impose conditions on its approval does not run afoul of *Union Carbide*, which held that the Commission’s general ratemaking authority “does not carry with it” the power to “exercise general management powers.” *Union Carbide Corp v Pub Service Comm*, 431 Mich 135, 148, 151; 428 NW2d 322 (1988).

MEICEO’s reply brief, p. 2. MEICEO adds that:

the CCAA and PSA both explicitly contemplate that the Commisision [sic] may do just that by setting forth DTE and Google’s rights and obligations in the event that the Commission “grants conditional approval, or attempts to modify any term” of the agreements. Ex. A-18 [the CCAA] at 3; Ex. A-16 [the PSA] at 7–8. Specifically, the parties will meet and confer to “negotiate in good faith any amendments” necessary to implement the Commission’s conditions. *Id.*

Id. Thus, MEICEO asserts that the Commission is not attempting to rewrite the special contracts.

MEICEO reiterates its criticisms of the net benefit analysis and argues that DTE Electric has not demonstrated that other customers will be held harmless. MEICEO asks the Commission to reject the notion that the cost impact on other customers can be estimated and verified at the

beginning of the 20-year commitment. MEICEO argues that the affordability benefit consists of a shift of fixed production and transmission costs “from other classes to Google through the coincident-peak allocator.” *Id.*, p. 4 (citing 3 Tr 671-672). Thus, MEICEO reiterates that “[w]hether other customers pay costs caused by Google’s load depends entirely on how the Commission allocates costs in future rate and PSCR proceedings—not on this record.” MEICEO’s reply brief, p. 4. MEICEO also notes that the PSA’s affordability backstop language makes clear that the backstop can be triggered at any time that the Commission makes a determination that the costs of serving Google’s load exceed the benefits. *Id.*, p. 5. Thus, MEICEO urges the Commission to adopt its proposals regarding additional modeling and ongoing reporting requirements and the cadence of the evaluation of the affordability benefit.

MEICEO reiterates its position on DTE Electric’s proposal to own 100% of the renewable energy resources under the CCAA, arguing that the evidence shows that the CRO would be composed of “‘relatively smaller projects with public institutions (e.g. municipalities and higher education institutions’—not a 1.6 GW portfolio for a corporate customer. Sherman Direct, 3 TR 776.” *Id.*, p. 6. MEICEO contends that the company failed to rebut its evidence showing that third-party projects can be cheaper than company owned, and objects to DTE Electric being the market participant for PPAs. MEICEO again argues that this arrangement diminishes competition and will create “separate procurement tracks, because the Google procurement would be subject to a different ownership split than the Company’s VGP and IRP procurements.” *Id.*, p. 9.

MEICEO also reiterates its position regarding the opportunity for the use of DERs and other innovative procurement options. MEICEO argues that these options do not require a rewrite of the special contracts and would not disrupt the no-cost nature of the ZRC transfer. *Id.*, p. 11. MEICEO posits that DTE Electric is already investing in similar advancements and “[t]o the

extent that there are investments the Company is not already making to enable MEI/CEO's proposals, MEI/CEO reiterates that Google would cover the rest." *Id.*

MEICEO argues in favor of the extension of the Rider 12 DRA and the ZRC transfer beyond 2033 to avoid the resource adequacy shortfall that would have to be covered by all customers. *Id.*, pp. 12-13.

MEICEO urges the Commission to reject the financial adder for the ZRC transfer or at least treat it as a cost offset, again contending that it simply adds additional revenue and that the company does not have a right to negotiate unreasonable contract terms. *Id.*, p. 13. Finally, MEICEO also urges the Commission to reject the notion that Google is paying the renewable energy equivalent of 140% of its data center load. *Id.*, p. 14.

IV. DISCUSSION

A. Primary Supply Agreement

DTE Electric is correct in asserting that the Commission may approve or decline to approve the special contracts in this proceeding. The Commission may also grant a conditional approval pursuant to Mich Admin Code, R 460.2031 (Rule 31), which provides as follows:

- (1) When a utility enters into a special contract to provide service in a manner or at a rate not specifically covered by its filed rate schedules or rules and regulations, the utility shall file an application for approval of the special contract with the commission.
- (2) If the commission specifies any modifications to the proposed special contract with its approval order, then within 30 days, the utility shall file a copy of the executed special contract, modified as required by the commission's order.

A conditional approval, such as in the December 18 order, specifies the circumstances under which the special contract(s) may be approved. Sections 4.4 and 4.5 of the PSA indicate that DTE

Electric and Google have predetermined how to address this contingency.⁹ DTE Electric is free to reject the Commission's conditional approval.

The approval of special contracts "requires an evaluation of the public interest." March 23, 1995 order in Case No. U-10646, p. 18, n. 8. In Case No. U-21990, DTE Electric sought *ex parte* treatment of the Oracle special contracts and the Commission granted *ex parte* approval, but stated that:

the Commission will consider any subsequent applications for approval of special contracts on a case-by-case basis. The Commission encourages DTE Electric to take steps to promote transparency and meaningful review as part of any such applications, and the Commission maintains its broad discretion under Rule 415(1) [Mich Admin Code, R 792.10415(1)] to convert any such applications to contested case proceedings as appropriate.

December 18 order, p. 39. Subsequently, DTE Electric filed the Google case as a contested case. While the Commission is thus not required to decide whether this case merits *ex parte* treatment, the Commission finds that the examination of the public interest includes an examination of the impact of the proposed special contracts on other customers. Pertinent to this examination is the case precedent discussed by the Commission in the December 18 order. *See*, December 18 order, pp. 27-32.

In *Attorney General v Pub Serv Comm*, 227 Mich App 148, 155; 575 NW2d 302 (1997); *appeal den*, 459 Mich 910; 589 NW2d 282 (1998) (*Attorney General*), the Michigan Court of Appeals upheld the Commission's decision to approve a special contract on an *ex parte* basis because the special contract did not increase any customer's rates or costs of service. The court

⁹ Section 4.4.2 of the PSA, for example, provides that "[i]f the Commission grants conditional approval" then DTE Electric and Google may meet and confer to "negotiate in good-faith any amendments necessary to such agreement to implement the conditions" while preserving the benefits and bargains contained in the PSA and CCAA. Exhibit A-16, p. 6 of 49; *see also*, Section 2.4.1 of the CCAA, Exhibit A-18, p. 3 of 55.

further noted that, if the utility ever sought a future rate increase as a result of any shortfall in revenue received from the special contract customer, then the utility would have to meet the stringent evidentiary standards applied by the Commission in any rate proceeding. 227 Mich App at 151. The Attorney General had argued that the only way that the Commission could grant *ex parte* treatment would be to find that all costs under the special contract would be borne by the utility and its shareholders and not by other customers. The court rejected this argument based on the fact that any future cost recovery would necessarily be the subject of a contested proceeding before the Commission. *Id.* at 154-155.

In the December 18 order, the Commission found that:

[a]pplying the case precedent and these legal principles, the Commission finds that the 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. . . . And while the Commission finds that the standard for *ex parte* treatment is met on that basis alone, it also notes that, in this case, the standard argued by the Attorney General in *Attorney General* is also met. Although the argument was ultimately rejected by the Court of Appeals, the then-Attorney General argued “the only way the PSC could approve the contract without public notice and an opportunity for hearing would be if the PSC ruled that all discounts and costs resulting from the [special] contract must always be borne by Consumers and its shareholders only, and never by any of Consumers’ other customers.” 227 Mich App at 152. 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. As such, approval of the special contracts in this case not only meets the findings of the Court of Appeals in *Attorney General*, but also meets the higher standard proposed by the then-Attorney General (though not adopted by the Court of Appeals) in that case.

December 18 order, pp. 31-32. The Commission has applied the same test, and thus the same condition, in the instant case.

The Commission finds that DTE Electric has demonstrated that approval of the special contracts will not increase rates, rate schedules, or the cost of service to other customers. The

terms and conditions of the PSA and CCAA reflect distinct protections for the utility with respect to stranded costs, mitigate cost subsidization for existing and future customers, and provide an opportunity for a benefit to customers in the form of electric rates that are lower than they otherwise would have been due to the increased share of fixed costs that will be borne by Google, with the conditions described below. The Commission notes that in this contested proceeding the Staff and the intervenors were able to test the validity of DTE Electric's claims regarding costs and benefits. The Commission finds that the public interest is served by approval of the special contracts as a result of the contribution to fixed costs that would otherwise be recovered from other customers through both base rates and PSCR surcharges, creating the affordability benefit discussed in detail below; as well as through the construction of 1,600 MW of renewable energy projects, 480 MW of energy storage projects, and the transfer of 300 MW of ZRCs, all of which add additional benefits to the broader electrical grid. The Commission finds that the terms of the PSA that enhance the conditions of Rate D11, including the long-term 20-year commitment, the MBD, the termination payment, the credit and collateral requirements, and the affordability backstop, substantially mitigate any risk associated with potential cost subsidization and include well-defined protections for the utility and its other customers with respect to stranded costs. The Commission makes clear that conditional approval of the special contracts does not approve or require future approval of subsidization by existing customers, recovery of stranded costs from existing customers, or any particular cost allocation or rate design.

The Commission's approval of the special contracts is accompanied by certain conditions. The PSA provides that the facility will begin taking service in December 2027 and maximum load will be achieved by December 2028, and that the company will provide service to Google under Rate D11 for a period of 20 years; and the PSA describes the terms and conditions of service that

are not included in Rate D11. Application, p. 2. The parties contested a number of issues related to the PSA which are addressed below.

1. The Minimum Billing Demand

The Commission finds, consistent with the November 6 and December 18 orders, that DTE Electric's proposed 80% MBD is reasonable. *See*, November 6 order, p. 108; December 18 order, p. 33. As the Staff noted, in a scenario where Google completes its load ramp but never pays more than the minimum bill:

[t]his scenario shows that the minimum bill will cover non-production costs to serve the Customer. Line 32 of Staff Exhibit S-3.3 shows how much the minimum bill will cover those costs in percentage. For example, in 2035 the minimum bill will be 116.64% of non-production costs, which is the lowest value for minimum bill coverage over the term. Because the termination payment is made up of future minimum bill revenue one can conclude that the termination payment also will cover non-production costs over the contract term. An easy way to test that the termination payment will pay for nonproduction costs is to compare the total non-production costs of \$2.476B [billion] to the termination payment beginning with the full ramp period in 2028, which is also \$2.476B.

3 Tr 875 (citing Exhibit S-3.0, lines 27 and 34); *see*, 3 Tr 873-875. Thus, the Staff finds that, applying the 80% MBD, the lowest annual coverage of the non-production costs during the contract term still exceeds 100% (by 16.64%) and the termination payment will also cover non-production costs over the term of the contract. The Attorney General did not rebut this evidence, but instead argued that an MBD of 90% or more is appropriate because that percentage was used as the load factor in the company's determination of the base sales benefit. However, as the Staff pointed out, the load assumed by DTE Electric for modeling purposes and the MBD are not connected. Staff's initial brief, pp. 12-13. The MBD is a proposed contractual floor that is unrelated to the assumptions used for modeling purposes.

Under Rate D11, the MBD is either 50% of contract capacity or 65% of the highest monthly peak demand. DTE Electric's Rate Book, tariff sheets D-48.02, D-48.03; *see*, 3 Tr 88-89, 98-99.

ABATE noted that DTE Electric's total current full service customer load on Rate D11 has a load factor of 73.4% spread over 2,079 customers. 3 Tr 527-528. The Commission finds that the Attorney General failed to show that an 80% MBD is not sufficiently protective of other customers or that 90% is required in order to demonstrate that protection. Without some tie to the evidence other than the company's use of a particular load factor in the net benefit analysis, the 90% recommendation appears to be arbitrary. While it is consistent with earlier decisions, the Commission does not find that an 80% MBD is reasonable based simply on precedent, but instead because DTE Electric showed, and the Staff confirmed, that an 80% MBD will provide sufficient customer protection from stranded costs that could arise if an adequate revenue floor is not set for Google. 3 Tr 97-99, 873-876; Exhibits A-19, S-3.0, S-3.3.

2. The Termination Payments and Affordability Backstop

Similarly, the Commission is not persuaded that the PSA termination payment should be based on 100% of total demand for the full 20 years as argued by the Attorney General. 3 Tr 468. In her reply brief, she also asserts that the PSA termination payment covers only 15 years of the contract. The PSA termination payment is based on the MMC, which is based on the MBD. 3 Tr 102. The CCAA termination payment (which is triggered only by Google's default) is based on 100% of the remaining revenue requirement associated with the life of the assets. 3 Tr 124. This discussion will address both termination payments; however, most of the dispute focused on the PSA.

Again, the Staff concluded that the PSA termination payment will cover non-production costs over the full 20-year term of the PSA based on the application of assumptions that the Commission finds reasonable. 3 Tr 873-875. The termination payment will recover at least 15 years of MMCs after the maximum load is achieved, and, if termination occurs for any reason prior to the fifteenth

anniversary of the load ramp completion date, the termination payment will recover the MMC multiplied by the greater of (1) the number of months between that termination date and the fifteenth anniversary, or (2) 24 months. 3 Tr 102-103, 136; Exhibits A-16 and A-22. If the PSA is terminated after that anniversary, the termination payment will recover the lesser of 24 months of MMCs or the number of remaining months in the contract. Applying the rates approved in DTE Electric's most recent rate case, this results in a termination payment as of the load ramp completion date of \$2.48 billion. 3 Tr 102. Thus, the proposed mechanism adjusts to the obligations of Rate D11 as they change over time, and ensures that Google will contribute to at least 15 years' of cost recovery for system costs if it chooses to terminate the PSA for any reason. The Commission finds that the proposed termination payment adequately protects other customers from cost shifting that could occur as a result of the early termination of the PSA by ensuring a sufficient long-term commitment from Google. 3 Tr 102-103, 870-875; Exhibit S-3.0. Further, the Commission finds that the proposed termination payment aligns with the exit fee included in Consumers' large load tariff and is greater than the termination fee approved in the December 18 order. *See*, November 6 order, pp. 109-110; December 18 order, p. 33. Section 7.3(3) of the PSA requires Google to pay a termination payment:

equal to the lesser of 24 months of MMCs or the number of months remaining in the contract term if the PSA is terminated after the 13th anniversary of the Load Ramp Completion Date. The Company notes that the as-filed PSA contained a drafting error in section 7.3(3) which referenced "Commencement Date" rather than the "Load Ramp Completion Date", however, that error has been corrected. See Exhibit A-22.

3 Tr 136. The load ramp completion date is December 2028. Thus, the Attorney General is correct that the termination payment does not cover the full 20 years, but the Commission finds that the maximum 17-year coverage is sufficient to protect other ratepayers from the risk of costs

associated with serving Google, when combined with the other protections adopted in the instant order.

Turning to the CCAA termination payment, the company testified that the CCAA termination payment is designed to collect all amounts that DTE Electric would have collected if the agreement had not been terminated. 3 Tr 124. As DTE Electric explained:

[a]s it pertains to the CCAA, the termination payment is set equal to the remaining revenue requirement of the energy storage and renewable energy projects deployed under that agreement that have not yet been recovered from the Customer. As such, the termination payment automatically adjusts to account for the costs of those projects and ensures that the Customer will fully pay for each project's revenue requirement over the project's depreciable life.

3 Tr 138; *see*, Section 9.3, Exhibit A-18, pp. 15-16 of 55. No party rebutted this evidence.

Because the CCAA termination payment is equal to 100% of the revenue requirement for all of the CCAA projects that are remaining at the time of termination, the CCAA termination payment is also clearly modifiable.

The Commission also finds that the Attorney General failed to provide convincing support for her theory as to why the PSA termination payment needs to be extended and should be based on 100% of capacity for the full 20 years. While future demand for the output of data centers cannot be known, the Attorney General did not provide persuasive support for the idea of a forthcoming industry-wide overcapacity scenario. *See*, Exhibits AG-2, AG-3. As DTE Electric noted, the article relied upon by the Attorney General for this notion also predicted that demand for data center computing power will increase. Exhibit AG-2, pp. 1, 4-5; *see also*, Exhibits A-23, A-24. The Commission is likewise not troubled by the fact that the termination payment is based on MMCs rather than on the cost of specific investments (such as the costs of building or decommissioning specific assets). The Commission finds it reasonable, as it did in the November 6 and December 18 orders, to base this significant contractual element on what will be required to

cover monthly overall billed costs for the remainder of the contract term under the PSA and the remaining revenue requirement under the CCAA. 3 Tr 136-139, 203, 874-875. The Attorney General failed to identify any costs that would be stranded as a result of approving the proposed mechanism for determining the PSA termination payment. Transmission and energy costs will be paid through the PSCR surcharge and the Staff's analysis confirmed that the MBD will cover the estimated non-production costs even where the company still faces costs from the transmission provider. 3 Tr 873-875. The Commission also rejects the Attorney General's arguments regarding mitigation and finds, as it did in the November 6 order, that "customers have the option of filing a complaint with the Commission if they believe that mitigation was not adequately pursued." November 6 order, pp. 109-110.

ABATE contends that approval of the special contracts must be conditioned upon the affordability backstop being rendered modifiable in order to allow modification of the termination payment. *See*, 3 Tr 541-543. The "affordability backstop" is the term that the parties (and the Commission) use to describe the contractual language in Section 5.1.3 of the PSA, which reads as follows:

The Parties [DTE Electric and Google] acknowledge that a goal of this Agreement [the PSA] and the Related Agreements [the CCAA, LEA, Rider 12 DRA, and any Supplemental Agreement] is to protect other customers, other customer classes and Company [DTE Electric] from funding the costs to serve Customer [Google]. The Parties also acknowledge that the combined revenues received by the Company under this Agreement and the applicable Related Agreements along with any avoided costs attributable to Google should be considered in regulatory proceedings applicable to Company's cost to serve Customer, and the Parties shall act in good faith to ensure such combined revenues and avoided costs are presented in such proceedings to the extent applicable. If, at any time during the Term, the Commission (a) issues a ruling or order determining that the costs to serve Customer exceed the combined revenues paid or payable to the Company under this Agreement and the applicable Related Agreements, or (b) disallows Company's recovery of costs to the extent attributable to serving Customer, then, in either case, Customer agrees to comply with any such ruling or order to ensure that Customer pays all costs associated with its service from Company, and, as applicable,

Customer shall reimburse Company for any unrecovered costs, plus interest accrued on such amount at the Interest Rate within ninety (90) days of any such order; provided, however, that notwithstanding the foregoing, Customer shall not be required to reimburse Company for unrecovered costs incurred due to the gross negligence or willful misconduct of Company.

Exhibit A-16, pp. 8-9 of 49; *see, id.*, pp. 34-35 of 49. Thus, the affordability backstop requires Google to provide cost recovery to DTE Electric for any amount determined by the Commission to be unrecoverable from other customers because the amount is attributable to serving Google, or any amount by which the costs of serving Google exceed the revenues paid or owing to DTE Electric by Google.

Turning to ABATE's arguments, the Commission notes that the PSA termination payment is tied to the MBD (via the MMC) and the CCAA termination payment is tied to the unrecovered revenue requirement associated with the chosen renewable energy and energy storage projects. Thus, both termination payments are subject to change over time and are already modifiable. 3 Tr 138-139, 124. The affordability backstop operates "any time during the Term" of the PSA. Exhibit A-16, p. 8 of 49. Should Google decide to terminate the PSA, the PSA termination payment will not be known until the time of termination as it relies, in part, on the then-current Rate D11, as well as any cost allocation and rate design changes that have resulted from intervening rate cases. The CCAA termination payment addresses Google's default and is also self-adjusting. 3 Tr 138. The affordability backstop provision addresses something completely different—the consequences resulting from any decision by the Commission finding that the costs of the special contracts to DTE Electric exceed the combined revenues owing to DTE Electric from Google or mandating a disallowance of the recovery of costs that are attributable to serving Google. The Commission finds that both the PSA and CCAA termination payments and the affordability backstop are already modifiable as each depends on the circumstances existing at the

time of the termination or the Commission ruling, and are reasonable measures for preventing any shift of the costs of serving Google to other customers. For all of the stated reasons, the Commission is not persuaded to modify the elements of the PSA or CCAA termination payments.

3. Collateral

Turning to the issue of collateral, the Attorney General recommends that the Commission remove any cap on the collateral. DTE Electric notes that it has committed to bear all risk associated with the potential insufficiency of the collateral. 3 Tr 134-135. The collateral is provided via a PG from Google's parent company (Alphabet Inc.) that escalates to an LoC if the parent's credit rating falls below a certain threshold. The Staff confirmed that though DTE Electric's "PSA is a proposal for a different collateral requirement and form" from the collateral requirements approved in the November 6 order, it "is allowable on the Consumers tariff established in [Case No.] U-21589." 3 Tr 871. The Staff states that:

[t]he PSA requires a letter of credit depending on the parent company's credit rating, so there is a mechanism by which a more secure form of collateral may be required if needed if the credit rating of the parent company changes following execution of the special contracts. . . . The Commission already cautioned the Company that in the event that an LLC's [large load customer's] collateral is not sufficient to cover remaining financial exposure caused by an LLC's exit from service, that the Company would be responsible for unrecovered costs.

3 Tr 871. The Staff, GLREA, and the Attorney General recommend that the Commission apply the same conditions to the instant case as were applied in the December 18 order, p. 41, regarding the company's responsibility for the sufficiency of the collateral. *See*, 3 Tr 871, 879, 469, 585. The Commission agrees. Thus, the Commission finds that, in the event of a failure by Google 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 PG or the LoC, if DTE Electric determines that the specified collateral is not sufficient to cover the full amount of the remaining financial exposure associated

with the PSA or the CCAA, 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. This comports with the commitments that DTE Electric has made on the record in the instant case. *See*, 3 Tr 134-135. It also comports with the condition placed on the approval of the contracts at issue in the December 18 order, which was accepted by DTE Electric in its January 15, 2026 letter filed in Case No. U-21990. *See*, December 18 order, p. 41.

The Staff's worst case scenario identifies a gap between the collateral and the amounts that may be owed to DTE Electric in the event of termination or default by Google under the PSA. 3 Tr 877-879; Exhibit S-3.3; Confidential 3 Tr 1007, 1015-1016. The company acknowledges that there is a gap between the collateral and the termination payment and states that "the gap is precisely what the Company's acceptance of collateral-insufficiency risk resolves" because in no case will any shortfall fall on other customers. DTE Electric's reply brief, p. 41; *see*, 3 Tr 134-135. As DTE Electric notes, the company's risk exposure from this gap declines over time under both the PSA and the CCAA as the termination payment declines over time. As for this risk, the Attorney General asks whether the company can absorb this risk. As DTE Electric states, "[h]ow the Company would absorb a speculative future shortfall of unknown magnitude, arising years from now under unknown conditions, is not a question this special contract proceeding must resolve[.]" DTE Electric's reply brief, p. 42. The Commission finds that this is a question that cannot be resolved in this special contract case (no matter what the state of the record) as it rests on many widely speculative assumptions, including that Google and its parent company, Alphabet Inc., are bankrupt, an LoC is insufficient, and there is no longer a need for the data center. What the Commission is looking for is a binding commitment that any collateral shortfall will not be

shifted to other customers under the special contracts, and that commitment has been provided on the record. 3 Tr 134-135. In that scenario, DTE Electric would be required to seek cost recovery from Google, Alphabet Inc., or the company's shareholders.

The Commission is also not persuaded by ABATE's claim that this commitment is not binding due to DTE Electric's reference in Exhibit AB-1 to seeking cost recovery for "utility service provided to customers generally[.]" Exhibit AB-1, p. 26; Exhibit S-3.5. The full quote is as follows:

Such a commitment [to hold other customers harmless for costs not recovered from Google] is not included in the application or testimony. The Company is committed to pursuing recovery from the Customer for all amounts owed to the Company under the special contracts. The collateral protections set forth in PSA Section 9 and CCAA Section 11 were designed to mitigate any under recovery of costs due to Customer nonpayment. In the event of a default, the Company may draw upon available letters of credit and/or seek recovery under the parent guarantee for amounts owed to DTE Electric, including the termination payment or any other amounts due.

In the highly unlikely event of a Customer bankruptcy or other circumstance in which recovery from the Customer, its parent guarantor, and letters of credit is not sufficient, DTE Electric's position is that it would not seek to recover from other customers costs that are ultimately determined by the Commission, pursuant to Section 5.1.3 of the PSA, to be in excess of the combined revenues payable to the Company under the PSA and Related Agreements. However, if at a later date the Commission determines such costs to be reasonable and prudent and appropriately attributable to utility service provided to customers generally, the Company may seek recovery at that time. Any such determination would necessarily depend on the facts and circumstances at the time and would be subject to Commission review and approval in the applicable proceeding.

Exhibit AB-1, p. 26. The Commission accepts this response as sufficient to address the stated concern. Cost recovery for utility service provided to customers generally is addressed by the Commission in rate cases. The discovery response makes clear that no such recovery would occur unless the service at issue was provided to "customers generally" and was the subject of Commission review. *Id.* Under the affordability backstop, and whatever the state of the

collateral, costs that are found by the Commission to be attributable to serving Google may not be recovered from other customers. The Commission finds that such costs are also not subject to recovery from other customers even after termination of the PSA and CCAA. As in the December 18 order, DTE Electric's responsibility for the costs to serve Google continues in perpetuity. *See*, December 18 order, p. 43. Thus, this condition addresses ABATE's concern about the termination of the affordability backstop congruent with the termination of the PSA.

Finally, the Commission notes that DTE Electric agreed to the Staff's recommendation that the Commission review the collateral amounts and termination payment amounts within three years of the load ramp completion date. DTE Electric's initial brief, p. 30; 3 Tr 881. The Commission adopts this recommendation and directs DTE Electric to file this review application covering the PSA and CCAA collateral amounts and the PSA and CCAA termination payments in this docket within three years of the load ramp completion date. For all of these reasons, the Commission declines to adopt the Attorney General's recommendation for uncapped collateral.

4. The Claimed Net Benefit Amount

The intervenors took issue with the company's claimed aggregate net benefit of \$1.7 billion (over 2028 through 2047), asserting several criticisms of the assumptions used and the analysis underlying the claim. *See*, Exhibits A-19, A-20, A-15; 3 Tr 404-418. However, no party showed that approval of the special contracts would result in an aggregate net cost over the same time period. As the company notes, the claimed amount is only an estimate. The fact that other parties produced their own analyses and arrived at different projections does not mean that the special contracts will not produce a net benefit for other customers. After its audit, the Staff found that, even without DTE Electric's 1.5% rate escalation and with Google paying only the minimum billed amount, there would still be a "net benefit to other customers." 3 Tr 877; *see*, 3 Tr 864-871.

Having recreated the analysis, the Staff found that its result “largely matches” the company’s results as found on Exhibits A-19 and A-20. 3 Tr 857, 863. Thus, after performing a more conservative analysis, the Staff found that there continued to be a net benefit to other customers over the term of the PSA. Like the Staff, ABATE’s calculation of the net benefit on a present value basis projects an approximate \$1.0 billion net benefit to other customers over the term, and MEICEO’s present value calculation projects an approximate \$984 million net benefit to other customers over the term. 3 Tr 539-541, 676-678. These results are less than \$1.7 billion, but they are still significant. Most importantly, each of these analyses finds that the special contracts represent a net benefit to DTE Electric’s other customers, and do not result in a net cost.

MNS and ABATE point out that the company’s net benefit analysis assumes a 90% load factor, while the MBD is only 80%. As discussed above, these inputs address different issues, and neither MNS nor ABATE produced evidence showing that, using other assumptions, approval of the special contracts results in an aggregate cost to other customers over the term. The Staff’s analysis took the revenue level to its contractual minimum and still found a net benefit, while noting that the main driver of costs is the assumed proxy plant which will be addressed in a future IRP. *See*, 3 Tr 874-877. Cost recovery is supported by the termination payments and the affordability backstop. While there appears to be agreement that the four years of 2035 through 2038 will produce annual net costs to other customers (due to the need to construct the proxy generation resource), the Commission finds that approval of the special contracts does not require an annual demonstration of a net benefit to other customers because the aggregate impact of the special contracts on other customers over the term of the contracts is the key consideration. *See*, 3 Tr 678; Confidential Exhibit A-5. The Commission finds that the entire contractual period is the relevant consideration in this examination of the public interest.

MEICEO points out that the net benefit is largely produced as a result of the shifting of costs from residential customers to Google rather than as a result of lowering total costs. 3 Tr 671-672. The Commission is not persuaded that, in order to be approved, special contracts must lead to lower total costs. If proposed special contracts lead to a shift of certain fixed costs from other customers to the special contract customer, the Commission does not find that this precludes approval. And, as the parties are aware, future rate cases and PSCR cases will apply the then-current rates and billing determinants, not the ones used in DTE Electric's net benefit calculation.

ABATE argues that after the end of the 20-year contract term, the selection of the CCGT with CCS will result in a \$129.55 million present value cost to other customers. 3 Tr 539-541; Exhibit AB-2. MNS and MEICEO also challenge the use of this proxy resource and the assumptions that went into its analysis, and these intervenors caution the Commission not to endorse the company's claimed \$1.7 billion net benefit. Additionally, MEICEO challenges the company's valuation of the storage pull-ahead benefits and of so-called avoided costs. DTE Electric responds that the proxy is only a proxy and that actual resource selection occurs in an IRP.

The company is correct that the Commission need not (and cannot) approve the CCGT with CCS in this proceeding, but the Commission finds that the CCGT with CCS is a reasonable proxy to use for purposes of the company's analysis. As part of its public interest determination, the Commission need not endorse a specific benefit amount or any required return to other customers resulting from the approval of a special contract and does not do so in the instant case. The Commission finds that DTE Electric, as well as the Staff, ABATE, and MEICEO, provided adequate evidence demonstrating that approval of the special contracts will result in a net benefit to other customers over the life of the special contracts. *See*, Exhibits A-19, A-20, A-15; 3 Tr 379, 404-418; 3 Tr 857-877; 3 Tr 539-541, 676-678. DTE Electric will provide the "with-and-without"

analyses described above in the IRP, and the actual resource portfolio will be selected through IRP proceedings. The Commission does not find that, in order to be considered for approval, special contracts must demonstrate which actual generation resources will be used to supply energy and capacity over the life of the contracts at the time of approval. However, in order to supply the Commission with information regarding the potential costs associated with serving Google, DTE Electric needed to opt for some future resource based on an identified need in 2033. The company relied on a third-party forecast for the capital and O&M costs and supplied modeling showing the calculated annual revenue requirements. 3 Tr 375-376, 395-410; Exhibit A-15. The Commission finds that the CCGT with CCS is a reasonable proxy for use in this analysis.

Again, though the Commission addresses some of the criticisms of the company's inputs to the net benefit analysis, the Commission does not endorse or make a finding on any specific net benefit calculation put forth by any party to this case. Instead, the Commission finds that over the term of these special contracts other customers are likely to benefit as a result of their approval—a conclusion that was again supported by multiple parties in this proceeding. Further, the required demonstration by DTE Electric of the affordability benefit in future rate cases and PSCR proceedings will ensure that the question of the aggregate net benefit will remain before the Commission for at least the term of the special contracts (and should be based on actual data where possible); and the language of the affordability backstop enables the Commission “at any time during the Term” to examine costs and revenues attributable to Google. Exhibit A-16, p. 8 of 49. In sum, the Commission finds that, based on its analysis of the special contracts and the evidentiary record supplied by the company, the Staff, and the intervenors, the weight of the evidence and public interest considerations support approval of the special contracts because they

represent a means of potentially obtaining significant aggregate net benefits for other ratepayers and for the grid as a whole.

The Commission finds that the issue of regulatory liability accounting in the context of data center special contracts is under dispute in DTE Electric's pending electric rate case, Case No. U-22046, and, because numerous parties are involved in contesting the related issues, a stronger and more comprehensive record is under construction in that proceeding. *See, e.g.*, Case No. U-22046, filing nos. U-22046-0004, -0322, -0333, -0359, -0361, and -0432. On that basis, the Commission declines to adopt the Attorney General's recommendation for the use of a regulatory liability account to record the net benefit produced as a result of the special contracts in this case. *See, e.g.*, 3 Tr 485-488; Exhibit AG-8. The Commission observes that a final decision in Case No. U-22046 will be issued no later than February 28, 2027.

5. Energy Waste Reduction and Other Issues

The Commission adopts the Staff's recommendation that the company be directed to make Google aware of the requirements and obligations related to DTE Electric's EWR goals and compliance expectations, and notes that DTE Electric agreed. 3 Tr 891; DTE Electric's initial brief, pp. 51-52. DTE Electric is directed to work with Google to establish the EWR plan consistent with the directives of Case No. U-21627, to bring an awareness of the reporting requirements and to communicate the expectations that are associated with self-direction.

Regarding ABATE's argument as to the load ramp completion date (discussed again below), the Commission finds that the PSA already leaves it within DTE Electric's discretion to delay that date and the Commission is not persuaded to require the implementation of the delay at this point in the development process.

The Commission notes that DTE Electric's proposed 20-year contract term, renewal terms and conditions, and terms and conditions addressing rate-switching were not disputed. Based on its review of the record and the arguments of the parties, the Commission approves those terms.

B. Clean Capacity Accelerator Agreement and Other Resource Issues

The CCAA sets forth the obligations of Google and DTE Electric with respect to the development of, and cost responsibility for, up to 480 MW of energy storage projects, up to 1,600 MW of renewable energy projects, and the transfer of 300 MW of ZRCs. Application, p. 3. As with the PSA, the parties addressed a number of disputed issues. The Commission's approval of the CCAA is accompanied by certain conditions, discussed below.¹⁰

1. Competitive Procurement and Sourcing

The Commission is not persuaded to impose requirements on the sourcing of the ZRCs (such as through VPPs or BTM resources). Nor is the Commission convinced that it should impose a 50% third-party owned/50% company owned requirement on the ownership of the renewable projects that will be developed under the CCAA. The Commission sees substantial value in customer-sited resources and in third-party ownership of renewable projects, but as the projects at issue in this case are part of a negotiated agreement between Google and DTE Electric where all costs are paid for by Google alone, the Commission does not recognize the need for additional conditions on the associated projects.

¹⁰ The Commission notes that the issue of the CCAA termination payment was addressed above.

The Commission approved the Competitive Procurement Guidelines for Rate-Regulated Electric Utilities (Not for PURPA Compliance)¹¹ (Competitive Procurement Guidelines or CPGs) in the September 9, 2021 order in Case No. U-20852, and has recently issued an order seeking comments on proposed revisions to update the CPGs. *See*, August 27, 2026 order in Case No. U-20852. The settlement agreement approved in Case No. U-21193 (DTE Electric’s most recent IRP) provides that the acquisition of renewable energy and energy storage resources in fulfillment of the company’s PCA will comply with the CPGs via the use of an independent monitor (IM) and will break down to 65% company owned and 35% third-party owned. 3 Tr 773; *see*, July 26, 2023 order in Case No. U-21193, pp. 5-7, and Exhibit A, pp. 8-11.

The VGPS is a negotiated agreement that places the full cost of the renewable resources on Google. Prior to the adoption of the CPGs, the order in Case Nos. U-20713 *et al.* provided that:

[t]he projects associated with customer-requested projects shall utilize a specialized competitive bidding process for all contracts above \$100,000 other than a contract with the anchor tenant. The details of the competitive process will be agreed upon with the customer and will incorporate any competitive bidding rules specific to the customer. Competitive bidding for customer-requested projects remains subject to Commission Staff audit.

June 9, 2021 order in Case Nos. U-20713 *et al.*, Exhibit A, p. 7 of 28. The July 2, 2024 order in Case No. U-21172 (July 2 order), Exhibit A, p. 3, paragraph 2, provides that, in acquiring renewable energy resources as part of the CRO under Case Nos. U-20713 *et al.*, “the Company will comply with the Michigan Public Service Commission’s [CPGs] as it pertains to use of an [IM], and as set forth in paragraph 9 of the settlement agreement approved in Case No. U-21193” subject to certain exceptions that do not apply here. Thus, as the Staff points out, the July 2 order incorporates the terms of the IRP settlement agreement with respect to the use of the IM, but does

¹¹ PURPA stands for the Public Utility Regulatory Policies Act of 1978, Pub L No. 95-617, 92 Stat 3117.

not explicitly negate the terms of the settlement agreement approved in Case Nos. U-20713 *et al.* Thus, both the IRP order and the VGP settlement agreements require the use of the CPGs, but, in the case of VGP resources, the details are to be agreed upon with the customer. This means that the resources procured under the VGPSC must be procured in consultation with Google.

The Commission agrees with the Staff that DTE Electric and Google should comply with the CPGs to the maximum extent practicable in the procurement of the renewable energy and energy storage resources secured in fulfillment of the CCAA (including the ZRCs), but the Commission is not persuaded that the statutory scheme or case precedent authorize the Commission to dictate the source of that procurement or the applicable ownership percentages, or to increase the amounts that have been contracted for. Again, the Commission agrees with the Staff that the most cost-effective resources are going to be those resources that are selected as a result of competitive bidding. When projects compete on an equal footing, the lowest-cost portfolio is the likely result. Thus, the Commission encourages DTE Electric to exceed the 35% limit on third-party owned resources anytime that exceeding that limit will provide a cost benefit to ratepayers (who are not special contract customers).

The Commission also agrees with the Staff that resources should be selected for fulfillment of the PCA under the IRP prior to being selected for fulfillment of the CCAA. *See*, Staff's initial brief, pp. 27-28. Common sense dictates that the utility's total customer base must take precedence over a single customer. *See*, March 27, 2026 order in Case No. U-21193, pp. 7-8.

MEICEO and ABATE argue for an extension of the ZRCs and Rider 12 DRA beyond May 31, 2033. The Commission observes that the ZRCs and the Rider 12 DRA terminate just as the need for additional resources commences. Thus, the Commission agrees with MEICEO that DTE Electric should be required to provide modeling runs in its IRP filing showing how such an

extension would affect any incremental accredited capacity need identified after May 31, 2033.¹²

The Commission also encourages DTE Electric to discuss such an extension with Google. If the parties agree to an extension, they may seek approval of amended special contracts. However, the Commission does not find that it should require the extension as a condition of approval of the special contracts. VGP and DR programs are voluntary and, in any case, the affordability backstop assigns any capacity costs that are determined by the Commission to exceed the benefits of the special contracts to Google.

Though the Commission declines to direct where the ZRCs are to be sourced, the Commission finds that the Staff makes an important point with respect to DTE Electric's interconnection procedures, which currently offer no mechanism for customer connected storage installations to export to the grid. The Commission directs DTE Electric to begin the process of updating its interconnection procedures to allow BTM storage to export directly to the grid (and to be used for import and export at the same time) within 120 days of the date of this order. The Commission notes that in the August 11, 2021 order in Case No. U-21032 (August 11 order), the Commission encouraged utilities, including DTE Electric, to propose pilots to be used for addressing customer-owned storage until customers are able to participate in the wholesale market. The Commission notes that FERC Order No. 2222¹³ and its progeny will allow such resources to begin registering in June of 2029. In the August 11 order, the Commission found that the approach of:

encouraging utilities to propose well-designed retail tariffs that account for the full value stack ESRs [electric storage resources] offer, while also allowing for

¹² Other supplements to DTE Electric's September 24, 2026 filings in Case Nos. U-22168 and U-22057 are discussed below.

¹³ See, *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (issued September 17, 2020) (Docket No. RM18-9-000) (FERC Order No. 2222).

participation through the utility in regional wholesale markets—is a reasonable next step in enabling increased participation of ESRs in the electric grid. Should the proposed offerings ultimately fail to fully meet the goals of customers in utilizing ESRs, or unreasonably limit the opportunity to fully realize the multiple benefits ESRs can provide, the Commission may then consider other options to better enable ESRs to market and monetize the various benefits they offer at both the wholesale and retail levels.

August 11 order, pp. 27-28. The Commission finds that it is high time that DTE Electric began to move forward on this approach. The company needs to provide the opportunity for customers to monetize the benefits of BTM resources, and the Commission’s findings in the August 11 order take on more urgency as implementation of FERC Order No. 2222 approaches.¹⁴ Thus, the Commission directs DTE Electric to file an application for a contested proceeding for approval of updated interconnection procedures and a draft battery import and export tariff in a new docket within 120 days of the date of this order. *See*, Mich Admin Code, R 460.920(6). The Commission encourages the company to work with the Staff and interested persons in the development of the tariff.

2. The Financial Adder

The Commission does not find a basis for denying approval of the financial adder, but declines to approve the company’s requested accounting treatment. Based on the arguments presented by the Staff and all of the intervenors, the Commission finds that the financial adder shall be treated as ordinary income and passed through for the benefit of all ratepayers including those on Rate D11. *See, e.g.*, 3 Tr 550, 587, 810-811, 844. The Commission agrees with ABATE’s recommendation that the instant order should not act as precedent for the idea that this type of financial incentive should be obtained from other large load customers in the future.

¹⁴ The Commission provided further guidance on moving forward with VPP pilots in the September 10, 2026 order in Case No. U-21653, pp. 9-10.

3. Transferred Renewable Energy Credits

The Commission agrees with the Staff that the CCAA can be considered to be a VGP program only if the RECs associated with the enrolled customer load are accounted for and retired in the year that the retail sales are removed from the company's RPS compliance calculation. The Commission finds this to be the correct interpretation of MCL 460.1061 and to be consistent with the orders issued in Case No. U-18349. DTE Electric's position on this issue would potentially allow Google to sell the transferred RECs into the REC market—a sale which could end up in the hands of another utility such as Consumers or an alternative electric supplier serving customers in Michigan. This result makes no sense. DTE Electric indicated in discovery that it will either retire the transferred REC on behalf of the Customer, or it will simply transfer the REC to the Customer. Exhibits S-1.0, S-1.1. The company fails to provide an explanation for how Google would be prevented from selling that REC if the REC is not, at a minimum, retired in the same year that it is transferred and removed from the utility's RPS compliance calculation. Without some form of acknowledgement that the REC no longer has the renewable attribute and thus is not marketable, there is no reason why Google could not sell a transferred REC. Even accepting DTE Electric's premise that the transferred REC is no longer available to the company, that does not mean that it is not available to Google to utilize as it pleases, which appears to be the whole point of the transfer.

The Commission also agrees with the Staff that a VGP REC must be retired in order to be counted toward CEP compliance per the holdings of the December 18, 2025 order in Case No. U-21867 and the approved Clean Energy Plan Template. As such, DTE Electric must demonstrate that the RECs associated with the enrolled customer load are accounted for and retired in the year that the retail sales are removed from the company's RPS compliance

calculation; absent such a demonstration, the company's RPS compliance obligations shall not be reduced by the amount of renewable generation for which RECs are not retired in this manner. As stated above, the Commission declines to adopt MNS's recommendations with respect to additional measures for ensuring RPS compliance. Such measures are better addressed in an IRP, REP, or amended REP proceeding.¹⁵

4. Operating Parameters

Turning to the issue of grid transients and operating parameters, the Commission finds that approval of the special contracts should be conditioned upon DTE Electric's adoption of whatever industry-wide standards are eventually approved as a result of the ongoing efforts being made by NERC, FERC, MISO, ITC, and the regional transmission organizations (RTOs) prior to energization of the facility. *See*, 3 Tr 454-456. But the Commission does not find it advisable to set such standards or to adopt a mandate concerning power quality monitoring equipment on this record.¹⁶ This issue is crucial to the safe and reliable operation of the entire grid and the Commission holds the same concerns as are expressed by MEICEO with regard to ramp rate limits, ride-through requirements, and the other operating parameters that are currently under discussion by these agencies. These issues are under active consideration for a good reason and the Commission finds that the instant docket is inadequate for addressing these significant

¹⁵ The Commission has no jurisdiction over marketing claims made by Google and thus does not opine on Google's renewable energy assertions.

¹⁶ The Commission notes that no actual final operating parameters are proposed by MEICEO, nor does GLREA propose any specific power quality monitoring equipment that should be utilized. Even if it were advisable for the Commission to address these issues, the record is incomplete.

industry-wide concerns.¹⁷ The Commission thus conditions this special contract approval on DTE Electric's commitment to updating the operating parameters applicable to the facility at any time up to and after energization where necessary to comply with operational requirements that are imposed by the Commission, NERC, FERC, MISO, or ITC. The Commission finds that this condition, along with the language of Sections 5.5.2 and 5.5.3 of the PSA, ensures that the most up-to-date industry-wide standards shall be utilized at the facility at the time of (and after) energization.

5. Other Issues

The Commission approves DTE Electric's request for a regulatory liability to record the excess costs from the cost acceleration in order to cover the longer depreciable life of the relevant assets. 3 Tr 111-114, 127-128. This request was unopposed and the Commission finds that the record supports approval.

The Commission also agrees with the intervenors that the "up to" language in the CCAA with reference to the 1,600 MW of renewable energy projects and 480 MW of energy storage projects should not act as a cap on those resources, but rather DTE Electric should be directed to treat those

¹⁷ The Commission notes that FERC recently directed NERC to file revised mandatory reliability standards governing the integration of computational loads, with a draft due by December 31, 2026; and a Phase II work plan for additional standards, including a registry for bringing computational-load entities under the mandatory reliability framework, is due from NERC by March 1, 2027. *See, Order Directing the North American Electric Reliability Corporation to File Reliability Standard(s) Pertaining to Computational Load Integration*, 196 FERC ¶ 61,031 (issued July 16, 2026) (Docket No. RD26-7-000). DTE Electric will be subject to the registration and framework, which will be audited by Reliability First. *Id.*; *see*, Confidential Exhibit A-21; Confidential Exhibit A-1, p. 1. DTE Electric will also be subject to revised data center tariffs issued by MISO. *See, Order Instituting Proceeding Under Section 206 of the Federal Power Act*, 195 FERC ¶ 61,212 (issued June 18, 2026) (Docket No. EL26-70-000) (show cause order issued to MISO requiring reformed tariff rules applicable to data centers and other large load customers, governing issues including transmission technologies, cost-shifting, cost transparency, and BTM generation).

amounts as minimums to be reached, and, if possible, exceeded. The Commission finds that this must be a condition of approval of the special contracts because, without it, there is no clear commitment to any particular amount at or below 1,600 MW of renewable energy projects and 480 MW of energy storage projects—“up to” could mean 1 MW of each. The Commission acknowledges that project sizes vary, but that does not mean that Google and DTE Electric cannot be expected to hit a target, even if the mix of contracted resources results in the development of more MW than the amount named in the CCAA as the “up to” amount.

Additionally, the Commission finds that DTE Electric shall track and report on the accreditation of capacity resources under the CCAA as requested by MEICEO. 3 Tr 720-723; MEICEO’s initial brief, pp. 16-23. However, the Commission declines to approve MEICEO’s recommendations with respect to requiring commitments from the company as to how it would address any scenario in which it needed to deploy less capacity than is named. This is not an IRP planning or procurement docket, and the Commission agrees with DTE Electric that such issues are best addressed in IRP, REP, or amended REP dockets. The Commission also finds that it is premature to attempt to address the need for potential RPS compliance extensions, as argued by GLREA. Additionally, the Commission finds that it need not address GLREA’s observations regarding a scarcity fee, as those observations are forward looking and do not constitute an actual proposal for consideration in the instant case.

The Commission declines to direct DTE Electric to fully use its discretion to limit Google’s load ramp, or to direct DTE Electric to adopt new emergency electrical procedures specific to the special contracts. In the August 27, 2026 order in Case No. U-22059, the Commission approved updated Emergency Electrical Procedures for Section C3 of the company’s Rate Book. The

updated procedures apply to Google and the Commission finds that the updated procedures address these concerns. August 27, 2026 order in Case No. U-22059, p. 2.

IRP proceedings are where the determination of the resources needed to meet customer needs will take place. Thus, the Commission agrees with both the Staff and the company and finds that DTE Electric shall update its current IRP filing as necessary to provide modeling reflecting both large load customers as a group, and each large load customer individually, including Google and Oracle. Thus, per the Staff's testimony, the Commission finds that "large load customer loads, supply side resources paid by the large loads, and demand side resources provided by the large loads be aggregated for this analysis" and that DTE Electric shall also comply with the directives included in the December 18 order which required separate analyses. 3 Tr 839. These requirements apply to the IRP, CEP, and amended REP as described by the Staff at 3 Tr 838 and should include the associated rate and affordability impacts for all analyses in the IRP.

Recognizing that these filings were made on September 24, 2026, the Commission conditions the special contract approvals on DTE Electric's agreement to supplement the September 24, 2026 filings in Case Nos. U-22168 and U-22057 to comply with these findings, within 21 days of the date of this order. Finally, the Commission notes that in the December 18 order it directed DTE Electric to "file an amended renewable energy plan with its next integrated resource plan[.]" December 18 order, p. 43. The company erred in filing the amended renewable energy plan in a separate docket, as the three plans are intended to be reviewed holistically by the Commission. Thus, DTE Electric shall consolidate Case No. U-22057 into Case No. U-22168 and all filings related to the amended renewable energy plan shall thereafter be made in Case No. U-22168.

Reporting requirements are discussed below.

C. Cost Allocation and Reporting

1. Contribution in Aid of Construction

While the LEA is not submitted for approval, the LEA has clear cost implications. The Commission adopts MNS's recommendation that there be no cap on the amount that is contributed by the parties to the LEA towards the cost of the line extension. Though the Commission agrees with DTE Electric that its projections are sound and Google's \$50 million commitment is likely more than sufficient, the Commission also recognizes that, as this record reflects, Google has committed to fully funding the cost of the special contracts as any distribution costs over \$50 million will be included in the affordability backstop analysis. *See*, 3 Tr 456, 250-252; Confidential Exhibit A-1, pp. 2-3. That being the case, and recognizing that all projections are simply projections, the Commission is not comfortable with going forward on any basis that could conceivably allow CIAC to be implemented. CIAC is in flux in Case No. U-22061 and the impact of Rate D11 CIAC policy on either DTE Electric, Google, or other customers cannot currently be known. The Commission's decision is predicated on the fact that Case No. U-22061 is pending and will not be resolved until after the instant order issues, thus any decision made in the instant case could only apply retroactively. Knowing that CIAC is in transition, the Commission is likewise not comfortable with imposing the current CIAC requirements which the company has petitioned to change. Thus, the Commission finds that approval of the special contracts must be conditioned on DTE Electric's acceptance of there being no cap on the amount to be contributed by Google or DTE Electric towards fulfilling the obligations described in the LEA or other costs resulting from electric infrastructure upgrades necessitated by providing service to the facility. As DTE Electric notes, distribution costs that exceed the \$50 million commitment would be subject to the affordability backstop of Section 5.1.3 and are subject to review and evaluation by the

Commission in contested proceedings. 3 Tr 250-251. Thus, the Commission's decision here does not change the commitments that Google has already made under the PSA.

2. Cost Allocation

The Commission adopts the Staff's proposal to continue to require the filing of the six COSSs mandated in the December 18 order with the single change recommended by the Staff and agreed to by DTE Electric. Thus, the Commission directs DTE Electric to file at least the following six cost allocation and rate design studies in electric rate cases: (1) one under traditional ratemaking as exemplified by DTE Electric's current COSS from its most recent rate case order including the expected full contract capacity of any large load customer(s) on Rate D11; (2) same as (1), but with the inclusion of a new large load customer rate class; (3) same as (2), but using 12CP¹⁸ to allocate costs instead of 4CP where 4CP is currently being utilized; (4) one under traditional ratemaking utilizing the most recently approved COSS without the large load customer(s) in service; (5) one utilizing a direct assignment of costs to a new large load customer rate class, including transmission, generation, and distribution costs; and (6) one utilizing a direct assignment of costs to each individual large load customer, again including transmission, generation, and distribution costs. *See*, 3 Tr 865-866; December 18 order, pp. 39-40. DTE Electric shall provide all the data necessary to allow the Staff and intervenors to recreate the proposals, which may be filed under seal if necessary, including a workpaper listing all assumptions used to create the proposals.

As the Commission has stated in each large load customer case, cost allocation, rate design, and the consideration of the creation of a new rate class will be addressed in rate cases, where the Commission is able to take a holistic view of rates and rate impacts. The Commission reiterates

¹⁸ "CP" refers to coincident peak in the cost allocation formula.

that, with respect to the PSA, CCAA, LEA, Rider 12 DRA, or any related agreement, no cost allocation or cost recovery methods are approved by this order. As the Commission previously stated:

[r]atemaking treatment is the Commission's exclusive prerogative and occurs within contested cases. This is the fundamental finding of *Attorney General* and the other cases discussed above: the approval of a special contract, where the contract has no effect on rates, rate schedules, or costs of service, does not involve ratemaking, but ratemaking may still take place in the appropriate forum wherein all parties may contest the ratemaking proposals of the utility and the other parties. In other words, approval of the special contracts does not guarantee any particular ratemaking treatment associated with the special contracts or service to the Customer.

December 18 order, pp. 38-39. Of course, as a Rate D11 customer, Google will pay any new or updated charges applicable to Rate D11. Addressing MNS's concern regarding updates to rates, the Commission observes that rate switching is governed by Section 5.1 of the PSA, and DTE Electric's Rate Book is incorporated into the PSA at Section 18.2 which acknowledges that the Rate Book may be "updated, revised and/or modified during the Term of the Agreement as approved or agreed to by the Commission." Exhibit A-16, p. 24 of 49; 3 Tr 96.

The Commission directs DTE Electric to provide information in PSCR cases via testimony and exhibits addressing any DR nonperformance penalties assessed by MISO during the PSCR year, and notes that DTE Electric has already agreed that these amounts should be credited to other customers. 3 Tr 483-484, 399.

3. Affordability Benefit Analysis

The Commission finds that the company's updated analysis of the affordability benefit shall be provided in each rate and PSCR case based on actual data to the extent possible, and thus shall be on the same cadence as those proceedings. As DTE Electric stated, "[t]he Commission and parties may evaluate those actual costs through the applicable proceedings rather than assume now

that a presently unanticipated overrun necessarily becomes a subsidy.” DTE Electric’s reply brief, p. 138. The Commission, as noted above, does not find that the affordability benefit analysis needs to reflect a positive result on an annual basis or on the cadence of these proceedings, as the Commission agrees with DTE Electric that the aggregate effect of the special contracts on other customers over the term of the contracts is the primary driver of the public interest examination that the Commission is required to undertake. In light of the other determinations in this order, including the adoption of regulatory liability accounting for the net benefits, the Commission declines to adopt an annual reconciliation process.

4. Reporting

Turning to reporting, the Commission adopts the Staff’s requested reporting requirements, described as follows:

Staff recommends the Commission direct the Company to file a report consistent with the Commission’s December 18, 2025 Order in Case No. U-21990, p. 42. Staff recommends the Commission direct the Company to file a quarterly report detailing the Customer’s load profile for the previous quarter; the amount of renewable and storage that is operational under the CCAA as of the end of the quarter; the Customer’s total demand for the preceding 12 months, compared to the expected contract capacity and minimum billing demand (MBD) and any changes to the Customer’s credit rating, as well as associated impacts to credit or collateral terms; and an assessment of the financial state of the Customer. Then, on an annual basis, in any report filed on June 30, the Company should include information related to the realization of the affordability benefit. Staff recommends the first report be filed in this docket on June 30, 2027.

3 Tr 844. Though this appears to generally dovetail with the company’s reporting proposal, the company notes that the language from the December 18 order does not address the affordability backstop provisions. Thus, DTE Electric states that annual reporting should start by April 15, 2027, and, to account for Section 5.1.3 of the PSA, should include:

- o The Customer’s load profile for the previous year;
- o The Customer’s maximum demand for the previous year (by month) compared to the expected contract capacity and MBD;

- o The total MW of energy storage projects deployed under the CCAA that have achieved their Commercial Operations Date (“COD”) by the end of the previous year;
- o The total MW of renewable energy projects deployed under the CCAA that have achieved their COD by the end of the previous year;
- o Any changes to the Customer’s or its parent’s credit rating; and
- o A presentation of the aggregate costs and benefits of serving the customer as of the end of the previous year; I provide additional detail of what would be included in such a presentation earlier in Part III of my rebuttal testimony[.]

- Consistent with Section 5.1.3 of the PSA and my previous rebuttal testimony in Part III on the affordability backstop, during future rate cases and PSCR proceedings the Company would present aggregate costs and benefits of serving the Customer such that the Commission could determine if aggregate benefits exceed aggregate costs[.]

3 Tr 152-153. The Commission adopts the Staff’s reporting regime described above with the additions recommended by DTE Electric. 3 Tr 844, 153. The Commission finds that DTE Electric shall provide the quarterly reporting requested by the Staff during the ramp up period only, based on the company’s seeming concession implicit in stating that a quarterly cadence is unwarranted “particularly once the Customer’s full ramp is achieved and the reported information is not expected to change meaningfully from one report to the next.” DTE Electric’s initial brief, p. 42. Quarterly reporting during the ramp up period is reasonable in light of the fact that the reported metrics will be changing meaningfully during that time. After the load ramp completion date, DTE Electric is subject only to annual reporting. The Commission approves April 15, 2027, for initiation of the quarterly and annual reporting.

The Commission also finds that the company’s report shall include the tracking of Google’s load materialization and accreditation for resources under the CCAA as proposed by MEICEO. *See*, 3 Tr 720-723. Finally, the Commission adopts the Attorney General’s and MEICEO’s recommendation that the annual reporting should include: (1) actual ITC transmission upgrade costs associated with serving Google; (2) how those costs are recovered through MISO schedules

and reflected in the PSCR factor; (3) the portion of those costs paid by Google through Rate D11 and PSCR charges; and (4) the effect of Google's load on transmission billing determinants and unit costs. 3 Tr 687-688, 485. The Commission acknowledges DTE Electric's inability to provide project-by-project information due to the lack of a requirement from MISO for ITC to provide an itemized bill to DTE Electric. 3 Tr 146. The company should provide the requested information where possible, as it has already committed to do. In light of its other determinations in this order, the Commission declines to adopt MEICEO's recommendation for a demonstration that other customers are held harmless or that a true-up should be adopted. The Commission finds that the approved reporting requirements (in partnership with regulatory liability accounting treatment for the net benefits and the regular provision of the affordability benefit analysis on the same cadence as rate and PSCR cases) are robust enough to address the remaining concerns expressed by MEICEO, the Staff, GLREA, and the Attorney General. Quarterly and annual reporting shall be filed in the instant docket.

As in the December 18 order, DTE Electric shall provide an updated analysis in its next capacity demonstration filing showing the impact of Google's load on the company's capacity requirements under direct loss of load (DLOL) using MISO's most recent indicative DLOL results. This analysis shall include a comparison of the company's planning reserve margin requirements (PRMR) under the MISO DLOL construct, absent Google's load, the incremental storage, and the incremental renewable resources filed in the company's REP compared to the company's PRMR under the MISO DLOL construct with the inclusion of Google's load and corresponding incremental resources. In light of the December 18 order, the Commission finds that this requirement should also be extended to providing the same information for Oracle alone, and also for Google and Oracle combined. *See*, December 18 order, p. 37.

In conclusion, the approval in the instant case is conditioned upon the assumption, as represented by DTE Electric in its application, testimony, and exhibits, that Google's obligations under Rate D11 and the special contracts will at least cover all costs to serve Google (including generation, transmission, distribution, or other costs) such that those costs are not borne by other customers.¹⁹ 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 PG or LoC, if the company determines that the specified collateral is not sufficient to cover the full amount of the remaining financial exposure associated with the PSA, CCAA, LEA, or Rider 12 DRA or any other related agreements, the Commission specifically cautions DTE Electric that any unrecovered costs shall not be borne by other customers 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, as the company has already indicated. The Commission directs DTE Electric to file, within 30 days of the date of this order, a letter in the instant docket accepting the conditions described in this order. Per Rule 31(2), if DTE Electric finds that any special contract requires revision as a result of the Commission's conditions, then DTE Electric shall file a copy of the revised special contract(s) within 30 days of the date of this order in this docket.

Finally, the Commission retains jurisdiction of this matter and reserves the authority to reopen this case at any time and/or issue an order to show cause if DTE Electric's claimed affordability

¹⁹ The Commission's references to prohibiting cost shifting to "other customers" do not include customers who do not pay power supply costs (such as choice customers). As noted above, the Staff found that these customers will pay more as a result of the conditional approval of the special contracts. 3 Tr 861-863; Staff's initial brief, p. 4.

benefit fails to materialize or vanishes or costs associated with serving Google are expected to fall upon existing customers.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company's March 17, 2026 application for approval of special contracts consisting of a primary supply agreement and a clean capacity accelerator agreement with Google LLC is conditionally approved.

B. The approval of the special contracts is conditioned upon the representations made by DTE Electric Company that payments made by Google LLC under Rate Schedule D11 and the special contracts will cover the costs to serve Google LLC such that the costs of serving Google 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 all of the conditions in this order.

C. The approval of the special contracts is conditioned upon DTE Electric Company's commitment to updating the operating parameters applicable to the Google LLC facility at any time up to and after energization where necessary to comply with operational requirements that are imposed by the Michigan Public Service Commission, North American Electric Reliability Corporation, Federal Energy Regulatory Commission, Midcontinent Independent System Operator, Inc., and International Transmission Company, d/b/a, *ITCTransmission*.

D. The approval of the special contracts is conditioned upon DTE Electric Company's acceptance of the removal of any cap on the amount to be contributed by Google LLC or DTE Electric Company towards fulfilling the obligations described in the Line Extension Agreement or other costs associated with electric infrastructure upgrades required to serve Google LLC.

E. The approval of the special contracts is conditioned upon DTE Electric Company's agreement to treat the financial compensation mechanism included in the special contracts as ordinary income, as described in this order.

F. The approval of the special contracts is conditioned upon DTE Electric Company's agreement to retire any renewable energy credit transferred to Google LLC under the special contracts in the same year that the renewable energy credit is removed from DTE Electric Company's renewable portfolio standard compliance calculation and use of the transferred renewable energy credit for clean energy plan compliance in that same year.

G. The approval of the special contracts is conditioned upon DTE Electric Company's agreement to supplement the September 24, 2026 integrated resource plan and associated clean energy plan filing in Case No. U-22168 to provide a comparison of the resource requirements necessary to serve the company's load both with and without the addition of Google LLC's load, and both with and without Google LLC's load and Green Chile Ventures LLC's load in aggregate, as described in this order, within 21 days of the date of this order; and DTE Electric Company's agreement to supplement that filing to provide modeling showing how the extension of the zonal resource credit transfer and the Rider 12 demand response agreement beyond May 31, 2033, would affect any incremental accredited capacity need identified after May 31, 2033, within 21 days of the date of this order.

H. The approval of the special contracts is conditioned upon DTE Electric Company's agreement to supplement the September 24, 2026 amended renewable energy plan filing in Case No. U-22057 to provide: (1) a comparison of the resource requirements needed to comply with the renewable portfolio standard targets both with and without Google LLC's load, and both with and without Google LLC's load combined with Green Chile Ventures LLC's load and

corresponding retail sales; (2) an analysis of options for recovery of any incremental costs of renewable portfolio standard compliance that may result in a surcharge such that the surcharge is not collected on a per meter basis; and (3) an analysis of equitable ways to recover the incremental costs of renewable portfolio standard compliance which ensure that costs and benefits are appropriately distributed among rate classes, within 21 days of the date of this order.

I. The approval of the special contracts is conditioned upon DTE Electric Company's agreement to file an application in a contested proceeding for approval of updated interconnection procedures and a draft battery import and export tariff in a new docket within 120 days of the date of this order.

J. DTE Electric Company shall provide an updated analysis in its next capacity demonstration filing under MCL 460.6w showing the impact of Google LLC's load and Green Chile Ventures LLC's load, separately and in aggregate, on the company's capacity requirements under direct loss of load methodology using the Midcontinent Independent System Operator, Inc.'s most recent indicative direct loss of load results, as described in this order.

K. DTE Electric Company shall work with Google LLC to make Google LLC aware of the requirements and obligations related to energy waste reduction goals and compliance expectations, as described in this order. DTE Electric Company shall provide a detailed analysis of the incremental costs necessary to meet the 2% energy waste reduction savings target inclusive of Google LLC's load and Green Chile Ventures LLC's load, along with 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 Google LLC and Green Chile Ventures LLC.

L. In its next general rate case, DTE Electric Company shall file a cost allocation and rate design proposal that ensures that future large load interconnection customers pay the full costs

associated with interconnection, and shall include the six cost allocation and rate design studies, as detailed in this order. DTE Electric Company shall also provide all the data necessary to allow the Commission Staff and intervenors in the general rate case to recreate the studies, which may be filed under seal if necessary, including a workpaper listing all assumptions used to create the studies.

M. Within three years of the load ramp completion date, DTE Electric Company shall file an application in this docket for review of the status of the termination payments under the special contracts and the collateral amounts under the special contracts.

N. Beginning on April 15, 2027, DTE Electric Company shall provide the quarterly and annual reporting described in this order.

O. DTE Electric Company shall consolidate Case No. U-22057 into Case No. U-22168. All future filings related to the amended renewable energy plan shall be made in Case No. U-22168.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at SheaC1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION



Daniel C. Scripps, Chair

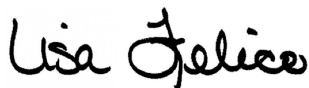


Katherine L. Peretick, Commissioner



Shaquila Myers, Commissioner

By its action of October 1, 2026.



Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

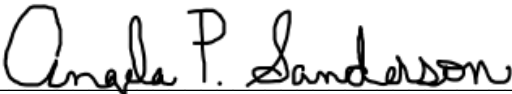
Case No. U-22058 *et al.*

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on October 1, 2026 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 1st day of October 2026.


Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

Service List for Case: U-22058

Name	On Behalf Of	Email Address
Adam M. Cozort	MPSC Staff	cozortal@michigan.gov
Amit T. Singh	MPSC Staff	singha9@michigan.gov
Andrea E. Hayden	DTE Electric Company	andrea.hayden@dteenergy.com
Brian W. Coyer	Great Lakes Renewable Energy Association	bwcoyer@publiclawresourcecenter.com
Christopher M. Bzdok	Michigan Environmental	chris@tropospherelegal.com
Christopher M. Bzdok	Sierra Club	chris@tropospherelegal.com
Christopher M. Bzdok	Natural Resources Defense Council	chris@tropospherelegal.com
Daniel E. Sonneveldt	MPSC Staff	sonneveldtd@michigan.gov
Daniel H.B. Abrams	Union of Concerned Scientists, Inc.	dabrams@elpc.org
Daniel H.B. Abrams	The Ecology Center	dabrams@elpc.org
Daniel H.B. Abrams	Michigan Energy Innovation Business Council	dabrams@elpc.org
Daniel H.B. Abrams	Environmental Law & Policy Center	dabrams@elpc.org
Daniel H.B. Abrams	Institute for Energy Innovation	dabrams@elpc.org
Daniel H.B. Abrams	Vote Solar	dabrams@elpc.org
Don L. Keskey	Great Lakes Renewable Energy Association	donkeskey@publiclawresourcecenter.com
DTE Electric Company	DTE Electric Company	mpscfilings_account@dteenergy.com
Helen Y. Li	Sierra Club	hli@earthjustice.org
Holly L. Hillyer	Sierra Club	holly@tropospherelegal.com
Holly L. Hillyer	Michigan Environmental	holly@tropospherelegal.com
Holly L. Hillyer	Natural Resources Defense Council	holly@tropospherelegal.com
Joel B. King	Department of Attorney General	kingj38@michigan.gov
John A. Janiszewski	DTE Electric Company	john.janiszewski@dteenergy.com
Katherine S. Duckworth	Michigan Energy Innovation Business Council	kduckworth@elpc.org
Katherine S. Duckworth	Institute for Energy Innovation	kduckworth@elpc.org
Katherine S. Duckworth	Union of Concerned Scientists, Inc.	kduckworth@elpc.org
Katherine S. Duckworth	The Ecology Center	kduckworth@elpc.org
Katherine S. Duckworth	Vote Solar	kduckworth@elpc.org
Katherine S. Duckworth	Environmental Law & Policy Center	kduckworth@elpc.org
Lucas Wollenzien	Department of Attorney General	wollenzienl@michigan.gov

Michael J. Pattwell	Association of Businesses Advocating Tariff Equity	mpattwell@clarkhill.com
Sean C. Clark	Natural Resources Defense Council	sean@tropospherelegal.com
Sean C. Clark	Sierra Club	sean@tropospherelegal.com
Shannon W. Fisk	Sierra Club	sfisk@earthjustice.org
Stephen A. Campbell	Association of Businesses Advocating Tariff Equity	scampbell@clarkhill.com
Theresa A.G. Staley	ALJs - MPSC	staleytl@michigan.gov

Service List for Case: U-22168

Name	On Behalf Of	Email Address
Adam M. Cozort	MPSC Staff	cozortal@michigan.gov
Alena M. Clark	MPSC Staff	clarka55@michigan.gov
Daniel E. Sonneveldt	MPSC Staff	sonneveldtd@michigan.gov
DTE Electric Company	DTE Electric Company	mpscfilings_account@dteenergy.com
John A. Janiszewski	DTE Electric Company	john.janiszewski@dteenergy.com
Jonathan F. Thoits	ALJs - MPSC	thoitsj@michigan.gov
Nicholas Q. Taylor	MPSC Staff	taylorn10@michigan.gov

Service List for Case: U-22057

Name	On Behalf Of	Email Address
DTE Electric Company	DTE Electric Company	mpscfilings_account@dteenergy.com
Morgan L. Esters	DTE Electric Company	morgan.esters@dteenergy.com
Theresa A.G. Staley	ALJs - MPSC	staley1@michigan.gov