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March 20, 2019

VIA ELECTRONIC CASE FILING

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

Re: ***MPSC Case No. U-20162: DTE Electric Company General Rate Case (2018)***

Dear Ms. Kale:

Attached for filing, please find the ***Exceptions of the Association of Businesses Advocating Tariff Equity*** along with a ***Proof of Service.***

Very truly yours,

CLARK HILL PLC

Robert A. W. Strong

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Attachments

cc: w/attachments: ALJ Wallace and Parties of Record

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the matter of the application of DTE Electric Company for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority	)))))	Case No. U-20162 Hon. Sally L. Wallace

EXCEPTIONS OF THE ASSOCIATION OF BUSINESSES ADVOCATING TARIFF EQUITY

The Association of Businesses Advocating Tariff Equity ("ABATE"), by its attorneys, Clark Hill PLC, files these Exceptions in accordance with Rule 435 (R 792.10435) of the Rules of Practice and Procedure before the Commission in accordance with the schedule established by the presiding Administrative Law Judge ("ALJ").

I. EXCEPTIONS

A. The ALJ Erred When She Failed to Discuss ABATE's Proposed Adjustment to Working Capital.

The ALJ stated as follows:

> "The Attorney General and ABATE recommended specific adjustments to the company's working capital that are addressed below. (PFD at 104).

The PFD reviewed the Attorney General's adjustments but completely ignored ABATE's proposed adjustment related to the inclusion in rate base of a prepaid pension asset.

Mr. Gorman set forth ABATE's position regarding whether to allow the inclusion of a prepaid pension asset in a utility's rate base:

> Q: DO YOU BELIEVE IT IS TRADITIONAL RATEMAKING PRACTICE TO ALLOW INCLUSION OF A PREPAID PENSION ASSET IN A UTILITY'S RATE BASE?

> A: No, not in my experience. Rather, in my experience a prepaid pension asset can be included in rate base only to the extent that the utility proves the asset is a prudent investment, that it has the effect of either lowering its overall pension cost of service, supports the integrity of the pension trust, or both. This demonstration ensures that the utility fairly recovers a reasonable amount of pension expense from the current generation of customers by ensuring that current customers pay no more than a reasonable share of DTE's employees' pension and benefit cost, that are paid after retirement.

(7 T 2921, emphasis in original).

Mr. Gorman then went on to explain how other state jurisdictions and courts have treated the prepaid pension asset. For example, the Indiana Utility Regulatory Commission only allows a prepaid pension asset measured by the difference between the actual funding contributions, less the Employee Retirement Income Security Act of 1974 ("ERISA") minimum funding contributions to be subject to inclusion in rate base, but it is still only to the extent that the non-discretionary funding contributions are shown to be prudent and reasonable investments.

He also cited the Illinois Commerce Commission in its performance-based Formula Rate for Electric Utility Companies recognizes the relative gray areas associated with including a prepaid pension asset in rate base. For this purpose, the Illinois Commerce Commission allows utilities to recover a long-term debt return on pension assets rather than earn the utility's full weighted average cost per capital. (7 T 2921).

He also testified that the New Mexico courts have ruled on the appropriate standard for determining whether or not a prepaid pension asset should be included in the rate base. A New Mexico utility must demonstrate that the prepaid pension asset was funded by investor capital, as opposed to collections from customers, and must demonstrate that the existence of a prepaid asset is used and useful, and that it has the effect of reducing the overall cost of service related to pension expense in the filing. (7 T 2921-2922, citations omitted).

Mr. Gorman also testified that DTE has not established that its funding for a prepaid pension asset was done in a means to substantially reduce cost to retail customers, or to protect the integrity of its pension trust. Rather, the evidence supports the conclusion that the buildup in a prepaid pension asset is not justified for either of these factors. (7 T 2922).

Mr. Gorman discussed what DTE claims are the benefits of making excess contributions to the pension trust in excess of the minimum requirements. He said that DTE's position is that it benefits the utility through the rate of return on trust fund assets, reduces pension costs, and avoids exposure to Pension Benefit Guarantee Corporation Premiums. (7 T 2922-2923). In the answer to question ABDE-9.94, DTE admits that the existence of a prepaid pension asset does not have an impact on the utility's pension expense. (7 T 2923). Mr. Gorman testified that in response to ABDE-9.87, DTE stated its prepaid pension asset has increased from around $616 million in 2015 up to $692 million in 2017, and up to $796.5 billion in the proforma test year period in this proceeding. (7 T 2923). The actual increase from 2017 over 2015 is about $76 million and the projected proforma increase used to set rates in this proceeding is an increase in this asset of approximately $105 million. (*Id.*) If included in the rate base, DTE's revenue deficiency will increase by $7.5 million at DTE's proposed overall rate of return. (*Id.*) Consequently, DTE "has an economic incentive to increase the prepaid pension asset, because it inflates rate base and improves earnings, regardless of whether a prepayment is needed. (7 T 2923). Mr. Gorman noted that the prepayments to the trust are purely "discretionary" because DTE is not obligated to make contributions to its pension trust in excess of the ERISA Minimum Funding. (7 T 2924). As such, the prepaid pension asset that exceeds the ERISA funding level is a controllable investment by DTE that should obligate DTE to show that its

actions are reasonable and prudent. Absent this definitive proof, this discretionary asset should not be included in cost of service. (7 T 2924).

DTE cited to only one instance where the Commission dealt with the parameters for inclusion of a prepaid pension asset in rates. This occurred in a MichCon Gas proceeding (Case Nos. U-13898 and U-13899), as Mr. Gorman reported, in the final order the Commission noted that the following factors supported its decision to include a prepaid expense balance in rate base:

> 1. A prepaid pension asset in that case was not an interest-earning utility asset.
>
> 2. In that case, MichCon Gas had a negative pension expense which gave cause to the creation of a prepaid pension asset.

(7 T 2924).

Mr. Gorman also testified that given DTE's economic circumstances that it would fail the test imposed by the Commission on MichCon. (7 T 2925). Further, and more specifically, Mr. Gorman stated that a prepaid pension asset can reduce operating costs and increase operating earnings and thus, provide DTE a return. (7 T 2925). Unlike MichCon, DTE's pension expense in this case is a *positive* $68 million. Mr. Gorman also stated that by providing DTE recovery of its accounting pension expense, it will allow the utility to fully recover from customers contributions to its pension trust over time and do so in a manner that is equitable to current and future generations of customers. (7 T 2925).

Mr. Gorman's testimony concerning a prepaid pension asset concluded with the following recommendation:

> I recommend that the Company's inclusion of a prepaid pension asset in rate base be denied. The Company has not proven that a prepaid pension asset represents a reasonable and prudent investment, after investment, and has not shown that making a

> pension plan prepayment is necessary to support the financial integrity of the pension trust, or to benefit customers through reduced pension cost of service in the proceeding. As such, including a prepaid pension asset in rate base has simply not been justified and should not be allowed. Removing a prepaid pension asset in rate base from this proceeding will lower DTE's claimed revenue deficiency by approximately $60.5 million, based upon the prepaid pension asset included in its original filing.

(7 T 2925).

B. The ALJ Erred When She Refused to Immediately Authorize the Implementation of the Regulatory Plan Put Forth by ABATE.

ABATE put forth a regulatory plan which would accelerate the amortization of a portion of the Adjusted Deferred Income Tax ("ADIT") balance as an offset to the increased depreciation expense attributable to the early retirements of Belle River and the Tier 2 Coal Units plus the current return on the Blue Water Energy Center ("BWEC"). The only party to actively oppose this regulatory plan was DTE. Other parties either were silent or supported ABATE's regulatory plan including Kroger Co. ("Kroger"), The Michigan Environmental Council, Natural Resources Defense Council, and the Sierra Club (collectively, "MEC, et. al.").

While ABATE appreciates the ALJ's careful review of its proposed regulatory plan, the regulatory plan must be considered and approved in this case. Waiting until DTE's next case will substantially and unnecessarily harm customers by imposing an unjust and significant price increase on DTE's customers in this case.

ABATE's regulatory plan can be calibrated by the Commission in this case to adjust excess ADIT amortization credits to offset the incremental cost of the retiring the coal units' incremental depreciation and BWEC construction period carrying charges. This can be accomplished by adjusting the amortization period of excess ADIT such that the revenue credit offsets these incremental costs. ABATE's original presentation was based on the Company's

original filed depreciation expense in this proceeding. However, the Company subsequently filed a settlement depreciation rate which lowered the depreciation expense in this case. Because of these changes in circumstances and facts, ABATE's regulatory plan can still be implemented while calibrating the annual amount of excess ADIT credits to offset this incremental depreciation expense, and the BWEC construction carrying charges.

Under Internal Revenue Code ("IRC") normalization rules, the Commission has the discretion to adjust excess ADIT amortization periods in this proceeding. Simply adjusting DTE's proposed period of unprotected excess ADIT balances from 23 and 14 years as recommended by DTE, down to 10 years and 5 years as originally advocated in ABATE's regulatory plan, is fully consistent with IRC normalization rules, and the record clearly shows will have no detrimental impact on DTE's financial standing and credit metrics. Doing this in this case creates a significant benefit to retail customers without any detrimental impact on DTE and its ability to recover coal plant costs and a current return on BWEC. As such, the regulatory plan strikes a meaningful balance between the utility and its ratepayers, by providing full cost recovery of prudent and reasonable costs but minimizing the rates charged to retail customers to accomplish this objective.

The ALJ did identify an error in ABATE witness Gorman's Table 2 outlining the regulatory plan. The ALJ noted that in Table 2 at page 7 of Mr. Gorman's Direct Testimony on line 2, the Tier 2 generating units' total depreciation expense under DTE's initial filing was $121.56 million. This total depreciation expense included an incremental depreciation expense of $87.1 million, and depreciation without accelerated recovery of approximately $34.4 million. (Exhibit AB-33, lines 6 and 8). ABATE agrees that Table 2 should be corrected for this error as noted by the ALJ. However, the error in Table 2 does not detract from the merits of the

proposed regulatory plan. Indeed, if the amount of the incremental coal unit accelerated depreciation expense declines, along with the current return on the BWEC, then the Commission can simply reduce the increase in excess ADIT amortization credit needed to offset these costs.

Specifically, also in Mr. Gorman's Table 2 on line 4, he proposes to increase the annual amortization of excess ADIT from the utility's proposed $74.1 million, up to $245.9 million. He derived that excess ADIT amortization on Exhibit AB-33. The Commission can calibrate the increase in excess ADIT amortization by simply changing the amortization period over which the unprotected excess ADIT balances are amortized. Mr. Gorman's Table 2 increased the excess ADIT balances for unprotected plant and non-plant from 23 and 14 years as proposed by the Company, down to 10 and 5 years proposed under his regulatory plan presented in Table 2. A change in this amortization period resulted in an increase in the revenue requirement of the annual amortization expense up to $245.9 million proposed by Mr. Gorman from the $74.1 million proposed by DTE. In its final determination, the Commission can lengthen the amortization period for the unprotected excess ADIT (both plant and non-plant amortization) to produce a targeted annual revenue credit. If the Commission extends the approved excess ADIT amortization periods it will lower the annual excess ADIT credit. The Commission can set the excess ADIT credit to offset the incremental accelerated coal facility depreciation expense and BWEC carrying charges.

C. The ALJ Erred When She Did Not Recommend a Return On Equity ('ROE") of 9.60%.

The ALJ recommended retaining the current 10.0% ROE that was approved by the Commission in Case No. U-18255. (PFD at 128). The ALJ justified her recommendation because how close the results in the recommendations are in this case compared to those in

DTE's previous rate case, coupled with only a short time that has elapsed since DTE's ROE was last determined (11 months). *Id.*

The record shows that the 10.0% ROE is at least forty (40) basis points above the industry average. The increase in ROE means that DTE's customers will have to pay more in ROE expense than similarly situated customers in other jurisdictions putting Michigan based businesses at a disadvantage.

The precise delta stated in dollars between 9.60% and 10.0% is not provided anywhere in the record because the dollar amount is based on the PFD's findings regarding rate base, capital structure and capital cost rates. If the Commission were to use the PFD's findings and substitute 9.60% for the 10.0%, the difference between the lower and higher ROE's would require DTE ratepayers to pay $34.880 million more per year than the industry average.

ABATE's testimony and evidence demonstrates that the industry norm is an ROE of 9.60%, that DTE's risk is lower than the risk associated with the proxy group of companies and that economic conditions have improved in Michigan. The later point was noted by the ALJ. (PFD at 127). The ALJ stated that the standard for making any adjustments in the ROE is as follows:

> "Thus, this PFD finds that the determination to be made is whether 'underlying economic conditions' have changed significantly since April 18, 2018 justify DTE Electric's recommended 10.5% ROE or, inversely, to justify the 20, 25 or 65 basis point reduction in ROE recommended by the Staff, the Attorney General and ABATE." (PFD at 125-126).

Throughout ABATE's Testimony and Exhibits, ABATE has shown that the Tax Cuts and Jobs Act ("TCJA") has not adversely impacted DTE and should not support any efforts to retain the current ROE or approve an even higher ROE for DTE.

One of the principal issues underlying the ROE recommendations in this case is whether DTE has a significant business risk or something much less, as noted by ABATE and several of the quoted rating agencies. As addressed by Mr. Walters, DTE's current corporate bond ratings from S&P and Moody's are BBB+ and A2, respectively. (7 T 2968). DTE's outlook from both S&P and Moody's is "stable" and, if S&P had rated DTE as a stand-alone entity, its bond rating would be rated at A-. (*Id*.) This means that DTE has suffered a one-notch downgrade in its bond rating simply because it is affiliated with DTE's parent and because of a lack of a ring-fence or protective insulating measures from its parent company. (*Id*.) In summary, Mr. Walters has quoted excerpts from the rating agencies that indicate that DTE's business risk is "excellent," and DTE has a "very low risk." (7 T 2969) This is directly contrary to Dr. Vilbert's unsupported assertions that DTE faces an elevated level of business risk which requires a higher ROE.

Mr. Walters quoted excerpts from the Standard & Poor's RatingsDirect: "Summary: DTE Electric Co." December 19, 2017 at 4:

> Our assessment of DTE's stand-alone business risk profile reflects a very low risk of the regulated utility industry that provides indispensable services that are strategically important to economies, have material barriers to entry, and essentially operate as a monopoly isolated from market challenges. . . .
>
> Our stand-alone base-case scenario forecast for DTE includes adjusted FFO to debt averaging above 20%, above the midpoint of the benchmark range. . . . We base our financial risk assessment on our more moderate financial ratio benchmarks, reflecting the company's steady cash flows from its low-risk, rate-regulated electric utility operating agents and regulatory risk management.

(7 T 2969).

D. The ALJ Erred When She Did Not Recommend a Downward Adjustment in the Nuclear Decommissioning Surcharge.

The ALJ stated as follows:

> "This PFD finds that DTE Electric's nuclear surcharge should be approved as proposed, subject to a requirement that the Company provide an updated decommissioning study in its next rate case, or in a stand-alone proceeding as been done in the past. 540
>
> DTE Electric correctly pointed out that the amounts in the nuclear trust fund cannot be reallocated without NRC approval. However, ABATE presented compelling evidence that the assumptions underlying the calculation of the amount needed to decommission Fermi 2 may no longer be valid and should be revisited. DTE did not contest that the last decommissioning study was performed years ago, nor did it rebut Mr. Andrews evidence about decommissioning amounts in trust funds or other nuclear plants that are roughly 50% on the amount DTE Electric has in its trust fund on a cost per kW basis." (PFD at 221).

While ABATE applauds the ALJ for requiring DTE to provide an updated nuclear decommissioning cost study in its next rate case or a stand-alone proceeding; however, this is not ample relief for DTE's customers. DTE should be required to have an independent third party conduct an entirely new nuclear decommissioning cost study. DTE cannot be allowed to simply update the nearly 20 year old study that it is still relying upon to support its excessive Nuclear Surcharge.

Further, as the ALJ correctly noted ABATE presented compelling evidence that the underlying assumptions to develop the nuclear surcharge are no longer valid. According to Exhibit A-20, Schedule J1, DTE is proposing to increase the nuclear surcharge to $38.285 million for a total increase of $2.725 million. There are three portions of the Nuclear Surcharge: (i) one covers Site Security & Radiation Protection expenses, (ii) a second covers the annual expense associated with the disposal of Low Level Radiation Waste ("LLRW"); (iii) and a third

portion is for the funding of the Nuclear Decommissioning Trust ("NDT"), which is intended to cover future expenses associated with the total decommissioning and dismantling of the Fermi 2 power plant.

DTE proposes to increase two of these three portions of the nuclear surcharge. First, DTE recommends increasing the Site Security & Radiation Protection to $29.418 million, an increase of $0.725 million. Second, DTE recommends increasing the LLRW funding to $6.0 million per year, an increase of $2.0 million. DTE has proposed no change to the NDT funding portion of the nuclear surcharge. (7 T 2854–2855). DTE's nuclear decommissioning costs are primarily based on an in-house study conducted in 2002. A copy of the study was included as Exhibit AB-5.

On behalf of ABATE, Mr. Brian C. Andrews provided testimony with respect to DTE's proposed Nuclear Surcharge. (7 T 2854–2865). Mr. Andrews recommended that the Commission significantly reduce the revenue that is recovered through the Nuclear Surcharge. Specifically, he recommended that DTE only be allowed to recover $27.482 million through this surcharge. The recommendation is based on allowing DTE to recover Site Security & Radiation Protection Costs equal to its 2017 historical cost levels and nothing else. The LLRW disposable costs can come from the existing NDT and no additional NDT contributions are needed to meet future expenses. He shows his calculation of the proposed Nuclear Surcharge in Exhibit AB-14 which is an update of DTE's Exhibit A-16, F6. (7 T 2864).

Mr. Andrews also recommends that the Commission order DTE to have a third-party, such as TLG Services, conduct a completely independent and current estimate of the cost to fully decommission the Fermi 2 power plant. The reliance on an in-house 2002 study, now over

15 years old, which itself was based on a 1996 generic estimate, is no basis for charging DTE's customers vast amounts in 2018 and beyond.

Finally, Mr. Andrews recommended that the Commission should require DTE to submit a report in the next rate case that details why the level of Site Security & Radiation Protection Expense is added that it incurs are actually required for the safety and security of the Fermi 2 power plant. (7 T 2865).

With respect to the third, or NDT funding, portion of the Nuclear Surcharge, ABATE has two major objections. First, ABATE finds that the 6% inflation rate is unsupported and exceeds the inflation rates used by other nuclear owning companies around the country based on the Callan 2018 Nuclear Decommissioning Funding Study. The study is in the record as Exhibit AB-8. The report is a compilation of publically available data that is filed with the NRC every two years by owners of nuclear power plants to remain compliant with the Code of Federal Regulations. 10 CFR §50.75(f)(1) requires each power reactor licensee to report to the NRC by March 31, 1999 and every two years thereafter with certain exceptions, on the status of its decommissioning funding for each reactor, or share of a reactor, that it owns. (7 T 2859).

The Callan Report shows that the escalation rates used by investor-owned utilities range from a low of approximately 2.0% to a high of 6.0% with the median at 3.02%. (See Exhibit AB-8 at p. 16 for the Figure illustrating this point.)

Mr. Andrews testified as follows:

> "Most interesting about the figures shown here is that 6% is the highest inflation rate used by any entity."

(7 T 2861).

Mr. Andrews also pointed out that DTE's assumption for the escalation of decommissioning costs for its coal plants is only 2.2% (7 T 2858). This is significantly lower

than the 6% inflation rate used for the nuclear decommissioning. DTE provided no rebuttal to this anomalous comparison.

ABATE's second major concern with the NDT funding portion of the Nuclear Surcharge is the staleness and excessive costs assumed for the current cost estimate to conducted the nuclear decommissioning work. DTE's basis for the decommissioning cost estimate is an in-house study that was conducted in 2002. Based on that study, DTE estimates that the current cost to decommissioning Fermi 2 is $2.04 billion (Exhibit AB-7 page 20 line 1). The Callan study (Exhibit AB-8 page 6) shows that for the 27 investor-owned utilities totaling 91,446/MW of nuclear capacity, the current average decommissioning costs estimate is only $829/kW. (7 T 2859). In contrast, DTE's estimate based on a 2002 study results in a December 31, 2017 cost estimate of $2.04 billion or $1,676/kW. This is over double the average assumed by all other IOUs. (7 T 2860; Exhibit AB-7 at 20, line 1).

Mr. Andrews testified that he developed an analysis set forth in Exhibit AB-9 that minor adjustments to the current costs estimates or escalation assumptions can zero out the nuclear decommissioning portion of the nuclear surcharge:

> "This analysis is the exact same procedure that DTE is used to justify the current funding levels of $2.867 million. Simply reducing the cost estimate to 1.90 billion, or $1,562/kW a reduction of only 6.8%, results in the future fund balance equaling the future cost estimate. This would ensure that future needs are met with no further contributions to the NDT. Similarly, if DTE's overstated cost estimate of $2.04 billion to decommission today is held constant, the only assumption change needed to justify no further contributions to the NDT is an escalation rate of 5.72%. A 5.72% inflation rate is still far higher than assumptions used by other IOUs with in DTE funding requirements and is far greater than any long-term forecast of inflation rates."

(7 T 2861).

Andrews presented an additional analysis set forth in Exhibit AB-10 that demonstrates when more reasonable assumptions are made for both the escalation rate and the current decommissioning costs estimate, DTE should be refunding to customers $31.5 million annually. Mr. Andrews testified:

> "Assuming a still excessive 5% inflation rate and a current cost estimate of $1.827 billion would result in DTE having to refund $31.453 million annually, due to an NDT balance that greatly exceeds costs in 2045. I show this analysis as Exhibit AB-10. The 5% inflation rate assumption was chosen such that the real rate of return on the NDT would be 2%, as this is the maximum real rate of return allowed by the NRC for its financial assurance calculations. The $1.827 billion for the current cost estimate was calculated by taking DTE's estimate of the NRC Minimum Assurance amount of $1.04 billion and multiplying that by 1.75."

(7 T 2862).

ABATE is not suggesting that DTE be forced to refund the overcharges. The analysis put forth in Exhibit AB-10 is to demonstrate that DTE has already collected well in excess of what is required to fully cover future nuclear decommissioning costs. There is no justification for DTE's customers to continue funding the NDT. (7 T 2862).

DTE has provided no rebuttal to the fact that its current estimate to decommission Fermi 2 is more than double the average used by all other IOUs nor has it provided any real economic justification for continuing to use a 6% inflation rate. DTE's argument to continue using a 6% inflation rate is based on its conclusion that the NRC minimum nuclear decommissioning costs have risen over 6% annually. Mr. Andrews discussed this in testimony and was not rebutted by DTE. Mr. Andrews stated:

> "DTE also claims that the 6% inflation rate is supported in its Triennial Fermi 2 Funding Report (provided as Exhibit AB-7), which claims that the NRC minimum cost estimates have increased

> 6.8% over the period 1986-2016. This claim is extremely misleading, as the NRC minimum decommissioning cost estimates only include the work required for NRC license termination; they do not include the storage of spent fuel nor the site-restoration work, which accounted for 46% of the 2002 total cost estimate."

(7 T 2858).

With respect to the LLRW portion of the Nuclear Surcharge it is ABATE's position that DTE should not include $6.0 million in the nuclear surcharge for these expenses, but rather $0 (Exhibit AB-14). ABATE believes that the LLRW costs can come from the existing NDT (7 TR 2864). DTE rejects this position claiming that the NRC will not allow for the use of funds within the NDT for disposal of LLRW (5 T 1311, 1313-1315).

Mr. Davis erroneously equates the NRC's rejection of the Indiana Michigan Power Company attempt to reallocate portions of its decommissioning trust fund for other non-decommissioning purposes to Mr. Andrews' assertion that there are funds within DTE's nuclear decommissioning trust that can be used to cover Low Level Radioactive Waste disposal expense. While it is accurate that funds that have been previously earmarked for nuclear decommissioning activities required under 10 CFR §50.75 cannot be reallocated to other non-decommissioning purposes, not all of the monies included in DTE's NDT have been earmarked for this purpose. Specifically, Exhibit AB-7 at page 17 shows that within DTE's NDT, there is a balance of $79.3 million for "greenfielding" activities, and $14.1 million for LLRW disposal activities. Neither of these two categories of dollars have been earmarked for NRC required decommissioning activities, and, therefore, can be utilized for other purposes. As discussed by Mr. Andrews, DTE's assumptions for both the current cost to decommission Fermi 2 and the escalation rate to estimate those costs in 2045 are greatly exaggerated. (7 T 2861). Because DTE has greatly exaggerated its decommissioning cost burden in 2045, it will most assuredly have excess funds

remaining that can be used for other non-nuclear decommissioning activities, such as "greenfielding". The funds that have currently been earmarked for "greenfielding" can be used to cover the LLRW disposal expenses as they are needed. Further, DTE's proposal is to collect $6.0 million annually from customers to cover LLRW activities, the total amount currently in the NDT earmarked for either "greenfielding" or LLRW disposal is $93.4 million; DTE expects this will grow at 7% annually (Exhibit AB-7 page 20, line 4). The interest earned on this $93.4 million is $6.5 million annually ($93.4 million x 7% = $6.5 million), which is more than adequate to pay for the DTE's expectation of the cost of $6.0 million annually for LLRW disposal. DTE's proposal to recover $6.0 million annually from customers through the Nuclear Surcharge should be rejected.

With respect to the Site Security & Radiation Protection portion of the Nuclear Surcharge, it is ABATE's position that DTE should not be allowed to escalate these costs greater than the 2017 levels. Mr. Andrews provides the following testimony:

> "DTE has provided support for its 2017 historical cost levels; however, there has been no determination if these costs were prudently incurred or necessary. DTE seems to hide under the umbrella of safety. ABATE has asked DTE what actions it has taken to minimize costs in these areas in order to maximize customer value. These discovery responses are attached as Exhibit AB-13. In response, DTE's first claim is that "Nuclear safety is our top priority." I have no dispute that this is DTE's top priority; however, based on the data provided by DTE that accounts for the 2017 historical costs, it cannot be determined that these historical costs were all necessary to meet the mission of nuclear safety. Further, DTE claims that approximately two-thirds of both the Site Security & Radiation Protection expenses are relatively inelastic and required to meet federally mandated plans and regulations.[1] This leaves one-third of those costs that are elastic and could be improved with operational efficiencies. DTE

[1]Exhibit AB-13.

> has simply not demonstrated that the 2017 historical levels should be escalated."

(7 T 2863 - 2864)

In summary, it is ABATE's position that the Nuclear Surcharge presented in Exhibit AB-14 (0.000593 $/kWh) be approved by this Commission and DTE's proposed nuclear surcharge presented in Exhibit A-16 F6 be rejected.

E. The ALJ Erred When She Found That The Production Cost Allocation Should Be Revisited in Either DTE's Next Rate Case or in a Special Purpose Proceeding as Done in Case No. U-17689. (PFD at 228).

As noted by the ALJ, she based her recommendation on the testimony provided by Douglas B. Jester who testified on behalf of MEC, et. al. His recommendations were designed to correct an alleged allocation deficiency where residential customers received an excess amount of its generation (production) costs that are allocated based on a contribution to system peak (i.e., coincident peak demands) and too little of those costs to energy.

To address this alleged excess allocation of production cost to residential customers, as a minimum, he recommended that the Commission establish a "maximum allocated cost of capacity equal to the MISO Cost of New Entry ("CONE") for MISO Zone 7, adjusted for a planning reserve margin in Zone 7 and allocate any remaining production costs to energy. He further recommended that the Commission "establish a minimum allocated energy cost equal to a projection of load-weighted locational marginal prices in the future test year, reducing the production costs allocated on system peak demand to balance production costs. (6 T 1773). Mr. Jester filed two exhibits (Exhibit MEC-5 and MEC-6) to support his production plan allocators. (6 T 1773). According to Mr. Dauphinais, Mr. Jester seems to have a fundamental misunderstanding of the COSS procedure and the setting of rates in Michigan. Further, Mr. Jester's recommendation that the allocation of cost to customer classes should somehow be

tied to MISO capacity and energy prices is unreasonable in that it has no basis in DTE's embedded cost of service, would be contrary to Michigan law which mandates cost of service based rates. (6 T 774).

Mr. Dauphinais testified that Michigan is unique in that the law states that the Commission shall ensure the establishment on electric rates equal to the cost of providing service to each customer class. (MCL 460.11(1)). MCL 460.11(1) goes on to further state:

> The commission shall ensure that the cost of providing service to each customer class is based on the allocation of production-related costs based on using the 75-0-25 method of cost allocation and transmission cost based on using the 100% demand method of cost allocation. The commission may modify this method if it determines that this method of cost allocation does not ensure that rates are equal to the cost of service."

From June 15, 2015 onward, the Commission has chosen to adopt the 4CP 75-0-25 method for production cost allocation in Case Nos. U-17767, U-18014, and U-18255. (6 T 1777).

In Exhibit MEC-5, Mr. Jester focused on the cost of service Allocator No. 520, "PIS-Prod Direct". This is an allocator generated internally within the COSS. It is calculated in the COSS by looking at the allocation of production plant-in-service and Midwest Energy Resource Company ("MERC") costs. Both of those items are allocated using Allocator No. 255 in the COSS which is the 75-0-25 production of cost allocator. So, allocator 520 is essentially the same as allocator 255. Mr. Jester made a claim that since Case No. U-17689 the production plant costs allocated to residential customers has increased by about 6 percentage points. According to Mr. Dauphinais: This claim is misleading. An increase of about 5.5 percentage points happened between Case No. U-17689 and the next case, U-17767. However, in Case No. U-17767 and its subsequent three cases, this allocator has been rather steady in range from 45.6% to 46.2% for

the residential class. (6 T 1777, footnotes omitted). Mr. Dauphinais also noted that all of the values in Exhibit MEC-5 are based on a 4 CP 75-0-25 allocation of production costs. (*Id.*)

Mr. Dauphinais concluded as follows: Therefore, the increase in the residential customer production allocator in Exhibit MEC-5 is completely unrelated to the use of a 75-0-25 allocator. Instead, it is entirely driven by changes in customer behavior. (6 T 1778).

Mr. Jester also provided a comparison of industrial rates and residential rates for various states. According to Mr. Dauphinais:

> The analysis is a 'red herring'. Mr. Jester attempts to claim that both Michigan, and DTE especially, are abnormal because of the relationship with industrial rates to residential rates as compared to most of the rest of the country. This graph is meaningless for two reasons. First, to my knowledge, Michigan is the only state in the country that legislatively requires electric rates be designed based on cost of service. Second, these rates are based on the total delivered costs, both power supply and delivery, but he cites the allocation of only generation costs as the principal reason for the apparent discrepancy. DTE's power supply revenue requirement is $3.2 billion and its distribution revenue requirement is $1.7 billion. Mr. Jester is ignoring the allocation of roughly 1/3 of DTE's total revenue requirement.

(6 T 1778).

Mr. Jester has provided no support for his claim that because of population density and DTE's service territory is higher than the rest of Michigan counties, distribution costs should be lower. He has provided no support for this claim proving either DTE's service territory population density is higher than elsewhere, or that population density effects distribution costs. His claims that DTE's allocation methodology is abnormal and should be disregarded. (*Id.*)

Based on Mr. Dauphinais' experience in other jurisdictions, where they do not have a legislative mandate for rates to be based on cost of service, interclass subsidies often exist in which some customer classes pay more than their cost of service while other customer classes

pay less. In most cases, it is typically the industrial and commercial classes that pay more and the residential classes that pay less. This makes a comparison of DTE's ratio of industrial to residential rates compared to other states of limited value, if any, for the purpose of establishing the appropriate cost methodology for production costs. (6 T 1779).

In Exhibit MEC-6, Mr. Jester chose an analysis using Allocator No. 100 and Allocator No. 250. According to Mr. Dauphinais:

> Suspiciously missing from the allocator list is Allocator No. 255, the 75-0-25 allocator which is used to allocate the majority of DTE's power supply costs. Furthermore in the DTE COSS, no portion of rate base or expenses is allocated using Allocator Nos. 100 or 250, contrary to what Mr. Jester portrays in this exhibit. His work papers do not show the calculations he used to determine the costs he claims were allocated using either Allocator No. 100 or No. 250.

(6 T 7779 – 7780).

Mr. Dauphinais also said that Mr. Jester in his Exhibit MEC-6 did not capture all the costs that are allocated based on energy. He also ignores other costs. Mr. Dauphinais testified:

> Earlier, I discussed Mr. Jester's Exhibit MEC-5, which shows the change over time in Allocator No. 520. As I noted, he used the change in that allocator to claim there is a trend towards increased costs being allocated to residential customers. Yet, here in Exhibit MEC-6, he ignores the costs that are allocated with that allocator.

(6 T 7780).

Mr. Dauphinais does not believe that DTE allocates too little cost based on energy and too much cost based on demand. He states as follows:

> The issue of allocating production related costs in Michigan has been litigated numerous times. For the previous four DTE cases, which address the class cost of service for DTE, this allocation has been based on the 75-0-25 allocation which is prescribed by PA341, unless the Commission finds a better approach. ABATE has long advocated for production-related costs to be allocated

> 100% on demand, as production facilities that are built and costs are incurred in order to meet system peak demand. Furthermore, DTE continues primarily construction generating facilities such as its new Combined Cycle Gas Turbine ("CCGT") generation facility, to meet its system peak demand capacity needs, not to reduce energy costs. Given the foregoing, if anything, DTE's current 75-0-25 allocation methodology allocates too little on demand and too much on energy; the opposite of Mr. Jester states.

(6 T 1784).

Consequently, the Commission should reject revisiting a change in the production costs allocation methodology in the next rate case.

II. RELIEF

WHEREFORE, ABATE requests that the Commission issue a final order which adopts these Exceptions.

Respectfully submitted,

CLARK HILL PLC

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Dated: March 20, 2019

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the matter of the application of DTE Electric Company for authority to increase its rates, amend its rate schedules and rules governing the distribution and supply of electric energy, and for miscellaneous accounting authority	)))))	Case No. U-20162

PROOF OF SERVICE

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

Robert A. W. Strong, being first duly sworn, deposes and says that on March 20, 2019, he did cause to be served the **Exceptions of the Association of Businesses Advocating Tariff Equity**, as well as this **Proof of Service**, in the above docket, via electronic mail, to the persons identified on the attached service list.

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Subscribed and sworn to before me
this 20th day of March, 2019.

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