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December 1, 2017

VIA ELECTRONIC CASE FILING

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

Re: *MPSC Case No. U-18150 - DTE Electric Company's Application for Accounting Approval of Depreciation Accrual Rates.*

Dear Ms. Kale:

Attached for filing please find the *Initial Brief of the Association of Businesses Advocating Tariff Equity* and a *Proof of Service* with regard to the above-entitled case.

Very truly yours,

CLARK HILL PLC

Robert A. W. Strong

RAWS:llm
cc (w/encl): Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of
DTE ELECTRIC COMPANY
for approval of depreciation accrual
rates and other related matters.

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Case No. U-18150

Hon. Sharon L. Feldman

**INITIAL BRIEF OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

CLARK HILL PLC

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**INITIAL BRIEF OF THE
ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY**

The Association of Businesses Advocating Tariff Equity (“ABATE”), by its attorneys, CLARK HILL PLC, files this Initial Brief in this proceeding before the Michigan Public Service Commission (“Commission” or “PSC”) in accordance with the schedule established by the presiding Administrative Law Judge (“ALJ”). The fact that ABATE is silent on any issue should not be construed as ABATE’s acceptance of any party’s position on that particular issue.

I. INTRODUCTION AND SUMMARY

DTE Electric Company (“DTE”) filed its Application on November 1, 2016, seeking a \$156 million increase in annual depreciation expense. Staff filed the testimony of Mr. Ronald Ancona, recommending a jurisdictional depreciation expense increase of approximately \$39 million.¹ ABATE sponsored the testimony of Mr. Brian Andrews, which recommended a jurisdictional depreciation expense increase in the amount of approximately \$55 million.² ABATE’s recommendation addresses only DTE’s steam production expense; ABATE is not contesting the non-steam depreciation expense increase of approximately \$7 million (\$156 million total less steam production expense of \$149 million).

The principal issues in this case are whether the Commission should approve depreciation rates which recognize the premature decommissioning of DTE’s Belle River, St. Clair, River Rouge, and Trenton Channel coal-fired units and whether the Commission should make several downward adjustments to the depreciation accruals requested by DTE. The dollar amount of the total future accruals and the remaining life (time in years) that derive the annual depreciation expense included in rates are the technical issues that must be examined in order to reach a decision in this proceeding. ABATE and Staff recommend that the Commission defer any action

¹ 2 Tr 213.

² 2 Tr 175-176.

on DTE's request to set rates based on the premature retirement of these plants until the Commission issues its final order in Case No. U-18419, in which the Commission will adopt, modify, or reject DTE's Integrated Resource Plan ("IRP"). DTE's IRP will necessarily involve the determination of the appropriate retirement dates for Belle River, St. Clair, River Rouge, and Trenton Channel. ABATE and Staff both recommend reductions in the amount of the depreciation increase.

ABATE's recommendation of a final steam production depreciation expense increase in this case of \$55 million is comprised of two reductions in DTE's filed case pertaining to: (i) the premature retirements of Belle River, St. Clair, River Rouge, and Trenton Channel, and (ii) the amount of decommissioning expense to be collected through the depreciation rates from ratepayers related to four (4) adjustments.

ABATE recommends that the Commission defer any decision on any increase in depreciation expense related to the premature retirements of Belle River, St. Clair, River Rouge, and Trenton Channel until a final order is issued in Case No. U-18419. ABATE further recommends that the Commission address in this case the questions of: (i) whether or not the decommissioning cost estimates should be escalated five years following the year of the plant retirement should be allowed; (ii) whether the cost of the obsolete inventory should be removed from depreciation expense; (iii) whether customers should receive the benefit of the time value of money; and (iv) whether the net salvage related to already-retired Harbor Beach and Conner's Creek should be removed from the River Rouge depreciation expense.³ If approved, these reductions would result in a final depreciation expense increase in the amount of \$55 million

³ 2 Tr 181.

(DTE total proposed depreciation expense increase = \$156.4 million, less premature retirement expense of \$88.8 million,⁴ less other adjustments of \$12.2 million = \$55.4 million.)

II. ARGUMENT

A. Treatment of Belle River, St. Clair, River Rouge, and Trenton Channel

The depreciation expense for Belle River, St. Clair, River Rouge, and Trenton Channel is being collected from ratepayers through the current depreciation rates approved in the Commission's June 16, 2011 Order in Case No. U-16117.⁵ This order approved retirement dates for these units, but DTE is requesting to shorten the useful lives of these units. ABATE's recommendation is that the retirement dates for the coal units remain at the dates that are currently approved, which results in a composite remaining life for all steam plants of 24.89 years.⁶ This compares to the remaining life of 18.03 years proposed by DTE.⁷

Table 2 from Mr. Andrew's testimony summarizes DTE's proposed changes in the retirement dates of Belle River, St. Clair, River Rouge, and Trenton Channel.⁸

[See Table on next page.]

⁴ 2 Tr 179.

⁵ This depreciation order does not cover renewable energy facilities, which were subject to Case No. U-16991.

⁶ Exhibit AB-4, p. 1, line 6.

⁷ Exhibit A-15, p. 66.

⁸ 2 Tr 182.

TABLE 2

Proposed Reduced Coal Plant Lives

<u>Plant</u>	<u>DTE Proposed Final Retirement Date</u>	<u>Final Retirement Date Approved in U-16117</u>	<u>Delta</u>
Belle River	2030	2051	-21
River Rouge	2020	2024	-4
St. Claire	2023	2035	-12
Trenton Channel	2023	2034	-11

The increased depreciation expense related to the premature retirement dates for these four plants is \$88.8 million.⁹ Therefore, if DTE's position is rejected in favor of reserving the retirement date issue to a final order in Case No. U-18419, then DTE's requested steam production plant depreciation expense increase of \$149.6 million would be reduced by \$88.8 million.

This case is not the proper forum to decide the issue of whether it is proper for rates to reflect premature retirements of four coal-fired generating plants. The proper retirement dates will necessarily be determined in Case No. U-18419, so if these dates are approved in the form of new depreciation expenses in this case, there is a chance that there could be conflicting Commission decisions and, if the Commission feels that it is bound by its decision in Case No. U-18150, then it creates an issue with respect to due process for those participants in Case No. U-18419. Case No. U-18419 involves whether the Commission should issue a number of Certificates of Necessity that will pre-approve the building of two new combined cycle combustion turbine plants at a cost of approximately \$986 million where cost recovery is guaranteed up to the pre-approved amount. The issues in that case are broad and all, in some

⁹ 2 Tr 179.

way, relate back to Commission approval of an IRP which analyzes and cost justifies the means for DTE to balance supply and demand for electricity well into the future. Case No. U-18419 is a much better forum to decide these monumental issues in a comprehensive manner, as opposed to deciding the principal IRP issues in a much narrower depreciation case. Parties to U-18419 will have a very appealable issue if the main IRP issue of the coal plant retirement dates is decided in this case. Please note that DTE did not provide any IRP data until the rebuttal phase of U-18150. Therefore, proper notice is a real issue for the Commission. These problems can simply be avoided by deferring any decision on retirement dates to a final order in Case No. U-18419.

On a more technical plane, Mr. Andrews testified that any decision on new retirement dates should be deferred because DTE had not provided adequate support for its decisions. In discovery, DTE indicates that the proposed early retirement dates for these plants are largely based on the implementation of the Clean Power Plan, which is no longer being considered by the current administration, so any decision to retire a portion of DTE's coal fleet early appears to be premature.¹⁰ Mr. Andrews also testified that it would be far better to defer any action until DTE's IRP is thoroughly reviewed and scrutinized. Consequently, it is premature to obligate ratepayers to provide significant additional revenues to cover the accelerated depreciation of DTE's coal fleet as a result of an order in this case.¹¹ Any increase in depreciation expense at this time is "unjustified and [an] unreasonable burden on ratepayers."¹² Finally, Mr. Andrews testified that the premature retirement of the four coal plants raises ancillary issues such as whether DTE, the Commission, and interested parties should consider securitizing any unrecovered plant balances and, potentially, decommissioning costs, as was done in Case No. U-

¹⁰ 2 Tr 182-183.

¹¹ 2 Tr 183.

¹² 2 Tr 184.

17473.¹³ Obviously, if these costs were to be securitized, then there would be no need to increase depreciation expense in U-18150. The Commission is under a statutory requirement to establish just and reasonable rates, and this would necessitate a review of the various ratemaking alternatives to collect any costs and expenses that the Commission found to be just and reasonable stemming from the premature retirement of four DTE coal plants, including a review of securitization. Again, this issue is something that should be addressed in Case No. U-18419 and not in U-18150.

B. Other Depreciation Adjustments.

ABATE's recommendations related to the net salvage that is recovered through depreciation rates (as it relates solely to steam production plant) entails reductions from DTE's filed positions to increase future accruals. ABATE requests the Commission to decide: (i) whether or not the decommissioning cost estimates should be escalated five years following the year of the plant retirement should be allowed; (ii) whether the cost of the obsolete inventory should be removed from the depreciation expense; (iii) whether customers should receive the benefit of the time value of money; and (iv) whether the net salvage related to already-retired Harbor Beach and Conner's Creek should be removed from the River Rouge depreciation expense. These adjustments would reduce DTE's depreciation expense request by approximately \$12.2 million.

There is also a policy issue raised by Staff and ABATE as to whether the residual value of the coal plants, including land, should be an offset to decommission expense. Staff and

¹³ Order, Case No. U-17473, dated December 6, 2013, p. 62, granting Consumers Energy's request for authority to issue securitization bonds for the remaining book value of several generating units.

ABATE support this concept, and DTE opposes it on the narrow ground that real property is not depreciable property.¹⁴

1. Five Year Decommissioning Cost Escalation.

DTE has proposed to escalate the coal plant decommissioning costs for the five years following the final retirement year. At an inflation rate of 2.2% used by DTE, this results in the cost at the retirement year to be further inflated by 11.5%.¹⁵ According to Mr. Andrews, there is no reason that the planning for the decommissioning cannot occur prior to the final retirement date. DTE suggests that planning can be accomplished prior to the final retirement date and, in fact, some of the decommissioning costs that would otherwise be incurred after the final retirement date, will be incurred prior to the final retirement year. DTE further goes on to indicate that some of those costs necessarily will have to be actually spent after the final retirement year.¹⁶ DTE has the burden of proof, and it has not fully accounted for those costs which will be incurred prior to and after the final retirement year. Accordingly, there is no sound evidentiary basis for adopting DTE's blanket position that all decommissioning costs should be escalated at 2.2% per year for five years after the final decommissioning year. Therefore, any escalation past the final retirement year should be rejected by the Commission in this proceeding.

2. Obsolete Inventory Costs.

One of DTE's objections to ABATE's recommendation to exclude the cost of obsolete inventory from the net salvage portion of depreciation expense was that DTE was asking for an increase in depreciation expense in this case and was not relying on the order in Case No. U-18033.¹⁷ Mr. Andrews pointed to two facts pertaining to the Commission's order in Case No. U-

¹⁴ 2 Tr 162-163.

¹⁵ 2 Tr 185.

¹⁶ 2 Tr 166.

¹⁷ 2 Tr 169-170.

18033. First, the order did not allow an increase in the cost of service to customers and, therefore, the order could be issued without notice or hearing.¹⁸ Second, DTE does not provide adequate support to show the level of obsolete inventory with any specificity. Consequently, the Commission should reject DTE's depreciation rate increase.

Mr. Andrews points out that in Exhibit A-4, DTE presented that it currently has \$66.8 million in obsolete inventory for its six coal plants as of December 31, 2015, and that it expects to receive a positive 10% in gross salvage proceeds. Absent DTE's detailed support for the level of obsolete inventory, the Commission should reject DTE's request to increase depreciation rates related to this item.¹⁹

3. Time Value of Money.

ABATE's position is that the depreciation expense should recognize the time value of money as explained in Exhibit AB-2.²⁰ Mr. Andrews presented a two-part proof, where the first proof described the concept, and the second proof demonstrated that the use of the methodology is sufficient to recover the escalated decommissioning costs required.

Exhibit AB-2 assumes that an estimate of the annual accrual decommissioning costs is performed in 2017, assuming a final retirement and decommissioning will occur in 2036. The 2017 cost estimate to decommission a plant is \$10,000 in 2017 dollars. In 2036, when the work is performed, it is estimated that the cost will be \$15,121. Under the current straight-line method, the estimated final cost of \$15,121 would be divided evenly over the remaining life of the plant. During the 20-year remaining life of the plant, the current methodology requires customers to pay \$756 per year. Column 4 of Exhibit AB-2 demonstrates that dollars collected in the early portion of the 20-year period are worth more than each subsequent dollar collected from

¹⁸ 2 Tr 187.

¹⁹ 2 Tr 188.

²⁰ 2 Tr 190-193.

customers. The \$756 collected in 2017 will be worth \$1,143 in 2036. In total, the future value of the annual accruals is \$18,740, which is 24% more than is required to meet the 2036 estimated cost of decommissioning.²¹ Recalculating the annual payment amounts to reflect the time value of money results in an annual accrual of \$610, which over the 20-year period, will have the same value as the \$15,121 needed to decommission a plant in 2036.²²

In order to remain within the confines of the straight-line method, then the \$15,121 should be reduced to \$12,200 and \$610 should be collected from customers in each and every year of the 20-year useful life of the plant. (Note that the Commission could change both of these numbers on a prospective basis, following a new approved depreciation study, as shown in Exhibit AB-3.) Mr. Andrews summarized his position as follows:

If my proposed methodology is adopted, DTE will collect enough revenues from ratepayers to meet its decommissioning expense needs, but in a manner that more fairly allocates costs across generations of ratepayers, thus representing a just and reasonable proposal.²³

DTE counters that the Commission had previously approved a straight-line method for future approval costs and that simplicity overcomes a more complicated method for calculating the cost of future removal. DTE also claims that any reduction in utility revenues as a result of reflecting the time value of money credit to customers would have negative financial consequences.²⁴

When deciding this issue, the Commission should keep in mind that depreciation has two disparate impacts on customers and the utility. For customers, depreciation is an annual cash expense that is paid by customers to the utility. For a utility, this is a non-cash expense because there is no corresponding cash payout by the utility in the year in which the dollars are received.

²¹ 2 Tr 191.

²² *Id.*

²³ 2 Tr 193.

²⁴ 2 Tr 169.

Instead, DTE simply credits the amounts received by customers to its depreciation reserve, which becomes a current asset offset by a future speculative liability. Utilities are free to use the free cash received from customers in a manner in which they choose prior to the time when the actual expenses are incurred many years in the future. Therefore, if the dollars collected from customers calculated using an adjustment for the time value of money are sufficient to meet the utility's future decommissioning expenses, then the Commission should approve the methodology which results in customers paying less up-front for depreciation expense. In the event that cost estimates change, the utilities can do what they do currently, and that is, request future adjustments in the amounts that are needed to pay for decommissioning costs. Obviously, any future projections are extremely speculative, so the Commission should adopt a policy that compensates utilities such as DTE for the just and reasonable cost of decommissioning while, at the same time, minimizing the current payments made by customers to utilities to cover depreciation expense.

4. Harbor Beach and Conners Creek Net Salvage Expense Included in River Rouge Depreciation Expense.

Harbor Beach and Conners Creek have been retired by DTE, and decommissioning costs are expected to be incurred by DTE in the 2018-2020 timeframe.²⁵

DTE has proposed to include these costs in the net salvage costs related to River Rouge and recover the total estimated costs through the River Rouge depreciation rates. However, DTE proposes to inflate the estimated costs of decommissioning for a period of five years after the final retirement date. For River Rouge, DTE is proposing a final retirement of 2025, but to include costs that will be incurred and expended in the 2018-2020 timeframe for Conners Creek

²⁵ 2 Tr 189.

and Harbor Beach is completely unjustified.²⁶ DTE is requesting that costs already expended be inflated to 2025. DTE has noted that it is in the process of disposing of the plants and, apparently, the contracts for disposal are not finalized.²⁷ Consequently it is also premature to include these in depreciation rates, much less include them in the net salvage portion of depreciation rates of River Rouge which will be escalated until 2025, as proposed by DTE.

As part of its decommissioning expense, DTE is asking that the Commission approve projected amounts that DTE says it will potentially pay to any purchaser to accept the plants.²⁸ Until these transactions are closed and completed, it is impossible for the Commission to conduct a prudence review and, therefore, ABATE requests the Commission to reject DTE's request to include any expenses related to Connors Creek and Harbor Beach in the depreciation expenses for River Rouge.

5. The Land Value of Power Plant Sites.

Staff and ABATE have proposed that the land value of power plant sites be included in the calculation of depreciation expense. DTE opposes this concept on the grounds that land is not a depreciable asset. ABATE's position is that the land value should be treated as gross salvage and an offset to the cost of removal, similar to the treatment of net salvage for interim retirements.²⁹ The following reasons support this position:

- The former sites of the power plants which are brought to either Greenfield or Brownfield status will provide future developers with a significant value. (These developers can include independent third party developers or the utility itself if it wishes to use the site to build a new, modern power plant.)
- The sites already have existing infrastructure and permits which derive the most value if they are used for the next generation of power plants.

²⁶ *Id.*

²⁷ 2 Tr 165.

²⁸ *Id.*

²⁹ 2 Tr 186.

- DTE could follow the Marysville model and sell the plant site “as is,” which would enable DTE to sell the site without paying for any demolition costs, thus receiving the purchase price as a positive cash flow.
- Failure to recognize the land value will create significant inter-generational inequities.³⁰

If a decommissioned site is used as a location for a new power plant, then the decommissioned site will provide substantial value to the next generation of customers in that improvements have been made that can be reused, the permits and zoning have already been approved, and the cost of improvements and obtaining the required environmental permits and required zoning permits were paid for by previous generations of utility customers. Simply letting all these benefits accrue solely to the next generation of customers is unfair and inequitable.

This is not a one-time issue, and it will reoccur on a continuing basis as depreciation expenses are calculated for such assets as Ludington. The Ludington Pumped Storage Facility, 49% owned by DTE, rests on 600 acres of land adjacent to Lake Michigan and, if and when this plant is fully decommissioned, the land can be repurposed for high value recreational uses. Requiring customers to pay for depreciation expense which returns this land to Greenfield or Brownfield status with no recognition of the value of land is patently unreasonable.

In summary, the Commission should adopt a policy that the value of land at the end of decommissioning should be treated as gross salvage and an offset to the cost of removal.³¹

³⁰ 2 Tr 186-187.

³¹ 2 Tr 186.

III. RELIEF REQUESTED

WHEREFORE, ABATE requests the Administrative Law Judge to issue a proposal for decision adopting ABATE's position as outlined in this Initial Brief and the Steam Production Depreciation rates set forth in Exhibit AB-4.

Respectfully submitted,

CLARK HILL PLC

By: _____
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Date: December 1, 2017

STATE OF MICHIGAN

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In the matter of the application of
DTE ELECTRIC COMPANY
for approval of depreciation accrual
rates and other related matters.

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Case No. U-18150

Hon. Sharon L. Feldman

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

Robert A. W. Strong, being first duly sworn, deposes and says that on December 1, 2017, he did cause to be served the **Initial Brief of the Association of Businesses Advocating Tariff Equity**, as well as this **Proof of Service**, in the above docket, on the persons identified on the attached service list, via electronic mail.

Robert A. W. Strong

Subscribed and sworn to before me
this 1st day of December, 2017.

Linda L. McCauley, Notary Public
Oakland County, MI
My Commission expires: October 18, 2019
Acting in Oakland County

SERVICE LIST
MPSC Case No. U-18150

Administrative Law Judge

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