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June 7, 2021

Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Highway
Lansing, MI 48917

RE: In the matter of the Application of **DTE GAS COMPANY** for *Ex Parte* Approval of an Amended Special Contract for Certain Transportation and Storage Rights.
MPSC Case No: U-21092

Dear Ms. Felice:

Attached for electronic filing in the above referenced matter is DTE Gas Company's Application for *ex parte* approval and authority to amend the Special Contract between DTE Gas and Constellation Newenergy – Gas Division LLC (Constellation). Also attached is the Proof of Service.

Very truly yours,

David S. Maquera

DSM/erb
Encl.

cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of DTE GAS) COMPANY for <i>Ex Parte</i> Approval of an) Amended Special Contract for Certain) Transportation and Storage Rights.) _____)	Case No. U-21092
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APPLICATION OF DTE GAS COMPANY
FOR EX PARTE APPROVAL OF AN AMENDED SPECIAL CONTRACT

DTE Gas Company (DTE Gas), which is formerly known as Michigan Consolidated Gas Company (MichCon) respectfully requests that the Michigan Public Service Commission (Commission) approve, *ex parte*, an Amended Special Contract between DTE Gas and Constellation Newenergy – Gas Division LLC (Constellation), titled Amended and Restated Easement Agreement (the Amended Special Contract) attached as Exhibit 1, which grants to Constellation certain transportation and storage rights. In support of its request, DTE Gas states as follows:

1. DTE Gas is a Michigan corporation the principal office of which is located at One Energy Plaza, Detroit, Michigan 48226. DTE Gas is a public utility engaged in the purchase, storage, transmission, distribution and/or sale of natural gas to over one million customers in the State of Michigan and is subject to the jurisdiction of this Commission.

2. CONSTELLATION NEWENERGY - GAS DIVISION, LLC, as successor to EXELON ENERGY COMPANY, a Kentucky limited liability company, with its principal address at 9400 Bunsen Parkway, Louisville, KY 40220. Among other things, Constellation sells

competitively- priced energy and distributed generation products to residential, small business, industrial and commercial customers in several states. Exelon also provides transportation and gas sales in Michigan, Pennsylvania, Illinois, Ohio, California and New Jersey.

3. On October 5, 1999, MCN Energy Group Inc. (MCN), which was the parent company of MichCon, and DTE Energy Company (DTE), the parent company of The Detroit Edison Company (Edison), which has subsequently been renamed DTE Electric Company (DTE Electric), announced that the two companies had agreed to a plan of merger. This combination resulted in significant economies and efficiencies for the combined entity. After the merger, portions of the service territories of DTE Gas and DTE Electric overlap in the Detroit and Ann Arbor metropolitan areas (the Overlap Area). (A map of the Overlap Area can be found at Exhibit A to the Amended Special Contract.)

4. At the time of the above merger announcement, the Federal Trade Commission Staff (FTC Staff) expressed concern that the merger could cause a reduction in competition in the Overlap Area, because DTE Gas had offered discounts and other incentives to promote natural gas usage to customers who would use natural gas to generate electricity, or to operate chillers or gas-fired air conditioning equipment. To address the FTC Staff's concerns and to further encourage the installation of on-site generation, including traditional cogeneration applications, as well as emerging distributed generation technologies in the Overlap Area, DTE Gas entered into the Original Special Contract with Constellation. The Original Special Contract granted Constellation a recognized property right in pipeline capacity on DTE Gas's system to give Constellation an ability to compete in the Overlap Area with services offered by DTE Gas. Constellation has used the capacity it purchases under the Original Special Contract to serve end-use customers in the Overlap Area on prices, terms, and conditions to be mutually agreed upon by

Constellation and those end-users. The Commission approved the Original Special Contract in Case No. U-12825 via its order dated February 14, 2001.

5. The FTC Staff's oversight terminated after twenty years on March 31, 2021. After that same date, the Original Special Contract permits Constellation to exercise an option to terminate the Original Special Contract. In addition, the contract rate is reset based on a formula in the Original Special Contract for services provided after that date. DTE Gas and Constellation engaged in discussions and developed an Amended and Restated Easement Agreement (Amended Special Contract), which is substantially similar to the Original Special Contract albeit with several agreed upon changes.

6. The Amended Special Contract includes an initial block of 5 Bcf of annual transportation capacity. Up to 15 Bcf of additional annual transportation capacity (Supplemental Capacity) may be purchased in 0.5 Bcf increments, which is a reduction from the 1 Bcf increments required by the Original Special Contract. At least 50% of the Supplemental Capacity must be used to serve electric displacement load (EDL) in the Overlap Area. If 15 Bcf of Supplemental Capacity has been purchased and meets the EDL target of 50%, then Constellation will have the option to purchase additional transportation capacity for serving on-site Generation Load that is new to DTE Gas's distribution system.

7. Beginning April 1, 2021, the capacity annual payments will be based upon a base contract rate of \$1.028 per Mcf. Both parties have agreed to the following schedule of adjustments to the base contract rate through 2028:

April 1, 2021 through March 31, 2022: Base Contract Rate - \$0.20
April 1, 2022 through March 31, 2023: Base Contract Rate - \$0.15
April 1, 2023 through March 31, 2024: Base Contract Rate - \$0.10
April 1, 2024 through March 31, 2025: Base Contract Rate
April 1, 2025 through March 31, 2026: Base Contract Rate + \$0.15

April 1, 2026 through March 31, 2027: Base Contract Rate + \$0.15

April 1, 2027 through March 31, 2028: Base Contract Rate + \$0.05

April 1, 2028 going forward: Base Contract Rate

As a result of these rates, Constellation will pay a fixed annual capacity payment of \$828,000 per Bcf for each 1 Bcf of Capacity and corresponding storage rights in 2021. The annual capacity payments will be adjusted upwards or downwards, as the case may be, for changes in DTE Gas's average per Mcf cost of service as established by the Commission from time to time. If Constellation opts to purchase Growth Capacity, then it will make monthly payments, based on the increments of capacity purchased, that are calculated using (i) 85% of DTE Gas's average residential distribution charge (for residential capacity) and (ii) DTE Gas's transportation rate schedule minimum (for non-residential capacity). In no case will the average payment for Growth Capacity be less than 80% of DTE Gas's average transportation rate. The Amended Special Contract also requires Constellation to pay a gas-in-kind fuel charge equal to that paid by Contract Storage Service provided under Rate CS-F, currently 1%. The language of the Amended Special Contract has been aligned with DTE Gas's rate book where appropriate. Appendix A to the Amended Special Contract specifically notes that the Constellation may bill its customers directly subject to the Commission's billing rules, R.460.101 et seq.

8. The term of the Amended Special Contract is perpetual, but Constellation may terminate the Amended Special Contract at the end of any Contract year by giving a one year notice.

9. The Amended Contract is the product of good faith negotiations and compromise between DTE Gas and Constellation. Although FTC oversight is now terminated, the fixed, annual capacity payments, as well as the other terms and conditions of the Amended

Special Contract, are responsive to the FTC's concerns that there exist a competitive alternative to DTE Gas and DTE Electric for customers interested in pursuing alternative energy applications.

10. Approval of the Amended Special Contract will further the Commission's goals of enhancing competition by encouraging construction of non-utility electric generation thus easing electric transmission constraints and generation capacity shortfalls within the state.

11. In this Application, DTE Gas does not seek approval of any changes in the rates or charges to its customers. Because no customer's rates will change as a result of the approval of this Application, the Commission may grant its approval of the Agreement without notice or hearing as provided for by MCL 460.6a; MSA 22.13(6a). Commission authority to grant *ex parte* approval under the circumstances presented in this Application has been affirmed by the Michigan Court of Appeals in Attorney General v. Public Service Commission et al., 227 Mich App 148, 575 NW2d 302 (1992).

12. The Commission has jurisdiction over DTE Gas's natural gas business pursuant to 1909 PA 300, as amended, MCL 462.2 *et seq.*; MSA 22.21 *et seq.*; 1919 PA 419, as amended, MCL 460.51 *et seq.*; MSA 22.1 *et seq.*; 1939 PA 3, as amended, MCL 24.201 *et seq.*; MSA 3.560(1010) *et seq.*; and the Commission's Rules of Practice and Procedure, R 460.17101 *et seq.*

RELIEF REQUESTED

For the reasons stated above, DTE Gas Company requests that the Commission expeditiously grant this Application, approve, on an *ex parte* basis, the Amended and Restated Easement Agreement, find that this Application and the Amended and Restated Easement

Agreement are in the public interest, and grant such other relief as the Commission considers appropriate.

Respectfully submitted,

DTE GAS COMPANY

By: _____
Attorney for Applicant
David S. Maquera (P66228)
One Energy Plaza, 1610 WCB
Detroit, Michigan 48226
(313) 235-3724

Dated: June 7, 2021

Exhibit 1

AMENDED AND RESTATED
EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the 3rd day of June, 2021, between DTE GAS COMPANY f/k/a MICHIGAN CONSOLIDATED GAS COMPANY, a Michigan corporation, with its principal address at One Energy Plaza, WCB, Detroit, Michigan 48226 ("Grantor"), and CONSTELLATION NEWENERGY - GAS DIVISION, LLC, as successor to EXELON ENERGY COMPANY, a Kentucky limited liability company, with its principal address at 9400 Bunsen Parkway, Louisville, KY 40220 ("Grantee"). Capitalized terms and phrases used and not otherwise defined herein shall for all purposes of this Agreement have the respective meanings specified therefor in Exhibit D attached hereto.

RECITALS:

This Agreement is based on the following recitals:

- A. Grantor is a regulated utility engaged in the distribution and sale of natural gas and owns and operates a natural gas distribution system consisting of gas lines and related equipment and systems constructed within easements granted pursuant to various franchise agreements and easement agreements ("Grantor's Distribution System").
- B. Grantor is selling transportation and storage capacity on Grantor's Distribution System to promote the growth of viable and competitive on-site Electric Displacement Load ("EDL") (as hereinafter defined) within the geographic area of Grantor's service territory that is also served by DTE Electric Company f/k/a The Detroit Edison Company, as more fully described on the map attached as Exhibit A (the "Overlap Area").
- C. Grantee desires to purchase capacity to serve EDL in the Overlap Area and Grantor has agreed, among other things, that Grantee will have the use of portions of Grantor's Distribution System in order to develop EDL in competition with Grantor.
- D. Grantee desires that an easement be granted over portions of the Grantor's Distribution System for purposes of firm transportation and storage of gas in accordance with the terms of this Agreement. Due to the unique nature of EDL and Grantee's capacity needs, Grantor is agreeable to providing said easement to Grantee.
- E. Subject to the provisions of this Agreement between Grantor and Grantee, Grantor shall retain full operational control over the transportation and storage of gas on Grantor's Distribution System and have ultimate control over the operation of Grantor's Distribution System.

NOW, THEREFORE, in consideration of the foregoing recitals, for ONE DOLLAR (\$1.00), the sufficiency and receipt of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **GRANT:** Grantor hereby grants to Grantee a perpetual, non-exclusive easement in, across and through the portions of the Grantor's Distribution System situated in Wayne, Washtenaw, Monroe, Oakland and Macomb Counties, Michigan, as more particularly described on Exhibit B upon the terms and conditions hereinafter set forth (the "Easement").
2. **PERMITTED USE:** The Easement is granted solely for the purpose of transportation and storage of gas in accordance with the terms and conditions of this Agreement. Nothing in this Agreement shall be construed to prevent Grantee from marketing gas to EDL, OGL or other end use customers in the Overlap Area or other areas of Grantor's service territory under programs that do not involve the use of the capacity made available to Grantee under this Agreement.
3. **CAPACITY RIGHTS:**
 - (a) **Initial Capacity.** Grantee shall have use of 5 Bcf of annual transportation capacity ("Initial Capacity"), to serve any end use customers located within the Overlap Area that have been designated by Grantee as being customers of Grantee for the purposes of this Agreement, during the period of any such designation ("Grantee's Customers"). Payment for the Initial Capacity shall be at the rate set forth in Section 6.
 - (b) **Supplemental Capacity.** At Grantee's option, Grantee may exercise its right to purchase up to an additional 15 Bcf of annual transportation capacity ("Supplemental Capacity") for use in serving Grantee's Customers for zip codes currently served by Grantor's electric service within the Overlap Area, as listed in Exhibit A. Grantor and Grantee agree that, as of the Effective Date, some existing Grantee's Customers are located in an area that is currently not served by Grantor's electric service, but those existing Grantee's Customers will continue to be served under this Agreement as if they were located in an area served by Grantor's electric service. Such Supplemental Capacity shall be sold to Grantee in increments of one-half (0.5) Bcf. Each increment of Supplemental Capacity purchased by Grantee will be charged a Capacity Annual Payment as provided in Section 6.
 - (i) Supplemental Capacity must serve a minimum of 50% Electric Displacement Load ("EDL Target"). Grantee shall be deemed to have met the EDL Target if Grantee has demonstrated, pursuant to the audit process outlined in Exhibit F or as otherwise agreed to by the Grantee and Grantor (the "Audit Process"), that the total EDL consumption by all of Grantee's Customers combined equals or exceeds 50% of the Supplemental Capacity purchased by Grantee. Grantee may acquire one or more additional increments of Supplemental Capacity at any time, provided that (x) the total Supplemental Capacity may not exceed 15 Bcf, and either: (y) Grantee has met the EDL Target for the Supplemental Capacity already purchased by Grantee; or (z) it has been determined that the additional Supplemental Capacity requested by Grantee would be used to serve EDL Load.
 - (c) **Growth Capacity.** If the Grantee and Grantor have determined that Grantee has purchased and met the EDL Target for all 15 Bcf of Supplemental Capacity, at

Grantee's option, Grantee may exercise its right to purchase additional transportation capacity ("Growth Capacity") for use in serving the On-site Generation Load for zip codes currently served by Grantor's electric service within the Overlap Area. Growth Capacity includes only that capacity that is new load to Grantor's Distribution System. Such additional capacity shall be sold to Grantee in any increments equal to the annual volumetric requirements of each of Grantee's Customers with incremental Growth Capacity as specified by the Grantee at the time the capacity is acquired. Growth Capacity purchased by Grantee will be charged as a separate Growth Capacity Monthly Payment as provided in Section 6. For all Grantee's Customers to which Grantee is selling Growth Capacity, consumption shall be separately metered. Grantee shall pay for any metering necessary to separately measure the Growth Capacity.

- (d) **Non-EDL Transportation.** At Grantee's election, Grantor will transport gas to Grantee's Customers at Grantor's Rate Book rates. Any capacity or volumes utilized for such transportation shall not be included in the calculation of: (1) Keep-Whole Payments, (2) Grantee's ACQ, (3) MDQ, (4) overruns, or (5) Excess Quantities under this Agreement. Grantee shall pay for any metering necessary to separately measure the EDL.
- (e) **Overruns.** Grantor shall notify Grantee within thirty (30) days after the end of any Contract Year in which deliveries to Grantee's Customers overrun the current ACQ ("ACQ Overrun"). Grantee shall have thirty (30) days from the date of the notice to (i) elect up to a minimum of the next 0.5 Bcf increment of capacity based on the total ending Contract Year's metered volumes if the Contract Year's metered volumes exceed the current capacity election; (ii) pay Grantor for ACQ Overrun based on the Contract Rate per Mcf in effect for the Contract Year in which such ACQ Overrun occurred; and (iii) pay Grantor for all PPA volumes outside the current Contract Year not to exceed twelve (12) months at Grantee's Contract Rate in effect for the Contract Year in which the PPA volumes originated. For the purposes of the ACQ Overrun, PPAs that originate outside of the applicable Contract Year shall be excluded.
- (f) **Keep-Whole.** Within thirty (30) days, or a timeline as otherwise agreed to by Grantor and Grantee, after the end of the Contract Year in which Grantee first purchases Supplemental Capacity and, as applicable, Growth Capacity, and each Contract Year thereafter, Grantee and Grantor shall determine, pursuant to the Audit Process, whether Grantee has met the requirements for service to Electric Displacement Load and On-site Generation Load applicable to the capacity acquired by Grantee. If, pursuant to the Audit Process, it is determined that Grantee's Customers (in aggregate) failed to utilize the required amount of Electric Displacement Load or On-site Generation Load, then Grantee shall keep Grantor whole by paying Grantor the Keep-Whole Rate multiplied by the applicable Keep-Whole Volumes (the "Keep-Whole Payment"); provided however, that no Keep-Whole Payment shall be required to the extent that Grantee's failure to meet the EDL Targets was a result of the termination of contracts with one or more of Grantor's

Customers with EDL, based on the most recent audit. For the purposes of the Keep-Whole Payment calculation, PPAs that relate to periods outside of the applicable Contract Year shall be excluded. No Keep-Whole Payments shall be required by either party if Grantee exceeds its EDL Target.

For the purpose of determining Keep-Whole Volumes, any volumes consumed over 20 Bcf that do not serve OGL will be subject to the Keep Whole Payment. Consumption is determined by actual metered volumes. Negative Keep-Whole Volumes, negative Keep-Whole Volumes_{OGL}, and negative Keep-Whole Volumes_{EDL} shall be deemed to be equal to zero. In order to calculate the Keep-Whole Payment, the parties shall make the following findings:

- i) Keep-Whole Volumes (in Mcf) for Supplemental Capacity where Grantee has used 20 Bcf or less of capacity:

$\text{Keep-Whole Volumes}_{\text{EDL}} = 0.5 \times (\text{metered volume for the Contract Year} - \text{Initial Capacity}) - \text{actual EDL consumption for the current Contract Year as determined through the Audit Process. See examples in Exhibit E.}$

- ii) Keep-Whole Volumes for Supplemental Capacity and Growth Capacity where Grantee has used more than 20 Bcf of capacity shall be the sum of Keep-Whole Volumes_{EDL} and Keep-Whole Volumes_{OGL}.

$\text{Keep-Whole Volumes}_{\text{OGL}} = (\text{Total consumption} - 20 \text{ Bcf}) - \text{OGL consumption. See examples in Exhibit E.}$

The “Keep-Whole Rate” means Grantor’s Average MPSC Rate - Inclusive as described in Exhibit C-2.

- (g) Notwithstanding Section 20, Grantee may transfer the right to use transportation capacity with or without any associated storage rights it purchases under this Agreement to a third party for re-sale to end-users in the Overlap Area (“Brokered Capacity”). Grantee shall remain responsible to Grantor for all capacity payments and any Excess Quantity or Deficient Quantity Charges associated with Brokered Capacity. For purposes of calculating Keep-Whole Volumes, the parties shall determine EDL and/or OGL consumption based on how Brokered Capacity is consumed by the ultimate end-user utilizing information received from the acquiror of any Brokered Capacity, relevant end-users, Grantee or Grantor.

- 4. **GRANTEE TRANSPORTATION RIGHTS:** Grantee shall cause to be delivered to Grantor at the Receipt Point(s), and Grantor shall transport from the Receipt Point(s) through the Grantor's Distribution System to the Delivery Points within the Overlap Area, Equivalent Quantities of natural gas. Grantor shall aggregate and treat as one all Grantee's Customers for the purposes of nominations, storage utilization, balancing and any fees or penalties (if applicable).

- (a) Grantee shall cause gas to be delivered to the Receipt Point(s) up to the following parameters:

$$\text{MDQ: Winter (November — March) } \frac{\text{ACQ} - \text{ACQ}_{\text{OGL}}}{110} + \frac{\text{ACQ}_{\text{OGL}}}{170}$$

$$\text{Summer (April — August) } \frac{\text{ACQ} - \text{ACQ}_{\text{OGL}}}{260} + \frac{\text{ACQ}_{\text{OGL}}}{110}$$

$$\text{Fall (September — October) } \frac{\text{ACQ} - \text{ACQ}_{\text{OGL}}}{260} + \frac{\text{ACQ}_{\text{OGL}}}{200}$$

Grantee shall have no minimum delivery requirements as to its MDQ except for in the event of a Curtailment of Gas Services pursuant to Section C3 of Grantor's Rate Book. If a minimum MDQ is imposed as a result of a curtailment and causes Excess Quantities, Grantee shall not be charged the "Excess Quantity Charge" under Section 6 below, for the month in which the curtailment was imposed.

- (b) At no time shall Grantee's daily nomination(s) to Receipt Point(s) exceed the then authorized MDQ unless agreed upon by Grantor in advance. Deliveries to Receipt Point(s) that exceed the authorized MDQ will be excess quantities ("Excess Quantities"). Deliveries to Grantee's Customers that exceed the MDQ will be deficient quantities ("Deficient Quantities"). Grantee shall accept or pay an Excess Quantity Charge or Deficient Quantity Charge as applicable, as provided in Section 6, for all such volumes.
- (c) Grantee will also be responsible for (i) all upstream or third-party transportation agreements and charges incurred in transporting the gas to the Receipt Point(s) and (ii) all charges or penalties caused by any agent acting on Grantee's behalf, including, but not limited to, unauthorized gas and storage penalties.

5. STORAGE RIGHTS: Transportation services under this Agreement include Grantee's access to a storage quantity equal to Grantee's Storage Capacity, which will be utilized by Grantee for balancing when Grantee's delivered volumes from the Receipt Point(s) do not match the consumption of Grantee's Customers at the Delivery Points. For capacity over 20 BCF subject to OGL requirements, storage shall be calculated separately based on all Grantee's Customers that meet the OGL requirement. For purposes of the below calculations and notwithstanding Grantee allowing storage balances to go below zero, all PPAs that contribute to the penalty and originate outside of the current month in penalty shall be excluded.

- (a) During the months of September and October, net injections into storage will be limited to no more than 14.3% per month of Grantee's Storage Capacity unless otherwise mutually agreed to by the parties. If net injections during the September and October period exceed the 14.3% tolerance level, Grantee will accept the Excess Quantity Charge, as provided in Section 6, for volumes in excess of 14.3%.
- (b) If the volume of gas held by Grantor in storage for Grantee's account exceeds the storage capacity limits set forth herein, Grantor shall treat the excess volumes as Excess Quantities.

Grantor shall purchase the Excess Quantities from Grantee by paying Grantee the Excess Quantity Charge for all such volumes.

- (c) During the months of November through March, net withdrawals from Grantee's storage account will be limited each month to 40% of Grantee's Storage Capacity.
- (d) If (x) Grantee allows the storage balance to go below zero, or (y) during the months of November through March, net withdrawals exceed 40% of Grantee's Storage Capacity, then Grantee will be deemed to have purchased gas from Grantor and Grantee will pay Grantor the Deficient Quantity Charge for any volumes delivered from storage on behalf of Grantee when its storage balance is below zero. Grantor may assess and approve a waiver of the Deficient Quantity Charge, on a case by case basis in Grantor's sole discretion, if net withdrawals cause Grantee's storage balance to go below zero.

6. CHARGES

- (a) The Initial Capacity Annual Payment shall be the Contract Rate applicable to the Contract Year multiplied by 5 Bcf.

The Supplemental Capacity Annual Payment shall be the Contract Rate applicable to the Contract Year multiplied by the amount of Supplemental Capacity elected for the Contract Year.

The parties agree that the Contract Rate that Grantee will pay beginning on April 1, 2021 is as follows:

April 1, 2021 through March 31, 2022: Base Contract Rate - \$0.20
April 1, 2022 through March 31, 2023: Base Contract Rate - \$0.15
April 1, 2023 through March 31, 2024: Base Contract Rate - \$0.10
April 1, 2024 through March 31, 2025: Base Contract Rate
April 1, 2025 through March 31, 2026: Base Contract Rate + \$0.15
April 1, 2026 through March 31, 2027: Base Contract Rate + \$0.15
April 1, 2027 through March 31, 2028: Base Contract Rate + \$0.05
April 1, 2028 going forward: Base Contract Rate

For purpose of this Agreement, "Base Contract Rate" is equal to \$1.028 unless and until adjusted in the event of an increase or decrease in Grantor's rates as described below in the Adjustment Mechanism in Section 6(c)(ii) below.

The Initial Capacity Annual Payment and the Supplemental Capacity Annual Payment, as both may be modified herein, shall be referred to collectively as the "Capacity Annual Payment."

(b) **Growth Capacity Monthly Payment** is equal to the sum of:

One-twelfth (1/12) the annual volume of Residential Growth Capacity times 85% of the Grantor's Average Residential Distribution Charge as defined in Exhibit D Section 1

and

One-twelfth (1/12) the annual volume of Non-Residential Growth Capacity times the Grantor's Transportation Rate Schedule Minimum as defined in Exhibit D Section 1.

Provided however, that in no case shall the Growth Capacity Monthly Payment be less than one-twelfth (1/12) the total annual volume of elected Growth Capacity times 80% of the Grantor's Average Transportation Rate.

- (c) Grantee shall pay, on the twenty-fifth (25th) day of each month, one-twelfth (1/12) of the Initial and Supplemental Capacity Annual Payments in effect on the first day of the preceding month, and the Growth Capacity Monthly Payment.
- (i) Capacity payments for Supplemental Capacity will start upon Grantee's election to purchase the additional capacity and continue as long as the capacity election remains in effect. Provided that Grantee has (x) not purchased Growth Capacity or (y) first turned back all Growth Capacity as provided below, Grantee shall have the right, upon ten (10) days prior notice, to reduce its election of Supplemental Capacity in the event that one or more of Grantee's Customers cease taking service from Grantee for EDL load. The amount of such reduction shall be in increments of 0.5 Bcf with approximately 50% EDL and 50% non-EDL load. Any such reduction shall become effective on the first April 1 for the Contract Year following Grantee's election.
- (ii) The Base Contract Rate used for both the calculation of the Initial Capacity Annual Payment and the Supplemental Capacity Annual Payment shall be adjusted for increases or decreases in the Average MPSC Rate - Inclusive, as defined below, from time to time, as described below ("Adjustment Mechanism"). At no time will any Capacity Annual Payment, on an Mcf basis, exceed 75% of Grantor's then effective Average MPSC Rate - Inclusive. The Growth Capacity Monthly Payment shall be increased or decreased with any changes in Grantor's Average MPSC Rate-Exclusive.

The Adjustment Mechanism shall be applied as follows: the Base Contract Rate will be adjusted for increases or decreases in Grantor's current weighted average per Mcf cost of end-user service rates together with all customer charges applicable under the Rate Book (per illustration in Exhibit C-2) as established by the MPSC from

time to time ("Average MPSC Rate - Inclusive"). As of April 1, 2021, the "Average MPSC Rate - Inclusive" is \$2.8313 per Mcf. The Adjustment Mechanism shall be calculated using the following formula and will determine the "Base Contract Rate" applied to both the Initial and Supplemental Capacity Annual Payments and shall be effective for the month in which new rates are effective per the MPSC Order:

$$\boxed{\text{Base Contract Rate}} = \frac{\boxed{\text{New Average MPSC Rate - Inclusive}}}{\boxed{\text{Immediately Preceding Average MPSC Rate - Inclusive}}} \times \boxed{\text{Immediately Preceding Base Contract Rate}}$$

For purposes of clarity, as of April 1, 2021, the "Immediately Preceding Base Contract Rate" is \$1.028.

- (d) A fuel use charge, as specified in Grantor's Rate Book, Section E27 for all volumes delivered to Grantor at the Receipt Point(s) for transportation to Grantee's Customers.
 - (e) The Excess Quantity Charge is equal to 95% of the lowest price reported in *Gas Daily*, in the Daily Price Survey, for the following locations for the month in which the breach occurred or the month following such breach: Dawn, Ontario; ANR ML7 (entire zone); Chicago-LDC, large euts; Michigan - Consumers Energy, large euts; Michigan - MichCon, large euts. Grantor shall purchase Excess Quantities from Grantee by paying Grantee the Excess Quantity Charge.
 - (f) The Deficient Quantity Charge is equal to 105% of the highest price reported in *Gas Daily*, in the Daily Price Survey, for the following locations for the month in which the breach occurred or the month following such breach: Dawn, Ontario; ANR ML7 (entire zone); Chicago-LDC, large euts; Michigan - Consumers Energy, large euts; Michigan - MichCon, large euts. If at any time during the term of this Agreement, *Gas Daily* ceases publication, the parties will mutually agree on a replacement trade publication that reports regional daily gas prices. Grantee shall purchase Deficient Quantities from Grantor by paying Grantor the Deficient Quantity Charge.
7. **REPAIR AND REPLACEMENTS:** Grantor shall repair and replace all components of Grantor's Distribution System necessary for the proper operation thereof consistent with Grantor codes and standards.
8. **RELOCATION:** Grantor reserves the right, from time to time, to relocate any portions of the Grantor's Distribution System. Such relocation shall in no way impact Grantee's rights, under this Agreement, to store and transport gas in the Overlap Area. If any portion of the Grantor's Distribution System required for performance of Grantor's obligations under this Agreement is relocated, Grantor will grant to Grantee a new easement and Grantee will

release the existing Easement for the relocated portion of Grantor's system. Furthermore, in the event Grantee, its successors and assigns shall no longer require the use of all or any part of the Easement, the part no longer required shall automatically revert to Grantor thereof and Grantee shall release such part of the Easement which Grantee shall no longer require.

9. **EASEMENTS OR RESTRICTIONS:** The granting of the Easement is subject to any easements or restrictions of record including the lien created by DTE Gas Company's, f/k/a Michigan Consolidated Gas Company, Indenture of Mortgage and Deed of Trust dated as of March 1, 1944, as supplemented and amended, to the terms of the underlying franchises or easement agreements. Grantor is not assigning or transferring any of its rights under any of the underlying franchises or easement agreements.
10. **CONFORMITY WITH LAW:** Grantor and Grantee shall use the Easement in conformity with safe practices and shall at all times comply with all local, State, and Federal laws, statutes, rules, and regulations pertaining thereto.
11. **INSURANCE:** Neither Grantor nor Grantee shall do or permit to be done any act or thing in connection with the use of the Easement that will invalidate or be in conflict with any insurance policies covering the Grantor's Distribution System.
12. **PROTECTION FROM LIENS:** Grantee shall keep the Easement and the Grantor's Distribution System and every part thereof free and clear of any and all liens and encumbrances for work performed by Grantee, or on Grantee's behalf, on the Easement.
13. **CONDITIONS:** This Agreement is subject to the prior approval by the MPSC. Grantor will file with the MPSC for approval of this Agreement. Both parties shall openly support this Agreement and seek MPSC approval of it.
14. **TERM:** Subject to Section 13, this Agreement is effective as of the date of MPSC approval (the "Effective Date").
 - (a) This Agreement may be terminated by Grantee at the end of any Contract Year by giving Grantor written notice one year prior to the proposed termination date.
 - (b) Upon termination of this Agreement, the Easement shall be deemed to have been abandoned and will cease and terminate, which termination may be evidenced by Grantor's recordation of an affidavit to that effect.
 - (c) Grantee, in its sole discretion, may terminate this Agreement at any time if the Securities and Exchange Commission ("SEC") or any successor agency asserts jurisdiction over Grantee or Exelon Corporation, or any successor, affiliate or subsidiary of either, under the Public Utility Holding Company Act of 1935 by reason of entering into this Agreement or relating to this Agreement or exercising any rights under this Agreement. Grantee may also terminate this Agreement if by reason of entering into this Agreement or relating to this Agreement or exercising

any rights under this Agreement, the Federal Energy Regulatory Commission ("FERC") or the Michigan Public Service Commission ("MPSC") or any successor agencies, (i) subjects Grantee or Exelon Corporation, or any successor, affiliate or subsidiary of either, to regulation to which a gas marketer in the State of Michigan or any successor, affiliate or subsidiary thereof would not be subject and (ii) such regulation has, in Grantee's reasonable judgment, a material adverse impact upon this Agreement for Grantee or upon Grantee or Exelon Corporation or any successor, affiliate or subsidiary of either.

15. **GOVERNING LAW:** This Agreement shall be governed and construed in accordance with the laws of the State of Michigan.
16. Grantor shall take no actions before the SEC, MPSC, FERC, or any other government agency in opposition to any attempt by Grantee to serve end users in the Overlap Area without utilizing Grantor's Distribution System.
17. **TERMINATION OR MODIFICATION.** This Agreement shall not be terminated, modified, altered, or amended by the parties except as provided herein or except in writing as agreed to by the parties hereto.
18. **NOTICES:** All notices or other communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given and received (i) when actually delivered and received, if personally delivered; or (ii) three (3) business days after being mailed, if sent by registered or certified mail, postage prepaid, return receipt requested; or (iii) one (1) business day after being sent by overnight delivery service; all to the following addresses:

If to Grantor: DTE Gas Company
 One Energy Plaza, 1635 WCB
 Detroit, Michigan 48226
 Attn: Office of the General Counsel

If to Grantee: Constellation NewEnergy – Gas Division, LLC
 9400 Bunsen Parkway, Suite 100
 Louisville, KY 40220
 Fax No: (502) 214-6381
 Attn: Contract Administration


Each party shall have the right to designate other or additional addresses or addressees for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

- 19. **SUCCESSORS AND ASSIGNS:** This Easement runs with the land and binds and benefits Grantor's and Grantee's successors and permitted assigns.
- 20. **ASSIGNMENT:** Neither party may assign this Agreement or any of its rights or obligations arising under this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld, provided, however, either party may assign this Agreement to an affiliate so long as the assignor guarantees the continuing performance of the assignee. Furthermore, Grantee may assign this Agreement to any institution providing financing to it. In no event, however, will Grantor be required to consent to a partial assignment of any rights or obligations arising under this Agreement.
- 21. **GENERAL TERMS AND CONDITIONS:** All transportation services provided under this Agreement shall be in accordance with the General Terms and Conditions attached as Exhibit D.
- 22. **PRIOR AGREEMENTS:** This Agreement, together with Exhibits A, B, C, D, E and F and any attachments thereto, dated of even date as this Agreement, terminate and supercede the Amended and Restated Easement Agreement dated February 2001 and executed by the parties.

IN WITNESS WHEREOF, the Grantor has signed and sealed this instrument this 3rd day of June, 2021, and the Grantee has signed and sealed this instrument this 3rd day of June, 2021.

DTE Gas Company:

Constellation NewEnergy – Gas Division, LLC

By: 

By:  *AK*

Name: Daniel Brudzynski

Name: Leonardo Caro

Title: Vice President, Gas Sales & Supply

Title: Senior Vice President, C&I Gas

EXHIBIT A

MAP OF OVERLAP AREA TO BE SERVED BY GRANTEE

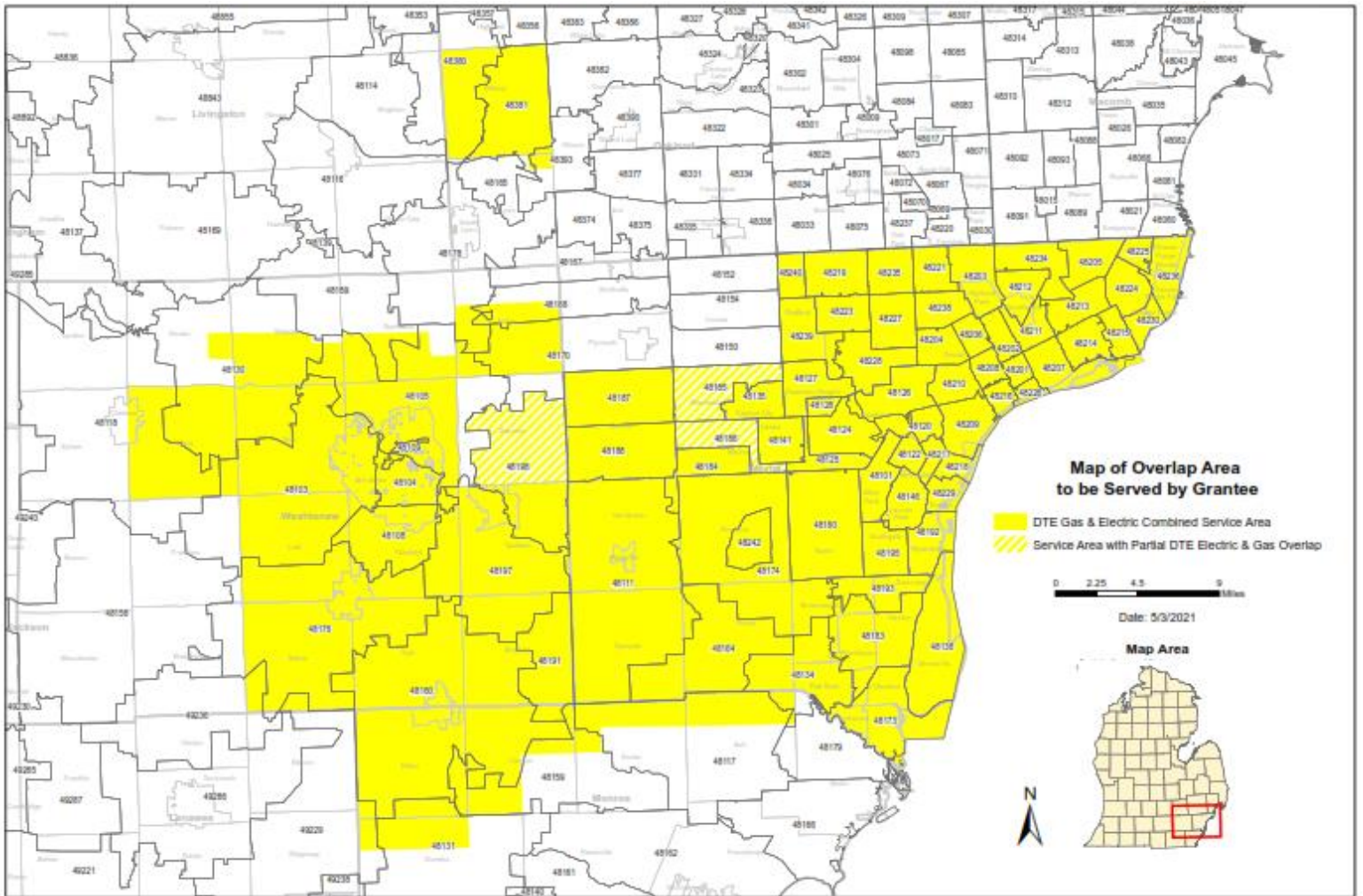


EXHIBIT B

PORTIONS OF GRANTOR'S DISTRIBUTION SYSTEM SUBJECT TO EASEMENT

Any customers located within the areas identified below that are not served by Grantor's electric service shall not be subject to the terms within this Agreement except as described in Section 3(b) of the Agreement. All distribution pipelines, associated rights of way and appurtenant facilities located in Wayne County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 24280, Pages 93 through 305, Wayne County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Wayne County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Washtenaw County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 2336, Pages 494 through 706, Washtenaw County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Washtenaw County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Milford Township, Oakland County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 11005, Pages 835 through 1047, Oakland County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Oakland County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Monroe County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 1087, Pages 22 through 234, Monroe County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Monroe County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

All distribution pipelines, associated rights of way and appurtenant facilities located in Macomb County, Michigan described in the Indenture of Mortgage and Deed of Trust dated as of March 1, 1944 and its 29 Supplemental Indentures from Michigan Consolidated Gas Company to Citibank, N.A., recorded at Liber 4695, Pages 1 through 213, Macomb County Records, and all other and after-acquired distribution pipelines, associated rights-of-way and appurtenant facilities located in Macomb County, Michigan, regardless of whether any of such other or after-acquired distribution pipelines, associated rights of way and/or appurtenant facilities are described in the instruments recited herein or in any other instruments of record.

EXHIBIT C-1

GRANTOR RATE SCHEDULES

Grantor's rate schedules are those found on Grantor's web site at:

<https://newlook.dteenergy.com/wps/wcm/connect/dte-web/home/about-dte/common/dte-gas-company/tariffs> The web site will be updated to reflect any changes to Grantor's rates.

EXHIBIT C-2

“Average MPSC Rate – Inclusive” as of the Effective Date.

**DTE Gas Company
Case No. U-20642
Order
Average Rate Per Mcf**

	<u>Proposed Revenue /1 (5000)</u>	<u>Projected Volume</u>	<u>Average Rate</u>
Rate GS-1/GS-2 (Rate 1)	173,009	39,747	\$ 4.3528
Rate A (Rate 2, 3, &3A)	553,672	109,416	\$ 5.0602
Rate 2A	18,075	4,327	\$ 4.1773
Rate GS-2 (Rate 6) * not broken out in settlement	-	-	\$ -
Rate S (Rate 10)	3,855	1,465	\$ 2.6314
Rate ST	37,157	17,918	\$ 2.0737
Rate LT	23,817	21,356	\$ 1.1152
Rate XLT	17,598	25,887	\$ 0.6798
Rate XXLT	<u>24,669</u>	<u>80,754</u>	\$ 0.3055
Total	<u>851,852</u>	<u>300,870</u>	\$ 2.8313

EXHIBIT C-3

“Average MPSC Rate – Exclusive” as of the Effective Date

**DTE Gas Company
Case No. U-20642
Settlement -
Attachment 1, Page 1
Average Distribution
Rate Per Mcf**

	Proposed Distribution Revenue /1 (\$000)	Projected Volume	Distribution Rate
Rate GS-1	136,331	39,054	\$ 3.4909
Rate A (Rate 2, 3, &3A)	404,078	109,416	\$ 3.6930
Rate 2A	15,981	4,327	\$ 3.6930
Rate GS-2 (Rate 6) * not broken out in settlement	2,023	693	\$ 2.9183
Rate S (Rate 10)	3,328	1,465	\$ 2.2720
Rate ST	23,117	17,918	\$ 1.2902
Rate LT	16,310	21,356	\$ 0.7637
Rate XLT	14,955	25,887	\$ 0.5777
Rate XXLT	<u>11,314</u>	<u>80,754</u>	\$ 0.1401
Total	<u>627,438</u>	<u>300,870</u>	<u>\$ 2.0854</u>

EXHIBIT D

GENERAL TERMS AND CONDITIONS

D-1. DEFINITIONS

- a. "Annual Contract Quantity" or "ACQ" refers to the total volume of firm transportation Initial Capacity, Supplemental Capacity and Growth Capacity purchased by Grantee and available for Grantee's use in the Overlap Area in any Contract Year.
- b. "ACQ_{OGL}" refers to the volume of firm transportation Growth Capacity purchased by Grantee to serve On-site Generation Load.
- c. "Average MPSC Rate - Inclusive" means the average of the rates for the Rate Classes identified on Exhibit C-2, plus any that may be added in the future, together with all customer charges applicable under the Rate Book. As of the Effective Date, the "Average MPSC Rate - Inclusive" is the average Rate of \$2.8313 per Mcf.
- d. "Average MPSC Rate - Exclusive" means the average of the rates for the Rate Classes identified on Exhibit C-3, plus any that may be added in the future, excluding all customer charges applicable under the Rate Book. As of the Effective Date, the "Average MPSC Rate - Exclusive" is the average Rate of \$2.0854 per Mcf.
- e. "Contract Rate" shall be the current rate determined by the Adjustment Mechanism and utilized to calculate Grantee's Capacity Annual Payment, Expansion Allowance, and Overrun Charges.
- f. "Committed ACQ" means the contract commitment ACQ of Grantee's Customer requiring the Expansion Load (Mcf).
- g. "Committed Years" means the number of Contract Years, following the in-service of the expansion, Grantee commits to use the Committed ACQ for newly added incremental load for which the expansion was designed.
- h. "Contract Year" means the period from April 1 to the following March 31st.
- i. "Construct" means to design, engineer, procure, obtain regulatory approvals, permit, install, modify, upgrade, improve, build, inspect, test, or place in service.
- j. "Day" means a period of 24 consecutive hours commencing at 12:00 noon Eastern Time, or such other time as mutually agreed upon by the parties.
- k. "Delivery Point" is the interconnection(s) of the facilities of Grantor and those of each Grantee's Customer and/or any Grantee downstream extension.

- l.** "Electric Displacement Load" or "EDL" means natural gas consumption for On-Site Generation, General Generation or Electric Displacement Equipment.
- 1) "On- Site Generation" means electrical generation from power generation equipment, including but not limited to, gas fired engines, or gas-fired combustion turbine driven generation equipment, or when gas is used to create hydrogen for use in fuel cells ("Generation Equipment") and the Generation Equipment is installed on the same premise or parcel of land as the facility consuming electrical output from the Generation Equipment and (i) the Generation Equipment is owned or operated either by a non-utility entity that owns or operates the Generation Equipment, or by the entity that owns or operates the facility consuming output from the Generation Equipment, or both such entities, or (ii) the Generation Equipment is owned or operated by a municipal entity, including a city, village, township or county. A "non-utility entity" is an entity that has no obligation under state or local law to provide utility service to the public in the Overlap Area.
- 2) "General Generation" means up to 8,750,000 kWh of non-On-Site Generation, per year per each unit of Generation Equipment served by Grantee in the Overlap Area; provided, however, that General Generation may not exceed 8,750,000 kWh at any "contiguous customer location". A "contiguous customer location" means the buildings or parts of buildings situated upon the same parcel or contiguous parcels of land and occupied and used by the customer as a unitary enterprise at one location and under one management.
- 3) "Electric Displacement Equipment" means equipment that displaces electric equipment such as chillers, air compressors, commercial dishwashers and fryers, or other applications for which Grantor and Grantee, or an auditor through the Audit Process, determine that a practical and economic electric alternative exists. Electric displacement equipment shall not include direct-fired space heating and hot water applications.
- m.** "Equivalent Quantities" means the quantity of gas, in MCF received from Grantee, for the account of Grantee, at the Receipt Point(s), less the 1% Fuel Use Charge of gas-in-kind withheld by Grantor for loss and use.
- n.** "Expansion Load" means new incremental Grantee Customer load added pursuant to Section D-5 of Exhibit D.
- o.** "FERC" means the Federal Energy Regulatory Commission or its successor.
- p.** "Grantee's Storage Capacity" equals 10% of Grantee's Initial Capacity, Supplemental Capacity and Growth Capacity in effect on May 31 of each Contract Year and is the maximum quantity of natural gas that Grantor will hold in firm storage on Grantee's account under the terms of this Agreement.

- q. "Grantor's Average Residential Distribution Charge" as referenced in calculating the Growth Capacity Monthly Payment, equals the weighted average of the volumetric distribution charges of the MPSC approved residential service rates as in effect from time to time. Such distribution charges shall be exclusive of any customer charges. As of the effective date of this Agreement, the MPSC approved residential service rates include Rate Schedule Numbers 2, 2A, 3 and 3A, as identified in Grantor's Rate Book. In calculating the weighted average, the residential service rates shall be weighted by the total volume of service utilized by the MPSC in the most recent rate order to set rates for the respective residential rate classes.
- r. "Grantor's Average Transportation Rate" as referenced in calculating the Growth Capacity Monthly Payment, equals the weighted average of the ST-1 and LT-1 MPSC approved fixed cost transportation rates (or any successor rate) in effect from time to time, exclusive of any customer charges. In calculating the weighted average, the ST-1 and LT-1 transportation charges shall be weighted by the total volume of service for the ST-1 and LT-1 rate classes utilized by the MPSC in the most recent rate order to set rates.
- s. "Grantor's Transportation Rate Schedule Minimum" shall be the lowest MPSC approved non-residential Transportation Rate as listed in DTE's Rate Book, as in effect from time to time, exclusive of any customer charges.
- t. "Maximum Daily Quantity" or "MDQ" is the maximum quantity of natural gas that may be transported from the Receipt Point(s) and/or Grantee's storage account to the Delivery Point(s) on any one Day.
- u. "MPSC" means the Michigan Public Service Commission or its successor.
- v. "Non-Residential Growth Capacity" is the volume of all Growth Capacity other than Residential Growth Capacity.
- w. "Residential Growth Capacity" is the volume of Growth Capacity that meets the definitions of residential usage as detailed in Grantor's MPSC approved rate schedules.
- x. "On-site Generation Load" or "OGL" means natural gas consumption for On-Site Generation and General Generation, as defined above.
- y. "Prior Period Adjustment" or "PPA" is a correction of data from a previous bill cycle. Bill cycle is determined by the meter read end date. PPA's may be a result of an actualization of customer usage or correction of an error.
- z. "Primary Receipt Point" refers to a Receipt Point where firm deliveries will be received.

- aa.** "Receipt Point(s)" are those interconnection(s) between the facilities of Grantor and third parties that deliver gas to Grantor, for the account of Grantee, identified in Attachment D-1.
- bb.** "Secondary Receipt Point" refers to a Receipt Point where interruptible deliveries will be received.
- cc.** "Rate Book" means Grantor's Rules, Regulations and Rate Schedules for Gas Service as approved by the MPSC and/or as amended from time to time.
- dd.** "Operating Statement" means Grantor's Operating Statement on file with the Federal Energy Regulatory Commission (FERC), and located at <https://www.newlook.dteenergy.com/wps/wcm/connect/58d9a984-0001-4373-8dc5-ab0a50c949ae/DTEGasCoOperatingStatement.pdf?MOD=AJPERES>, as may be amended from time to time, which provides the rules and procedures for nominations on Grantor's system.

D-2 NOMINATIONS

All nominations must be made in accordance with Grantor's nomination practices in effect as defined in Grantor's Rate Book, Section E2 and Grantor' Operating Statement, Section 11, as may be amended from time to time. Prior to making any change to its nomination procedure, Grantor shall provide advance notice to Grantee.

Question pertaining to nominations can be directed to (833)-383-6667 or DTE_GasScheduling@dteenergy.com.

D-3 RECEIPT POINTS

Grantee may deliver gas to any Receipt Point located in the Overlap Area or that serves the Overlap Area, including but not limited to the Receipt Points defined in Attachment D-I as may be amended from time to time. Grantee shall have the flexibility to deliver up to its full MDQ at any primary Receipt Point.

D-4. DELIVERY POINT REQUIREMENTS

- a) For each Delivery Point, Grantee will provide customer enrollment and cancellation information to Grantor via a pre-formatted electronic file, as described in Attachment D-II and as may be amended from time to time.
- b) Accepted enrollments and cancellations will become effective the next business day after all Grantor meters at the Delivery Point have been read or estimated by Grantor.

- c) Grantor shall finalize monthly volumes on or before the tenth (10th) business day of each month. Grantor will provide Grantee with a monthly storage report by the fifteenth (15th) of each month which shall include metered consumption for Grantee's Customers, nominations made at the Delivery Points by Grantee, and beginning and ending storage balances.
- d) At Grantee's election, Grantor will retain responsibility for the cost of installing, operating, maintaining (including replacing in-kind) and reading Grantee's Customer meters except as otherwise provided in this Agreement. Grantor will forward meter reads for Grantee's Customers to Grantee daily or as otherwise available from Grantor's meter reading system. Upon thirty (30) days prior notice to Grantor, Grantee may assume responsibility for installing, operating, maintaining (including replacing in-kind) and reading Grantee's Customer meters. If Grantor provides billing services to Grantee, payments received from Grantee's Customers will be remitted on the same schedule as meter reads. Grantor or Grantee may install remote meter reading devices on the facilities of Grantee's Customers to get daily reads. The party requesting the installation of the remote meter reading devices shall bear all costs thereof.
- e) Subject to billing practices rules as provided in the DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS PUBLIC SERVICE COMMISSION CONSUMER STANDARDS AND BILLING PRACTICES FOR ELECTRIC AND NATURAL GAS SERVICE, R.460.101 et seq, as modified from time to time by the MPSC, Grantee may bill its customers directly or contract with Grantor for customer billing services at cost plus 10%. Grantee will bear all uncollectible risk with respect to Grantee's Customers and Grantor shall not undertake any collection efforts on behalf of Grantee. Any Grantee Customer complaints shall be subject to the jurisdiction of the MPSC.
- f) If Grantee elects to terminate its transportation agreement with any of Grantee's Customers, Grantee must notify Grantor as provided in this Section D4. Any customer terminated by Grantee may apply for service from Grantor as a "new customer" under the terms of Grantor's Rate Book.
- g) Grantee shall have the right to transfer gas between its storage account under this Agreement as defined in Rate Book Section E2.2. Transfers will take effect the month following the date which final storage balances have been determined. Grantee shall submit a written transfer request to Grantor no later than sixty (60) days from finalizing the storage balance.

D-5. SYSTEM REQUIREMENTS

- a) **Operation.** Grantor shall be responsible for operation of its Distribution System and all infrastructure maintenance and system-wide upgrades.
- b) **System Expansions.** At Grantee's request, any upstream or downstream facilities necessary to interconnect with, or to meet the current or anticipated future service needs of, Grantee's

Customers, including but not limited to service line extensions, upstream expansions, mains, transfer mains and gate stations shall be constructed.

- i) System expansion requirements will be analyzed by Grantor's engineering modeling software, as more fully described in Attachment D-III, Construction Costs Model, and generally accepted in the natural gas industry unless otherwise agreed upon by Grantee and Grantor.
- ii) Within ten (10) business days of receipt of all information necessary to run Grantor's current engineering model, as may be modified from time to time, of required facilities, Grantor will provide to Grantee, for Grantee review and approval, all of the details of the proposed facilities, including project design, lump sum cost estimate ("Construction Costs"), Expansion Allowance, as defined below, and the results, including all assumptions and variables, of its current model or such other mutually agreed upon engineering modeling software, generally accepted in the natural gas industry.

To qualify for the Expansion Allowance described below, the Grantee Customer shall have an existing or new site within the Overlap Area and be a current or previous customer of Grantor that has become or is in the process of becoming a Grantee Customer.

- c) **Costs.** To the extent that Grantee's level of purchased capacity is 20 Bcf or less, the Expansion Allowance as calculated below shall determine any contribution of Grantee for such construction work. See example in Exhibit E.

Expansion Allowance = Contract Rate x Committed Years x Committed ACQ x 0.8

Grantee's Costs = Construction Costs - Expansion Allowance

ACQ and Committed years shall be provided by Grantee

Construction Costs shall be calculated using Grantor's model for such costs.

Notwithstanding the foregoing, Grantee shall not be required to make a contribution towards the cost of any constructed upstream or downstream facilities related to Initial Capacity or Supplemental Capacity unless the Construction Costs are greater than \$100,000.00. For expansions related to Initial Capacity or Supplemental Capacity that exceed \$100,000.00, Grantee shall pay only those Construction Costs that exceed the Expansion Allowance.

- i) Grantee shall provide Grantor with the Grantee's Customer's Committed ACQ and the Committed Years.
- ii) Grantor shall submit such estimated Expansion Allowance to Grantee. The Expansion Allowance shall only be for construction or upgrades of facilities required to serve the specific Grantee Customer.

iii) If Grantor elects to over-size the expansion, Grantor will absorb the cost associated with such over-sizing.

iv) For each of the System Expansion Projects, Grantor shall determine if Grantee Customer's actual volume has met the Committed ACQ as calculated in the Grantee's Expansion Allowance. If Grantee does not meet the total combined Committed ACQ requirement by the end of the Committed Years, an Expansion Allowance Shortfall Payment shall be calculated. For the shortfall volumes below the Committed ACQ, Grantee shall pay Grantor's current distribution rate that would be applicable to the system expansion project.

$(\text{total Committed ACQ} - \text{actual metered volumes}) * \text{Grantor's distribution rate} = \text{Expansion Allowance Shortfall Payment}$

- d) To the extent that Grantee's level of purchased capacity exceeds 20 Bcf, Grantee shall be entitled to the same expansion allowance that Grantee's Customers would receive if Grantee's Customers were taking service from Grantor.
- e) **Grantor Construction.** Grantor will use commercially reasonable and nondiscriminatory efforts to construct facilities requested by Grantee within the timeframe requested by Grantee.
- f) **Grantee Construction.** Grantee may construct any required expansions, provided the facilities meet all Michigan Gas Safety Code requirements and applicable metering standards of the American Gas Association. Facilities constructed by Grantee will be placed in service no later than seven (7) days following notice to Grantor that construction is completed. Within such seven (7) day notice period, Grantor may inspect and test the facilities. At Grantee's request, made within sixty (60) days of the in-service date of extensions constructed by Grantee or third parties contracted by Grantee, Grantor shall purchase the facilities from Grantee for the Construction Costs quoted by Grantor but not to exceed the Expansion Allowance.
- g) **Interconnects.** Grantor shall interconnect with any downstream system extensions constructed by Grantee, provided such extensions meet all existing gas safety codes as established from time to time by the MPSC, Department of Transportation, or other governmental agencies with jurisdiction over natural gas pipelines. Subject to the expansion allowance provisions of this Agreement, Grantee shall be responsible for costs of such interconnection, including any upstream expansions required on Grantor's system to accommodate the downstream extension.
- h) Nothing in this section is intended to change Grantee's capacity rights under Section 3 of this Agreement.
- i) Nothing in the foregoing shall be interpreted to limit either party's ability to compete with the other party to serve any end user, including offering prices and terms to induce the end user to not purchase gas transportation services from the other party.

D-6. OPERATIONAL NOTICES OR CHANGES

In the event of Curtailment of Gas Services as provided in the Rate Book, Section C3, Grantor shall provide Grantee with Notice of Curtailment.

When possible, Grantor shall provide advance notice to Grantee for the following planned operational events below:

- a) Any planned new receipt points;
- b) Any proposed modifications or changes to Grantor's nomination process;
- c) Any scheduled maintenance or other outage of facilities on Grantor's Distribution System, or any change in operating standards, practices or procedures that would degrade or interrupt service to any Grantee Customer; and
- d) Any other scheduled event likely to impact Grantee or Grantee's ability to serve any Grantee Customer.

D-7. MEASUREMENT

All quantities of gas received at the Receipt Point(s) by Grantor for the account of Grantee shall be measured at the Receipt Point(s) by Grantor or its designee as provided in Grantor's Rate Book and all quantities of gas delivered by Grantor to Grantee's Customers will be measured at the Delivery Point(s) by Grantor, or its designee as provided in Grantor's Rate Book.

D-8. QUALITY

All gas delivered by Grantee at the Receipt Point(s) or delivered by Grantor at the Delivery Point(s) shall conform with the same gas quality standards to which Grantor holds itself and other shippers as provided in Grantor's Rate Book. Any failure to deliver the gas as specified by Grantor's Gas Quality Specifications will be remedied within the same manner as Grantor's other shippers as provided in Grantor's Rate Book.

D-9. POSSESSION AND LIABILITY

- a) Possession and liability of the gas transported under this Agreement shall be governed by the terms of Grantor's Rate Book.
- b) Neither party shall be liable to the other party for any punitive or exemplary damages in connection with this Agreement.
- c) Upon termination of this Agreement pursuant to Section 14, neither party shall have any further obligations to the other party, except such obligations as have accrued as of the termination date, and Grantor shall dispose of any Grantee storage inventories as directed by Grantee.

D-10. WARRANTY

- a) Grantee warrants that at the time of delivery it will have the right to deliver the gas in connection with Grantee's use of the capacity made available to Grantee under this Agreement.
- b) Grantee further warrants that either independently or through the services of a gas marketer or broker, Grantee will put in place contracts for the purchase and transportation of natural gas such that sufficient quantities of gas will be delivered to the Receipt Point(s) to meet Grantee's full requirements for natural gas, less any storage balance ("Sufficient Quantities").

D-11. INDEMNIFICATION

- a) Grantee will indemnify Grantor and hold it harmless from suits, actions, debts, accounts, damages, cost, losses and expenses arising from or out of adverse claims of any and all persons in connection with gas provided in connection with Grantee's use of the capacity made available to Grantee under this Agreement and royalties, taxes, license fees or charges related to such gas.
- b) Grantor will indemnify Grantee and hold it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons in connection with Grantor's Distribution System.

D-12. TAXES AND FRANCHISE FEES

Grantee shall pay any taxes, tariffs, and duties however designated, levied, or charged resulting from Grantee's use of capacity rights provided under this Agreement, including, without limitation, all state and local privilege or excise taxes and any amount in lieu of such taxes, tariffs and duties paid or payable by Grantor, exclusive however of taxes based on the net income of Grantor, property taxes, and Grantor's Michigan corporate income taxes. Grantee shall reimburse Grantor for any such taxes, tariffs and duties that are collected and remitted or paid on Grantee's behalf by Grantor because of Grantee's failure to pay. Grantor shall, however, reimburse Grantee for 80% of any franchise fees paid by it, provided that the reimbursement in any Contract Year shall not exceed 10% of the initial Capacity Annual Payment.

D-13. BILLING AND PAYMENT

- a) On or about the fifth (5th) day of each calendar month, Grantor shall render a statement to Grantee for the capacity payment and any other charge, if applicable. Grantee will pay Grantor the amount billed in that statement on or before the twenty-fifth day of the month. All such payments shall be made in the form of immediately available funds directed to a bank account designated by Grantor on its invoice.

- b) The statements rendered pursuant to this Agreement will be denominated in U.S. Dollars (\$U.S.). All payments must be made in \$U.S.
- c) Grantee shall have the right at all reasonable times to examine the books, records and charts of Grantor to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any provisions of this Agreement.
- d) Should Grantee fail to pay any undisputed amount of any statement rendered by Grantor as herein provided when such amount is due, such undisputed and unpaid amount shall accrue interest at the prime lending rate as published in the Wall Street Journal on the first day of each month.
- e) If Grantee finds at any time within twelve (12) months after the date of any statement rendered by Grantor that it has been overcharged in the amount billed in such statement, and if the overcharge has been paid, and Grantee makes a claim therefore within sixty (60) days from the date of discovery thereof, the overcharge, if verified, must be refunded within thirty (30) days. If Grantor finds at any time within twelve (12) months after the date of any statement rendered by it that there has been an undercharge in the amount billed in such statement, it may submit a statement for the undercharge, and Grantee, upon verifying the same, shall pay such amount within thirty (30) days.

D-14. CREDITWORTHINESS

During the term of this Agreement, Grantee shall meet and comply with the creditworthiness requirements of Grantor's Rate Book.

D-15. FORCE MAJEURE

- a) Force Majeure under this Agreement shall be as provided in Grantor's Rate Book.
- b) Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligation to make payments of amounts then due thereunder, nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

D-16. LAWS

- a) This Agreement and the respective obligations of the parties hereunder are subject to all laws, orders, rules and regulations of duly constituted authorities having

jurisdiction. This Agreement is also subject to all applicable federal, state and local taxes or surcharges.

- b) In the event there is a change in law or regulation that renders this Agreement, or any part of this Agreement, unenforceable and/or illegal, the Parties shall attempt to renegotiate this Agreement on mutually acceptable terms. Neither Grantor nor Grantee shall refuse to accept changes to the Agreement that would (i) render the Agreement enforceable and legal and (ii) would not materially adversely affect the Party refusing to accept the proposed change. Any disagreements as to what constitutes a material adverse affect shall be resolved in accordance with the procedures described in Section D-18. In the event the parties cannot reach a mutually agreeable resolution, Grantor commits not to oppose any efforts by Grantee to obtain franchises and any other regulatory approvals to serve end users in the Overlap Area.

D-17. INDEPENDENT AUDITOR AND MPSC REVIEW

- a) Grantor and Grantee may jointly appoint an independent, third party auditor with knowledge of the natural gas industry.
- b) If Grantee and Grantor choose, the auditor may perform the duties as set forth in an agreement with the auditor.
- c) At the discretion and direction of Grantor and Grantee, the auditor shall prepare an annual audit report as further specified in the auditor agreement (“Annual Report”), which shall be provided to the MPSC electronically for review. The parties shall within sixty (60) days after delivery of the Annual Report to the MPSC review such report with the MPSC and discuss any other issues related to Grantee Customer complaints or unresolved issues.

D-18. DISPUTES; GOVERNING LAW; ARBITRATION

- a) **THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MICHIGAN.** In the event of any dispute arising under or by virtue of this Agreement or any difference of opinion between the parties hereto concerning their rights and obligations under this Agreement, the parties shall endeavor to resolve such dispute or difference amicably by discussion and mutual accord and in accordance with the escalation processes to be agreed to by the parties before escalating to their respective senior management. If the matter cannot be resolved within thirty (30) days after discussion among the senior management of the parties it shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association by an arbitrator with experience with utilities and the natural gas industry and the following:
 - (i) The arbitration hearing shall be held in Detroit, Michigan on ten days’ notice to the parties.

- (ii) No arbitration proceeding may consider a matter designated by this Agreement to be within the judgment or discretion of one party, and the arbitration proceeding may not revoke or revise any provisions of this Agreement.
- (iii) The arbitrators shall not have authority to fashion a remedy that includes consequential or punitive damages.
- (iv) An award rendered by the arbitrators shall be final and binding on all parties to the proceeding.
- (v) Unless the arbitrators, for good cause shown, apportion the costs of the arbitration proceeding between the parties, the parties shall bear their own costs and expenses, and any costs of the arbitration proceeding, including the arbitrators' bill for services, any amounts charged by the American Arbitration Association in connection with the arbitration proceeding shall be shared equally.
- (vi) In no event shall either party be required to arbitrate any dispute based on transactions or occurrences which occurred more than 24 months prior to the date of the demand for arbitration, and mailing shall not be presumed to be timely in the absence of official postal proof of the date of mailing.

Judgment upon the award rendered by the arbitrators may be entered in any court located within the State of Michigan having jurisdiction thereof.

D-19 NON-WAIVER OF FUTURE DEFAULTS

No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement will operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

D-20 TREATMENT OF CONFIDENTIAL INFORMATION

- (a) Grantor and Grantee each shall use any Confidential Information received or derived from the auditor, from one another, or from performing this Agreement or any agreement with an auditor, as each may be modified from time to time, solely (1) in the performance of Grantor's or Grantee's obligations under this Agreement or an auditor agreement; (2) in the performance of Grantor's or Grantee's obligations under any order, rule, regulation or statute issued or administered by the MPSC; or (3) for the purpose of complying with financial, tax reporting, legal, health, safety, and environmental obligations of Grantor or Grantee. For purposes of this paragraph, Confidential Information means:
 - i) Any information designated as Confidential Information by either Grantor or Grantee that is treated as confidential by the party which designates the information as Confidential Information; and

- ii) Any information that is designated as confidential by any order, rule, regulation or statute issued or administered by the MPSC.
- (b) Any information or notices pertaining to Grantee's Customers ("Customer Information"), including information pertaining to any third party purchasing Brokered Capacity pursuant to Paragraph 3(g), will be maintained by Grantor's operations department in strictest confidence subject to the following:
- i) Disclosure of Customer Information will be limited to that necessary and appropriate for ensuring compliance with the Michigan Gas Safety Code and the curtailment rules of Grantor's Rate Book, which will be applied to Grantee's Customers in the same manner as applied to Grantor's customers.
 - ii) Disclosure of Customer Information will be limited to persons with responsibilities in connection with the operation and construction of Grantor facilities, and billing, if Grantee elects to have Grantor bill Grantee's Customers, and under no circumstances may Grantor disclose Customer Information or any other operational data pertaining to Grantee to employees of Grantor or any affiliate of Grantor who are engaged in the marketing of the transportation or sale of electricity or gas.
 - iii) Customer Information may be used only for the purpose of providing the transportation and storage services contemplated in this Agreement.

ATTACHMENT D-I
NOMINATION RECEIPT POINTS

DTE GAS COMPANY
EASEMENT / GCC
POINTS OF RECEIPT

Interconnects eNominator Location Name	eNominator Location ID	County	Summer *	Transaction Type (TT) Code	Winter *	Transaction Type (TT) Code
DTE Gas Co / ANR "Detroit A - Rec"	9004	Mecosta	Primary	CB	Secondary	CBI
DTE Gas Co / ANR "Detroit A Pool"	9319	Mecosta	Primary	CB	Secondary	CBI
DTE Gas Co / Blue Water Storage "Blue Water Storage - Rec"	9206	Macomb	Primary	CB	Secondary	CBI
DTE Gas Co / Blue Water Storage "Blue Water Pool"	9311	Macomb	Primary	CB	Secondary	CBI
DTE Gas Co / GLGT "Belle River Mills - Rec"	9002	St. Clair	Primary	CB	Secondary	CBI
DTE Gas Co / GLGT "Belle River Pool"	9301	St. Clair	Primary	CB	Secondary	CBI
DTE Gas Co / MichCon Gathering Co. "Kalkaska – Sag Bay - Rec"	9441	Kalkaska	Primary	CB	Secondary	CBI
DTE Gas Co / MichCon Gathering Co. "Kalkaska – Sag Bay Pool"	9321	Kalkaska	Primary	CB	Secondary	CBI
DTE Gas Co / MichCon Gathering Co. "Kalkaska DTE Gas Co - Rec"	9443	Kalkaska	Primary	CB	Secondary	CBI
DTE Gas Co / MichCon Gathering Co. "Kalkaska DTE Gas Co Pool"	9342	Kalkaska	Primary	CB	Secondary	CBI
DTE Gas Co / MichCon Gathering Co. "Merit Plant - DTE Gas Co - Rec"	9448	Kalkaska	Primary	CB	Secondary	CBI
DTE Gas Co / MichCon Gathering Co. "Merit Plt Pool"	9349	Kalkaska	Primary	CB	Secondary	CBI
DTE Gas Co / St. Clair Pipeline (Union) "St. Clair - Rec"	9435	St. Clair	Primary	CB	Secondary	CBI
DTE Gas Co / St. Clair Pipeline (Union) "St. Clair - Pool"	9459	St. Clair	Primary	CB	Secondary	CBI
DTE Gas Co / Vector Pipeline "Vector – Belle River - Rec"	9136	St. Clair	Primary	CB	Not Available	Not Available
DTE Gas Co / Vector Pipeline "Vector – Belle River Pool"	9308	St. Clair	Primary	CB	Not Available	Not Available
DTE Gas Co / Washington 10 Corp. "Washington 10 - Rec"	9440	Macomb	Primary	CB	Secondary	CBI
DTE Gas Co / Washington 10 Corp. "W10 Pool"	9310	Macomb	Primary	CB	Secondary	CBI
DTE Gas Co / ANR "Willow Run - Rec"	9038	Washtenaw	Secondary	CBI	Primary	CB
DTE Gas Co / ANR "Willow Run Pool"	9307	Washtenaw	Secondary	CBI	Primary	CB
DTE Gas Co / Consumers Energy "Northville - Rec"	9423	Wayne	Secondary	CBI	Primary	CB
DTE Gas Co / Panhandle Eastern "PEPL/MCON - Rec"	9028	Wayne	Secondary	CBI	Primary	CB
DTE Gas Co / Panhandle Eastern "PEPL/MCON Pool"	9303	Wayne	Secondary	CBI	Primary	CB
DTE Gas Co / NEXUS "Ypsilanti - Rec"	9219	Washtenaw	Secondary	CBI	Primary	CB
DTE Gas Co / NEXUS "Ypsilanti Pool"	9221	Washtenaw	Secondary	CBI	Primary	CB
DTE Gas Co / Vector Pipeline "Vector – Milford Junction - Rec"	9137	Oakland	Not Available	Not Available	Primary	CB
DTE Gas Co / Vector Pipeline "Vector – Milford Junction Pool"	9309	Oakland	Not Available	Not Available	Primary	CB

* "Primary Receipt Point" refers to a Receipt Point where firm deliveries will be received.

"Secondary Receipt point" refers to a Receipt Point where interruptible deliveries will be received.

"Summer" is the period from April 1 through October 31.

"Winter" is the period from November 1 through March 31.

ATTACHMENT D-II

ELECTRONIC FILE TRANSFER

Grantor and Grantee transfer electronic data for each enrollment, drop, meter exchanges, meter read transactions or other supporting documentation needed to provide Grantor with transactions necessary to bill Grantee Customers.

A. Transfer of Electronic Data

The process for transferring the data is through Grantor's Secure File Transfer Protocol (SFTP) site, as amended or updated from time to time. The SFTP specific instructions related to the transfer of these files are described herein. Grantor will provide Grantee with the file format required to submit all files. Files are transmitted through the SFTP site, in Extensible Markup Language ("XML") format or text format, as follows:

- a. The Enrollment/Drop File will include the following information for each Delivery Point:
 - i) Name and address;
 - ii) Account number; and
 - iii) Any other pertinent information as necessary to process the transaction.

B. Grantee may submit multiple XML Enrollment/Drop Files to Grantor each business day. Any file submitted to Grantor that is not in an acceptable format will not be processed by Grantor. For each enrollment and cancellation request Grantor will transmit confirmation records to Grantee each evening upon completion of Grantor's system batch run cycle. The files will be posted on Grantee's designated SFTP site.

C. Grantee will perform testing, within the timelines agreed to by the parties, for all modifications to Grantor's file formats, system enhancements or modifications.

D. Required Electronic Files

All files inbound files must be encrypted by the supplier and all outbound files will be encrypted by DTE. Encryption and Decryption keys are exchanged during the testing certification process. All files are transmitted through the SFTP site, in XML format or text format, as follows:

- a. Inbound Enrollment, Inbound Drop and Inbound change files are all files submitted by Grantee. These files are submitted daily. The inbound files will be processed in an evening batch and response files will be posted for Grantee for next day processing by Grantee. Grantee may upload this file to the SFTP throughout the business day.

Inbound drop file will return the customer to Grantor. This is the only acceptable method for enrolling or dropping a customer from the Easement. It is the responsibility of Grantee to submit the request via the specified electronic method described herein.

- b. Outbound confirmation and Outbound rejection files are created and returned to Grantee daily. The file details the status of each account that was submitted for enrollment, or cancellation for prior submissions. The file will provide a list of all accepted, confirmed enrollments, meter exchanges, as well as a list of any rejected accounts, if applicable. Rejected accounts will include Reason Codes that will explain to Grantee why a particular account was rejected. The file will also provide the status of accounts submitted for cancellation. Finally, this file includes cancellations that are due to customers moving or accounts shut-off.
- c. Weather Normalized Consumption File. This file, which is text tab delimited, is created by Grantor on a bi-monthly basis and placed in Grantee's designated folder on the SFTP site.
- d. Outbound usage and revenue files are sent to Grantee daily. These files are aggregated. All outbound usage records will be combined into one file and made available for the supplier to download. This will also occur for outbound revenue records.

ATTACHMENT D-III

GAS CONSTRUCTION MODEL EXPLANATION AND INPUTS

INPUTS:

- Existing system loads
- Existing system pressure ratings
- Existing pipeline diameters
- Existing pipeline lengths
- Existing valve and regulator configurations
- Expansion customer load
- Expansion customer pressure requirements

VARIABLES:

- Expansion pipeline diameter and lengths
- Expansion valve and regulator configuration

OUTPUTS:

Actual customer delivery pressure (to be compared to proposed customer requirements)

EXHIBIT E

EXAMPLES OF CALCULATIONS

A. Section 3(f)(i) – Keep-Whole Volumes (in Mcf) for Supplemental Capacity where Grantee has used 20 Bcf or less of capacity:

Keep Whole Volume Calculation Does Apply

Current Contract Year Volumes (PPA's Excluded)	12,500,000
Less Initial Capacity	5,000,000
	<u>7,500,000</u>
	50%
Required EDL	<u>3,750,000</u>
Less Certified EDL	<u>3,600,000</u>
Keep Whole Volume EDL	150,000
Multiply by Average Keep Whole Rate	<u>\$ 2.6092</u>
Keep Whole Payment	<u><u>391,380</u></u>

Keep Whole Volume Calculation Does Not Apply

Current Contract Year Volumes (PPA's Excluded)	12,500,000
Less Initial Capacity	5,000,000
	<u>7,500,000</u>
	50%
Required EDL	<u>3,750,000</u>
Less Certified EDL	<u>3,900,000</u>
Keep Whole Volume EDL	<u>(150,000)</u>

B. Section 3(f)(ii) – Keep-Whole Volumes (in Mcf) for Supplemental Capacity and Growth Capacity where Grantee has used more than 20 Bcf of capacity:

Keep Whole Volume Calculation Does Apply - Did Not Meet EDL nor OGL

Current Contract Year Volumes (PPA's Excluded)	21,500,000
Less Total EDL and Non-EDL	<u>20,500,000</u>
Net OGL	1,000,000
Less Actual OGL Consumption	<u>600,000</u>
Keep Whole Volume OGL	400,000
Plus Keep Whole Volume EDL	<u>150,000</u>
Keep Whole Volume	550,000
Multiply by Average Keep Whole Rate	<u>\$ 2.6092</u>
Keep Whole Payment	<u><u>1,435,060</u></u>

Keep Whole Volume Calculation Does Apply - Did Not Meet OGL but Did Meet EDL

Metered Volumes PPA's Included	21,500,000
Less Total EDL and Non-EDL	<u>20,500,000</u>
Net OGL	1,000,000
Less Actual OGL Consumption	<u>600,000</u>
Keep Whole Volume OGL	400,000
Plus Keep Whole Volume EDL	<u>0</u>
Keep Whole Volume	400,000
Multiply by Average Keep Whole Rate	<u>\$ 2.6092</u>
Keep Whole Payment	<u><u>1,043,680</u></u>

Keep Whole Volume Calculation Does Apply - Did Meet OGL but Did Not Meet EDL

Metered Volumes PPA's Included	21,500,000
Less Total EDL and Non-EDL	<u>20,500,000</u>
Net OGL	1,000,000
Less Actual OGL Consumption	<u>1,000,000</u>
Keep Whole Volume OGL	-
Plus Keep Whole Volume EDL	<u>150,000</u>
Keep Whole Volume	150,000
Multiply by Average Keep Whole Rate	<u>\$ 2.6092</u>
Keep Whole Payment	<u><u>391,380</u></u>

Keep Whole Volume Calculation Does Not Apply - Did Meet OGL and EDL

Metered Volumes PPA's Included	21,500,000
Less Total EDL and Non-EDL	<u>20,500,000</u>
Net OGL	1,000,000
Less Actual OGL Consumption	<u>1,000,000</u>
Keep Whole Volume OGL	-
Plus Keep Whole Volume EDL	-
Keep Whole Volume	-

C. Exhibit D-5(C) – Expansion Allowance calculation

Expansion Allowance Calculation									
Customer Name:					Project Install Date:		Month/Year		
					Committed End Date		Month/Year		
Meter No:					Rate Class		ST-1		
					Committed Contract Quantity:(dth)		150,000		
Grantee's Current Contract Rate	x	Committed Years	x	Committed ACQ (Dth per year)	Multiplier 0.8	=	Expansion allowance	Total Project Cost	Grantee Cost
\$1.028		3		50,000	0.8		\$123,360.00	\$130,000.00	\$6,640.00

EXHIBIT F

ANNUAL ELECTRIC DISPLACEMENT LOAD AUDIT

At the end of each Contract Year:

Grantor shall provide Grantee the annual consumption for the Contract Year, and the over-run calculation.

If an auditor is being used, Grantee shall submit to the auditor the following information:

- Usage data by meter for Contract Year for all Grantee Customers
- Calculation of the required EDL for the Contract Year
- Customer load data including, annual load, EDL equipment, EDL load % that aggregates to the minimum EDL required

If an auditor is being used, the auditor will:

- Verify the application of the approved methodology for determining EDL
- Verify all new equipment that is not previously approved meets requirements as EDL
- Verify preauthorized (grandfathered) load is within the allowable range and if Grantee Customer usage should fall outside of the range, determine if a site audit is required
- Conduct on-site audit of the agreed upon number of Grantee Customers each Contract Year to ensure the process/methodology is accurate
- Verify Keep Whole requirements are met

If auditor determines that Grantee has failed to utilize the required amount of EDL/OGL, Grantee shall be subject to the Keep Whole Payment.

If auditor determines that Grantee has utilized the required amount of EDL/OGL, no Keep Whole Payment shall be required.

Auditor will provide results of audit to Grantor and Grantee within the timeline agreed to by the Grantor, Grantee and auditor.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **DTE GAS**)
COMPANY for *Ex Parte* Approval of an)
Amended Special Contract for Certain)
Transportation and Storage Rights.)
_____)

Case No. U-21092

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ESTELLA R. BRANSON states that on June 7, 2021, she served a copy of the DTE Gas Company's Application *ex parte* approval and authority to amend the Special Contract between DTE Gas and Constellation Newenergy – Gas Division LLC (Constellation) via electronic mail upon the persons listed on the attached service list.

ESTELLA R. BRANSON

MPSC Case No. U-21092
SERVICE LIST

MPSC STAFF

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