

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of DTE Electric)
Company for the approval of a partial waiver)
of the Consumer Standards and Billing)
Practices for Electric Residential Service)
and approval of a Voluntary Prepay Billing)
Program)

Case No. U-21087

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on September 26, 2022.

Exceptions, if any, must be filed with the Michigan Public Service Commission, 7109 West Saginaw, Lansing, Michigan 48917, and served on all other parties of record on or before October 17, 2022, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before October 31, 2022.

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

**Katherine E.
Talbot**

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Date: 2022.09.26 12:51:23 -04'00'

September 26, 2022
Lansing, Michigan

Katherine E. Talbot
Administrative Law Judge

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PROPOSAL FOR DECISION

I.

PROCEDURAL HISTORY

On May 27, 2021, DTE Electric Company (DTE Electric) filed an application with an affidavit in Case No. U-21087, requesting *ex parte* approval of a prepay program and requesting a waiver of seven of the Consumer Standards and Billing Practices for Electric and Natural Gas Service Rules (billing rules) required to implement the program. The Environmental Law & Policy Center, the Ecology Center, the Great Lakes Renewable Energy Association, Soulardarity, the Union of Concerned Scientists, and Vote Solar filed an objection to the application. On July 27, 2021 the Commission issued an order denying the application and waiver requests, and found *ex parte* treatment of the case was inappropriate.¹

¹ Case No. U-21087, July 27, 2021 Order, p 6.

On September 29, 2021, DTE Electric filed a new application, supported by testimony and exhibits, for approval of a prepay program and waiver of billing rules, which omitted the request for *ex parte* approval.

A prehearing conference was held on November 17, 2021, at which time DTE Electric and the Commission Staff (Staff) appeared. At the prehearing conference, petitions to intervene filed by the Department of the Attorney General, the Citizens Utility Board of Michigan (CUB), the Residential Customer Group (RCG), and Soulardarity were granted.

On January 20, 2022, the Attorney General and CUB filed joint testimony, with exhibits. Staff, and Soulardarity also filed testimony with exhibits. Soulardarity, the Attorney General and CUB jointly, and DTE Electric filed rebuttal testimony and exhibits on February 17, 2022. An evidentiary hearing was held on March 21, 2022 where the prefiled direct and/or rebuttal testimony of all witnesses was bound into the record and one Company witness was cross-examined. Also, all proposed exhibits were admitted into the record.

On April 6, 2022, the Attorney General and Soulardarity filed a Motion for Dismissal or, in the Alternative, To Consolidate. On April 8, 2022, the RCG filed a Motion to Consolidate DTE Electric Cases U-20836 and U-21087.² On April 20, 2022, DTE Electric, Staff, and the Attorney General and Soulardarity filed responses to the motions and on April 28, 2022, a hearing was held on the motions. The ALJ denied both motions with a ruling on the record.

² RCG also filed a similar motion in Case No. U-20836 on April 8, 2022. The motion was not granted in that case.

On May 5, 2022 briefs were filed by DTE Electric, Staff, Soulardarity, the RCG, and by the Attorney General and CUB, jointly. On May 20, 2022 the same parties filed reply briefs.

II.

OVERVIEW OF THE RECORD

The evidentiary record is contained in 446 transcript pages, in three volumes, and 43 exhibits. The RCG participated in cross-examination and filed briefs but did not offer testimony.

A. DTE Electric Company

DTE Electric presented the direct and rebuttal testimony of one witness, who was also cross-examined. Michael J. Hatsios, the Director of the Customer Service Transformation team at DTE Energy Corporate Services, LLC, a subsidiary of DTE Energy,³ described the Company's efforts to design and implement a voluntary prepay billing program.

Mr. Hatsios testified "[t]he purpose of this filing is to seek approval for the Company to offer a voluntary prepay program . . . and the associated and required billing rule waivers."⁴ He described the design and mechanics of the program and how it will differ from a post-pay billing model, along with a list of the billing rules and some explanation of the requested waivers. Mr. Hatsios testified the Company is not seeking recovery of any costs associated with the prepay program in this case. He stated,

³ Mr. Hatsios' direct testimony, rebuttal testimony, and cross-examination are transcribed at 2 Tr 26-207. He sponsored Exhibits A1, A-2, A-3, and A-4 Revised.

⁴ 2 Tr 28.
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“[c]ost recovery for DTE PrePay will be requested in a future DTE Electric rate case filing along with the other identified portfolio of Customer IT capital projects.”⁵

Mr. Hatsios testified prepay programs have generated significant interest with electric utilities in the United States. While most of the active programs are not deployed by Investor Owned Utilities (IOUs), Mr. Hatsios testified the Company has been in contact with some IOUs that have piloted or implemented prepay programs, and he stated DTE Electric participates in consortium of industry professionals to share learnings associated with prepay programs.⁶ He stated the Company also incorporated lessons learned from its own Pay As You Go Pilot and a pilot implemented by Consumers Energy, known as Pay My Way. Mr. Hatsios testified the Company incorporated best practices and lessons learned from the prior offerings during the design of the current prepay program. He testified:

At its core, the concept of prepay is simple and is consistent across electric utility programs . . . Participants with electric AMI meters purchase electricity in advance by adding credits to their account. As their account credits reach predetermined low levels, the customer is notified, based on their preference (email, SMS/text), that they are at risk of a loss of service along with an estimate of the number of days of usage remaining. In the event the customer fails to replenish their account and the balance drops below zero, the customer is remotely disconnected. While there are no deposits or reconnection fees, the customer typically needs to add a sufficient amount of money to their account to cover the cost of any unpaid usage and to maintain a minimum credit balance. Prepay customers are able to check their balance, view their energy consumption, and replenish their accounts anytime they want through various service channels.⁷

He testified the Company is designing the prepay program as an option for all residential customers, with some restrictions. He testified the prepay program will

⁵ 2 Tr 28.

⁶ 2 Tr 30-31.

⁷ 2 Tr 29.

provide customers with increased visibility and control over energy usage, the ability to establish a payment schedule to suit their needs, a simplified billing experience, and the ability to make payments toward past due balances.⁸ Mr. Hatsios testified the Company anticipates prepay program customers will reduce energy consumption, explaining that recent studies have shown energy reductions of 5 to 14 percent.⁹ He noted that the small group of customers who participated in the Pay As You Go pilot experienced a six percent reduction.¹⁰

Mr. Hatsios testified the Company identified four specific customer segments that would likely benefit most from the prepay program: 1) Young and Tech Savvy, 2) Financially Stable Savers, 3) Renters and College Students, and 4) Payment Troubled and Vulnerable Customers.¹¹ He described the Young and Tech Savvy customer as younger with a desire to save energy. Noting over 190,000 customers have downloaded the DTE Insight App and 40,000 residential customers have enrolled in Michigan Green Power programs, Mr. Hatsios testified enrollment of 18- to 39-year-old customers increased significantly.¹² He asserted Financially Stable Savers seek new ways to manage their monthly expenses. He testified that approximately 15 percent of the 1.2 million inquiries received by the Company are from customers who repeatedly call to inquire about usage or the amount of a bill. He stated because the prepay program puts the customer in control of energy usage, these customers could benefit from this type of program. Mr. Hatsios testified that Renters and College Students could also see

⁸ 2 Tr 31-32.

⁹ 2 Tr 36; citing a 2018 report by the American Council for Energy Efficient Economy and ESource studies.

¹⁰ 2 Tr 36.

¹¹ 2 Tr 32-34.

¹² 2 Tr 32.

several benefits. He stated the prepay program eliminates the need for “complicated ID validations and document submissions” which would assist customers who move frequently. He stated the prepay program would allow roommates to monitor and discuss energy usage at the residence. And he stated the prepay program would also allow parents to do the same with college students.¹³

Mr. Hatsios testified that the prepay program will be a tool for Payment Troubled and Vulnerable customers (PTVC) who struggle with traditional post-pay billing due to low income, a lack financial stability, or unexpected loss of income. He stated that customers who are struggling financially “often wait until the last minute to pay, often pay late, can accumulate large arrears balances, and can find themselves disconnected for non-payment.”¹⁴ He testified that not all customers qualify for payment assistance, and when they do, some customers are still unable to pay consistently. He stated these customers may have to “make tough choices about which monthly bills get paid, and which ones don’t.”¹⁵ This can create a “cycle of disconnects and reconnects” which adds late fees and additional charges and deposits to a bill that a customer is struggling to pay.¹⁶ Mr. Hatsios asserted the prepay program could assist customers for whom the post pay system does not work. He stated the program will reduce the stress of receiving a monthly bill they cannot afford and allows customers to “take more control of and responsibility for the energy they use” and decide how much to pay based on their finances.¹⁷

¹³ 2 Tr 33.

¹⁴ 2 Tr 34.

¹⁵ Id.

¹⁶ Id.

¹⁷ 2 Tr 35.

Mr. Hatsios testified that low-income customers who are eligible for energy assistance will be provided support from the Company to access and receive that assistance while enrolled in the prepay program. He testified that the “process for requesting and receiving the assistance dollars will not change” and any funds will be credited to a prepay customer’s account according to the provider’s rules and policies.¹⁸

Mr. Hatsios testified the Company plans to implement the prepay program in two phases: He stated Phase 1 will enroll and unenroll customers using live, specially trained customer service representatives (CSRs), in accordance with strict eligibility requirements, and emphasized that Phase 1 enrollment will not be available through the Company’s website.¹⁹ He stated “Phase 1 includes the design and development of all of the core prepay functionality, will provide customers visibility into their usage, payments, and prepaid balance (e.g. number of days of usage remaining) in the self service channels, and will allow customers to manage payment and communication preferences on the DTE website.”²⁰ Mr. Hatsios testified the eligibility requirements will be expanded in Phase 2 “with the ability to customize the frequency and/or threshold at which they receive their low balance alerts.”²¹

Mr. Hatsios stated an eligible customer is a residential customer taking service on D1 Residential Service Rate “with a single electric commodity and having an active AMI meter with remote connection and disconnection capability.”²² He testified Customers enrolled in other payment plans will not be eligible for the program during

¹⁸ 2 Tr 49.

¹⁹ 2 Tr 36. See also proposed Eligibility requirements for both Phase 1 and Phase 2 in Table 1. 2 Tr 38.

²⁰ Id.

²¹ 2 Tr 37.

²² Id.

Phase 1. He stated the Company will expand eligibility to dual commodity customers and customers enrolled in other payment plan programs during Phase 2. And the Company is exploring inclusion of Time-of-Use rates during Phase 2.²³ Mr. Hatsios testified customers with medical restrictions, seniors on the Winter Protection Plan, and customers with more than one meter or multiple premises will not be eligible for the program in either Phase 1 or 2.²⁴ Customers with an arrearage of up to \$750 will be eligible to participate in the prepay program, however a portion of each payment is automatically allocated to the arrearage.²⁵

Mr. Hatsios testified that during enrollment:

Customers will be informed of their rights and responsibilities under the program, including their waiving of the right to receive written (i.e. USPS mail) communications and live agent phone calls ahead of a scheduled disconnect. Customers will be required to provide a valid email address for the purposes of receiving enrollment information and a copy of the full program terms and conditions, and to serve as their primary means of receiving balance alerts and other notifications. However, all customers will have the option of opting-in to SMS/text alerts, with customers who select this option receiving both email and SMS/text notifications.²⁶

At the time of enrollment, a customer is required to pay an initial amount of \$40 which will apply to future consumption unless the customer has an arrearage, then “80% will go towards their future consumption and 20% will be applied to any past due balance through the PrePay Deferred Payment Plan.”²⁷

Mr. Hatsios testified a prepay customer will be able to manage their prepay account and energy usage. These customers will have access to an estimated daily

²³ 2 Tr 39.

²⁴ Id.

²⁵ 2 Tr 37.

²⁶ 2 Tr 40.

²⁷ 2 Tr 41.

usage amount (in both kWh and dollars) and an estimate of the number of days remaining based on the pre-paid balance using their own mobile device, using the Company's automated phone system, or through CSRs. Customers will receive balance notifications, through email and SMS/text messages, and can sign up for daily balance notices. At a minimum, notices are sent when the Company calculates there are five days, three days, and one day until the customer reaches a zero balance.²⁸ A prepay customer will be able to make payments "through a DTE CR, on the DTE website, in the Mobile App, in the IVR, or at a Kiosk, with these payments posting in real-time to their ... account."²⁹ And a customer can set up an automatic reload of any amount and at any threshold of days remaining, and future dated payments can be effectuated through a CSR. A customer can mail payments however Mr. Hatsios stated the Company does not recommend this method due to inherent delays for the posting of the payment.

If a prepay customer reaches a zero balance, they will be informed, via email and SMS/text messages, that disconnection is scheduled and the date. Mr. Hatsios testified:

For customers who reach a zero balance, disconnects will occur no sooner than the next businesses day, and the customer will be provided confirmation of the shutoff along with what's required to reconnect service. Disconnects will only occur Monday-Friday 8:00 a.m. until 6:00 p.m., will not occur on weekends or holidays, and will be deferred during storm and other extreme weather events.³⁰

He stated a prepay customer can reconnect service by making a minimum payment of \$40 plus any unpaid usage. He testified that "[c]ustomer reconnection requests will be

²⁸ 2 Tr 42.

²⁹ Id.

³⁰ 2 Tr 46.

submitted to their AMI meter in real-time, with an average processing and reconnection time of 30 minutes after payment is received. However, depending on the circumstances, reconnect may take up to four hours.”³¹ He stated if the customer has not reconnected service after seven days, they are notified they will need to speak to a CSR, and the customer account is permanently closed after 30 days with no payment.³²

A customer may unenroll from the prepay program and return to post-pay billing with no fee or penalty. However, the customer will be “responsible for the payment of any unpaid usage and past due balances, and will be subject to the same deposit rules as any other non-prepay customer.”³³

Mr. Hatsios testified the Company will track data to measure the success of the prepay program. He stated key performance indicators will include: 1) customer segments enrolled, 2) turnover and retention rates, 3) service disconnection/reconnection rates, 4) energy usage reductions, 5) arrears reductions, and 6) customer satisfaction. He stated the Company will cooperate with Staff to improve the prepay program and will notify Staff and stakeholders of program changes when deemed appropriate.³⁴

Mr. Hatsios testified the Company’s target enrollment for Phase 1 is 3,000 customers.³⁵ He stated the majority of the enrollment will be effectuated through CSRs who engage customers that have contacted the Company and testified they will be “trained to identify which . . . customers would benefit from enrollment in PrePay and

³¹ Id.

³² Id.

³³ 2 Tr 48.

³⁴ Id.

³⁵ 2 Tr 49.

[to] provide all of the information for the customer to make an informed decision about their voluntary enrollment in the program.”³⁶

Mr. Hatsios testified the Company is requesting the waiver of several of the Consumer Standards and Billing Practices for Electric and Natural Gas Service (billing rules) in order to implement the prepay program.³⁷ These Rules are: 460.120(3) requires the mailing of a bill to customers, 460.129(4) which requires a past-due notice to include information about energy assistance, 460.139(1) which requires shutoff notice to be mailed 10 days prior to shutoff, 460.139(6) which requires the utility to make 2 attempts to contact a customer, 460.140(1) which provides the required information to be contained in a shutoff notice, 460.140(2) which provides additional information required for shutoff notice for residential customers, and 460.143(1) which requires the utility to make 2 attempts to contact a customer before remote shutoff.

Mr. Hatsios testified that the “protections provided by the billing rules for which the Company is requesting waivers, are necessary in the post-pay model to help ensure customers are provided adequate opportunity to access funding, and if necessary enroll in a payment plan to avoid shutoff.”³⁸ He reiterates that because post-pay customers continue to consume energy and accrue charges which adds to the amount due and, for some customers, leads to a cycle that results in disconnection for nonpayment. Mr. Hatsios testified that the prepay program “flips the script” and gives customers the ability to pay when and how much they want based on financial and energy needs. He

³⁶ Id.

³⁷ 2 Tr 50.

³⁸ 2 Tr 55.

asserted that customer protections in the billing rules are not necessary with the prepay model, positing that:

To assist customers, and to ensure they can successfully maintain a credit balance and avoid being disconnected, the Company will provide relevant information to the customer in the form of . . . daily balance updates, low balance alerts, and easy payment options, which includes notifications letting the customer know that they can contact DTE for assistance if necessary to avoid shutoff³⁹

Mr. Hatsios also asserted the enrollment restrictions and the fact that the Company will follow current disconnection rules in place for post-pay customers will protect prepay program customers.

Mr. Hatsios confirmed that prepay customers will pay the same rate for a kWh of electricity as a post-pay customer, however the customer's energy usage will be calculated on a daily basis, and it will not be necessary to generate a monthly bill.⁴⁰ He testified the Company's billing engine will calculate the daily energy charges by first reading the customer's AMI meter, then each day the prepay billing simulator calculates the daily usage, the daily capacity charges, the daily non-capacity charges, other daily volumetric charges, a prorated daily charge for fixed charges (such as monthly delivery charge), and then sales tax is added. The total of these charges is then deducted from the prepay program customer's account balance and the system calculates the number of days of energy usage remain.⁴¹

B. Staff

Staff presented the testimony of one witness. Christina A. Forist, the Departmental Manager in the Compliance and Investigation Section of the Customer

³⁹ Id.

⁴⁰ 2 Tr 56.

⁴¹ 2 Tr 56-57.

Assistance Division of the Michigan Public Service Commission.⁴² She outlined Staff's involvement in the prepay application indicating that Staff was generally supportive of the program and noted that "[t]he Billing Rules are mainly designed for post-pay customers."⁴³

Ms. Forist testified that Staff believes many customer types could benefit from the prepay program and could provide more options for customers.⁴⁴ She stated the Commission is frequently contacted by customers who are shocked by the amount of their monthly bill and this prepay program "will allow them to manage usage in a real time with amounts they can control."⁴⁵ She testified that many customers facing shutoff cannot afford to pay the bill; and some have exhausted all assistance available. Noting that under post-pay rules the customer may be required to pay the entire amount owed along with additional fees, Ms. Forist testified the prepay program can allow a customer to retain service and manage their arrearage for a minimal amount.⁴⁶

Ms. Forist indicated that Staff does not object to the electronic communication notifications or methods detailed in the company's Application. She noted that participation requires the customer to "select the amount and type of communication they choose."⁴⁷ And Ms. Forist noted the customer will receive a minimum number of low balance notifications when 5-days, 3-days, and 1-day of estimated usage remaining. Ms. Forist stated that a prepay customer is given a date for disconnection just as a post-pay customer but the difference is that the prepay program allows

⁴² Ms. Forist's direct testimony is transcribed at 2 Tr 211-224. She sponsored Exhibits S 1.1 to S 1.5.

⁴³ 2 Tr 222.

⁴⁴ 2 Tr 219-20.

⁴⁵ 2 Tr 220.

⁴⁶ Id.

⁴⁷ Id.

customers to receive notifications in real-time. She stated this allows the customer to add additional funds to their account quickly. Ms. Forist testified, since the Company sends notifications in real-time it would not be practical to mail notifications to prepay customers and opined that such a notice would cause confusion.⁴⁸ She testified that neither prepay nor post-pay customers should receive a grace period prior to disconnection. She stated allowing a customer to accrue unpaid usage could significantly increase the amount of money required to reestablish service and could perpetuate a cycle of disconnection, something the prepay program seeks to avoid.⁴⁹

Ms. Forist testified that Staff recommend the addition of the following mandatory reporting requirements:

- 1) Total number of customers currently enrolled in the pre-pay program.
- 2) Number of low-balance alerts sent that month.
- 3) Number of customers shut off that month and the number of customers restored.
- 4) Number of customers that dropped out of the program and why, if known.
- 5) Total number of senior citizen and low-income customers enrolled in the program.
- 6) A summary of participant feedback, positive and negative, received about the pre-pay program during that month.
- 7) Adjustments made to the program, if applicable.⁵⁰

She testified Staff would like this information reported on a monthly basis, no later than 15 days after the end of the month.⁵¹ Staff also asserted that the proposed prepay program could be approved as a pilot, rather than a permanent offering.⁵²

⁴⁸ 2 Tr 221.

⁴⁹ 2 Tr 222.

⁵⁰ 2 Tr 224.

⁵¹ Id.

⁵² 2 Tr 223.

Ms. Forist testified that Staff believe the requested waiver of billing rules is appropriate. She testified:

Within the current ruleset, approved in December 2017, prepay is defined and a provision was inserted as a placeholder for future development. While drafting the current ruleset it was determined that the program was still in the infancy stage and not ready to have a specific ruleset put in place. It was agreed that if utilities wanted to participate in this type of program, they would need to come forward and request the appropriate rules to be waived.⁵³

However, Ms. Forist testified that “[w]aiver requests should not be granted on a ‘long term’ basis.”⁵⁴

C. Soulardarity

Soulardarity presented the testimony of two witnesses, and rebuttal testimony of one witness.

Stephanie Johnson, the Community Development Specialist for Wayne Metro Community Action Agency⁵⁵ testified about her personal experiences as a DTE customer which informed her “perspective on the affordability of DTE’s rates, the clarity of DTE’s bills, and the quality of DTE’s customer support.”⁵⁶ She asserted the prepay program should not be approved. She detailed her concerns with the proposed prepay program and described the difficulties low-income customers have in accessing payment assistance and opined the proposed program does not adequately inform potential enrollees.⁵⁷ Ms. Johnson also testified that her agency works with many

⁵³ 2 Tr 222-23.

⁵⁴ 2 Tr 223.

⁵⁵ Ms. Johnson’s direct testimony is transcribed at 2 Tr 257-282. She sponsored Exhibits SOU-11 to SOU-15.

⁵⁶ 2 Tr 262.

⁵⁷ 2 Tr 262.

people of color and opined this group may be disproportionately represented in the PTVC, a customer segment identified by the Company.⁵⁸

Ms. Johnson testified the fact that the program is voluntary does not alleviate some of the potential risks. She testified that the Company has not made it clear how its CSRs will interact with potential enrollees. She stated the enrollment criteria have not been specified and merely offering the program does not ensure the customer is fully informed.⁵⁹

She testified there is sometimes a gap between when customers realize they need help and when they seek that help.⁶⁰ She expressed concern that customers facing shutoff in the prepay program, may be able to secure assistance but will not have sufficient time to make the payment with the real time shutoff provisions.⁶¹ And she noted that third party assistance may be unavailable to or difficult to access for prepay customers.⁶²

Ms. Johnson testified the Company has not provide adequate evidence that the benefits of the prepay program will materialize and noted the Company has not acknowledged or planned for the potential detriments. She questioned DTE Electric's reliance on studies from other utilities and criticized the Company's comparisons of the prepay program to prepayment for items like cellular service, gasoline, or a credit card.⁶³

⁵⁸ 2 Tr 261.

⁵⁹ 2 Tr 277.

⁶⁰ 2 Tr 271.

⁶¹ 2 Tr 269-70.

⁶² 2 Tr 279-80.

⁶³ 2 Tr 272-73, 276.

Ms. Johnson testified the prepay program would not benefit many customers and testified survey data indicates that customer interest in these programs is very low.⁶⁴ She noted that customers do not prepay now, despite being able to do so, and questioned why a customer would give extra money to a utility rather than keeping it for personal expenses.⁶⁵

She testified that the prepay program does not address affordability, the primary problem for low-income customers and she noted household electricity demand can be unpredictable which impedes budgeting.⁶⁶ She testified there are features of the prepay program that could assist customers to manage energy usage now and questioned why the information proposed in the program would not be available to all customers.⁶⁷ She asserted that an initiative to educate customers about their energy usage would be more beneficial than the current offering.⁶⁸

Ms. Johnson testified that the prepay program would be “disastrous” for dual commodity customers. She stated a customer would have to prepay for both electricity and natural gas and could lose both services even if the customer could have made a payment for one of the services.⁶⁹

Rafael Mojica, the Program Director for Souldarity,⁷⁰ asserted the Commission should reject the prepay program as proposed by DTE Electric. He testified the prepay program will not benefit low-income customers and “has the potential to be a misleading

⁶⁴ 2 Tr 276. See Exhibit SOU-13.

⁶⁵ 2 Tr 273-74.

⁶⁶ 2 Tr 274.

⁶⁷ 2 Tr 277.

⁶⁸ 2 Tr 280-81.

⁶⁹ 2 Tr 275.

⁷⁰ Mr. Mojica’s direct and rebuttal testimony are transcribed at 2 Tr 226-243. She sponsored Exhibits SOU-1 to SOU-10, and SOU-16.

and risky endeavor that may harm underinformed enrollees.”⁷¹ He stated the prepay program does not offer any benefits when compared to existing DTE programs, and any alleged benefits do not outweigh the cost of waiving critical “customer protections for billing, payment, and shutoffs.”⁷² He testified the Commission should not allow the prepay program to be offered to low-income or PTVCs until sufficient protections are assured.⁷³

Mr. Mojica testified a major concern for this prepay program is that it “completely ignores the lack of affordability of rates.”⁷⁴ He testified that the energy burden for low-income customers in Michigan, and particularly in the Detroit area, is higher than the national average.⁷⁵ He testified the prepay program does not address the real problem for low-income customers – high energy burdens. Mr. Mojica noted the Company’s Pay As You Go pilot did not gather any data from low-income customers and therefore did not inform the design of the proposed prepay program.

Mr. Mojica testified that customers could prepay their utility bill now by simply paying an amount above what is billed. He asserted that customers are not choosing to do so which undermines the Company’s assertion that this prepay program is something customers desire.⁷⁶ And he stated the Company can provide information about daily usage to all customers in the same manner as proposed in the prepay program.

⁷¹ 2 Tr 231.

⁷² 2 Tr 243.

⁷³ Id.

⁷⁴ 2 Tr 237.

⁷⁵ 2 Tr 233; citing Exhibit SOU-2 at p 2. He testified “energy burden” is the percentage of gross household income spent on energy. 2 Tr 233; See also Exhibit SOU-1.

⁷⁶ 2 Tr 238; citing Exhibit SOU-6.

Mr. Mojica questioned the effectiveness of the prepay program to address energy efficiency.⁷⁷ He asserted that low-income customers reduced energy consumption via deprivation behaviors when faced with accelerated shutoffs.⁷⁸ He testified that the prepay program will perpetuate self-deprivation behaviors from customers.

[B]y making it easier for DTE to turn off someone's power more quickly, prepay would hold a new lever of pressure over the heads of customers. Prepay is thus harsher and less forgiving than the post-pay processes that protect customers.⁷⁹

Mr. Mojica testified that the Company is asking to waive billing rules but does not discuss protecting customers from shutoff. He stated that because the prepay program operates in real time, it can increase the frequency of shutoffs. He testified while a prepay customer will be disconnected in real time, the post-pay customer has additional time to secure funds to pay the bill.⁸⁰

Noting the high energy burden for low-income customers, Mr. Mojica testified the risks associated with shutoff can have a greater impact on low-income customers.⁸¹ He stated because low-income customers have almost no financial cushion, the loss of food or medication that spoils in a refrigerator or the loss of income associated with taking time off work to solve the problem, is significant. These customers already have to "prioritize necessities" and cannot afford these financial setbacks.⁸² Mr. Mojica testified these customers need the protections of the billing rules and waiver of the rules

⁷⁷ 2 Tr 239.

⁷⁸ 2 Tr 239; referencing Exhibit SOU-7.

⁷⁹ 2 Tr 238.

⁸⁰ 2 Tr 241.

⁸¹ 2 Tr 235; citing Exhibit SOU-2.

⁸² Id.

could result in greater financial difficulties.⁸³ Mr. Mojica testified, based on recommendations from the National Consumer Law Center, consumer protections should be maintained and enhanced, rather than waived.⁸⁴

Mr. Mojica testified that many low-income customers “count on multiple modes of notification” in order to receive important information such as shutoff notices because internet and cellular service are erratic and even mail service can be disrupted.⁸⁵ And he noted that customers may have to choose between paying for internet or cell service and paying for electricity.⁸⁶

Mr. Mojica testified that simply because the prepay program is voluntary does not justify the program or the loss of well-established customer protections.⁸⁷ He asserted that regulators have a responsibility to make sure that utility offerings are financially beneficial for customers.⁸⁸

D. The Attorney General and Citizens Utility Board

The Attorney General and CUB filed joint testimony; they presented the direct testimony of one witness, Richard Bunch, a Senior Consultant with 5 Lakes Energy, LLC.⁸⁹ He testified that the Commission should not approve the prepay program or waive the billing rules. He outlined five primary concerns: 1) the Company overstates the likely benefits, and understates the costs of the prepay program, 2) the prepay program offered is not what customers want, 3) participation in the prepay program may

⁸³ 2 Tr 236.

⁸⁴ 2 Tr 239. See also Exhibit SOU-8.

⁸⁵ 2 Tr 236-37.

⁸⁶ 2 Tr 240.

⁸⁷ 2 Tr 242. He noted that Payday Loans are voluntary but opined they are not beneficial for customers. Id.

⁸⁸ 2 Tr 234.

⁸⁹ Mr. Bunch’s direct and rebuttal testimony are transcribed at 2 Tr 285-363. He sponsored Exhibits AG/CUB-1 to AG/CUB-16.

not be truly voluntary for some customers, 4) waiving the billing rules would be unfair and unwise given the customer demographic likely to enroll in the prepay program, and 5) the Company has not demonstrated the prepay program is cost effective and asserted “there is good reason to think it will not be, and that the Company should not be permitted to launch the program now and seek cost recovery later.”⁹⁰

Mr. Bunch testified the Company overstates the variety of customers likely to enroll in the prepay program.⁹¹ While the Company lists four primary customer segments with potential interest, Mr. Bunch testified available market segment research data indicates that low-income customers, or Payment Troubled and Vulnerable Customers (PTVC), are the largest segment enrolled in prepay programs.⁹² He testified that the billing and shutoff protections are most important to these customers.⁹³ He testified that these customers desire a prepay program which will reduce costs and assist in budgeting for seasonal cost fluctuations, and asserted the Company’s Auto Pay or BudgetWise billing programs currently offer this benefit without prepayment or waiver of the billing rules.⁹⁴

Mr. Bunch testified the Company overstates the benefits of the prepay program with its assertion that they are unique to that program. He noted that Mr. Hatsios listed greater visibility into and control over energy usage and expenses as a significant benefit of the prepay program. Mr. Bunch testified the Company admits it could send notifications about daily energy usage to post-pay customers using the DTE Insight app

⁹⁰ 2 Tr 291.

⁹¹ 2 Tr 292.

⁹² 2 Tr 293.

⁹³ 2 Tr 295.

⁹⁴ 2 Tr 294.

which would provide the same visibility and control, without prepayment or waiver of the billing rules.⁹⁵

Mr. Bunch testified the Company overstates the amount of energy use reductions customers will achieve, and he questions the amount and reliability of the data supporting those reductions. He asserted that examination of whether the motives to reduce energy usage in the prepay program are justified. And Mr. Bunch disputed the energy usage reductions calculated by the Company for its Pay As You Go pilot and other similar analyses of prepay programs, and asserted the actual energy reductions were lower than reported.⁹⁶

Mr. Bunch testified reduction in energy usage is not the same as energy waste reduction.⁹⁷ He testified that “prepay customers tend less toward energy waste reduction actions and more toward self-deprivation behaviors with electricity usage or other necessities of life in order to feed the meter.”⁹⁸ Mr. Bunch stated that reductions in energy usage were inconsistent over time and he testified only the low-usage customer experienced consistent reductions in energy usage in the Pay As You Go pilot.⁹⁹ He testified that a low-usage customer is not the same as a low-income customer, however, there is significant overlap, explaining:

Potential changes in energy use among Prepay program participants should not factor into the Commission’s consideration of the Company’s proposal. Though it appears that some prepay program participants use less energy, it is not clear that this reduction results from behaviors the Commission should wish to encourage.¹⁰⁰

⁹⁵ 2 Tr 296-97.

⁹⁶ 2 Tr 298-99.

⁹⁷ 2 Tr 304

⁹⁸ 2 Tr 301.

⁹⁹ 2 Tr 308.

¹⁰⁰ 2 Tr 310.

Mr. Bunch testified the threat of short-notice shutoff is what really motivates customers to use less energy.¹⁰¹ He asserted that customers in a prepay program experience escalated shutoff rates, and calculated that customers in the Pay As You Go pilot averaged 16 shutoff notices per year.¹⁰² Mr. Bunch cautioned that the Commission should be aware that waiver of the billing rules could exacerbate self-deprivation actions in the face of shutoff.¹⁰³

Mr. Bunch disputed the Company's assertion that the ability to pay on any schedule or that elimination of billing surprises and seasonal cost fluctuations are benefits that are unique to the prepay program.¹⁰⁴ He testified that a post-pay customer can make payments in any amount at any time. And he testified that the prepay program is a less effective tool to even out seasonal fluctuations than the Company's BudgetWise program.¹⁰⁵

Mr. Bunch also took issue with the implication that an additional benefit for prepay customers is the ability to make payments towards an arrearage. He pointed out that this is misleading because the prepay customer does not have a choice; 20 percent of any payment will be applied to the arrearage as a requirement of the program. And he stated the evidence does not establish that prepay programs result in larger reductions of customer arrearages than a post-pay system.¹⁰⁶

¹⁰¹ 2 Tr 306.

¹⁰² 2 Tr 307.

¹⁰³ 2 Tr 310.

¹⁰⁴ 2 Tr 310-11.

¹⁰⁵ 2 Tr 312.

¹⁰⁶ 2 Tr 315.

Mr. Bunch testified a prepay program could be offered without the automatic shutoff when the prepaid amount reaches zero. He stated this would address the most problematic aspect of the proposed prepay program.¹⁰⁷ He pointed to a study that found energy use reductions were lower when the automatic shutoff was eliminated and opined it “serves to further illustrate the coercive power of the threat of shutoffs.”¹⁰⁸

Mr. Bunch stated the Company offered a similar prepay program with the Pay As You Go pilot. He testified this was not a popular program – the Commission authorized up to 1,500 participants, but only 621 total customers were ever enrolled in the program and only 121 were enrolled at the end of the annual reporting period in 2014. He stated this does not evince significant demand for the offering.¹⁰⁹ He testified customers in BudgetWise or Auto-pay programs saw very little benefit to the prepay program absent some discount as a trade-off for paying early.¹¹⁰ And, noting that the Company does not provide detailed information about the Pay As You Go pilot or what lessons were learned, Mr. Bunch testified the Company did not offer support for the primary benefits attributed to the prepay program.¹¹¹

Mr. Bunch argued the Commission should not waive any of the billing rules requested by the Company.¹¹² He stated the annual reports from the Pay As You Go pilot do not discuss the waivers of billing rules and do not include any data concerning whether those waivers were necessary to implement that pilot.¹¹³ Mr. Bunch testified

¹⁰⁷ 2 Tr 316.

¹⁰⁸ 2 Tr 317.

¹⁰⁹ 2 Tr 318.

¹¹⁰ 2 Tr 322; citing DTE Prepay Program study Final Report, December 2020, p 14.

¹¹¹ 2 Tr 320.

¹¹² 2 Tr 328.

¹¹³ 2 Tr 321.

the billing rules are important because they protect customers from discriminatory or predatory billing and service practices.¹¹⁴ He asserted the requested waivers would undermine the intent of the rules and testified:

The Company's requested waivers and the practices those waivers would allow would expose customers to shutoff risks with much less notice, weaken protections against shutoff when charges are disputed, and leave customers with little time to evaluate billing notices, access funds, and respond. During extreme weather events, customers short on cash might face the necessity of going without other essentials or curtailing their energy use to an extent that compromises their health and safety – a dilemma not faced by post-pay customers who can average unusually high usage spikes out over a full billing period.¹¹⁵

Mr. Bunch stated the billing rules protect all customers and the Commission should be reluctant to waive them simply because the program is described as voluntary. He stated “[a]n agreement offered by the utility is not truly voluntary if it is too complicated for many customers to fully review and understand, if the customer has no reasonable alternatives to accepting the agreement, or if the utility has power to essentially compel the customer to accept the agreement.”¹¹⁶ He asserted that because these elements are present, participation in the prepay program may not be truly voluntary.¹¹⁷

Mr. Bunch testified the Company's arguments for waiver of the billing rules is based on convenience, not necessity. He stated the Company has not established that the billing rules prevent it from offering a prepay program and has not established why the waivers are required.¹¹⁸ Mr. Bunch addressed each rule specifically and testified

¹¹⁴ 2 Tr 327; citing the MPSC Issue Brief on the Billing Practice Rules.

¹¹⁵ 2 Tr 327.

¹¹⁶ 2 Tr 328.

¹¹⁷ 2 Tr 325-26.

¹¹⁸ 2 Tr 329.

that none are “whole incompatible” with a prepay program.¹¹⁹ He asserted the proposed prepay program should be changed, rather than granting a waiver of the billing rules.¹²⁰

Finally, Mr. Bunch asserted it is the Company’s burden to demonstrate that the prepay program would be cost effective, and it has not done so. He noted that the Company intends to seek cost recovery in a later rate case.¹²¹ He testified

For the most part, the Company has simply failed to introduce evidence or testimony on cost-effectiveness at all. The limited relevant information it has provided is either not persuasive or casts serious doubt on the program’s viability¹²²

E. Rebuttal

Mr. Hatsios provided rebuttal testimony to respond to the concerns and objections to prepay program features, expected benefits, and customer impacts raised by intervenor witnesses.¹²³

Mr. Hatsios reiterated that the prepay program is voluntary, characterizing it as another payment option that differs from traditional post-pay billing. And he reiterated that the program is designed to give customers greater visibility and control over their energy usage.¹²⁴ He testified the shutoff provision of the prepay program do not create an ever-looming threat which leads to self-deprivation behavior.¹²⁵ He testified that the prepay program actually reduces financial hurdles for some customers.¹²⁶ Mr. Hatsios

¹¹⁹ 2 Tr 330-37.

¹²⁰ 2 Tr 337.

¹²¹ 2 Tr 338.

¹²² 2 Tr 341.

¹²³ 2 Tr 60.

¹²⁴ 2 Tr 63.

¹²⁵ 2 Tr 64.

¹²⁶ 2 Tr 74.

disputed the assertion by other parties that the prepay program puts customers at risk because they will not understand the program, asserting that the Company will provide detailed information and reasserted initial implementation of the prepay program will be effectuated using trained CSRs who will assist customers to obtain all necessary information and ensure compliance with program criteria.¹²⁷ Mr. Hatsios disputed Mr. Mojica's concerns that some customers do not have reliable forms of electronic communications and testified these customers would not be candidates for the prepay program.¹²⁸

Mr. Hatsios disputed the argument that customers could obtain the same benefits resulting from the prepay program by paying an additional amount and creating a credit on their current post-pay account. He asserted the prepay program is more "nuanced and requires greater active engagement from the customer."¹²⁹ He indicated that the prepay customer can plan and modify their energy usage because they receive information in real time and do not have to wait for a monthly bill.¹³⁰ He argued that merely because customers do not currently prepay additional amounts does not indicate customers would not be interested in the program.

Mr. Hatsios confirmed that customers could use existing products, such as the Insight app, to gain visibility into their electricity usage. He confirmed the Insight app can provide customers with daily energy usage and estimated costs and can be used to set a monthly budget. However, he argued that this does not give the customer control of payments. And, he asserted billing data from the Insight app could differ significantly

¹²⁷ 2 Tr 72-73.

¹²⁸ 2 Tr 77.

¹²⁹ 2 Tr 67.

¹³⁰ 2 Tr 67.

from the actual bill, while the information provided in the prepay program will utilize all the daily charges.¹³¹ He did not explain why more precise data is not available in the Insight app.

Mr. Hatsios asserted that the prepay program differs from the BudgetWise program because the prepay program is based on real time data. He stated the payment calculated for the BudgetWise program is based on prior usage and is recalculated every quarter, which could result in a surprise increase. He stated because the prepay program includes daily reconciliations of usage, it eliminates these surprises.¹³²

Mr. Hatsios testified that waiver of the billing rules will not result in fewer protections for customers. He again reiterated that the prepay program is a voluntary option and may be a viable option for low-income and PTVC who have exhausted assistance.¹³³

In his rebuttal testimony, Mr. Mojica disputed Ms. Forist's reasoning for her support of the requested waiver of the billing rules. And he testified the costs and risks of the prepay program "greatly outweigh" the benefits, disputing the testimony of Mr. Hatsios and Ms. Forist.¹³⁴

Mr. Mojica testified that Staff did not address the lack of any meaningful evidence that the prepay program will encourage energy use reduction. He pointed to the Pay As You Go pilot and noted it produced unreliable data due to low enrollment with a high dropout rate and lack effective engagement with low-income customers. He stated DTE

¹³¹ 2 Tr 69-70.

¹³² 2 Tr 68-69.

¹³³ 2 Tr 76-77.

¹³⁴ 2 Tr 246.

Electric did not study why customers unenrolled at such a high rate, noting that only 14 customers were enrolled for the entire duration of the pilot.¹³⁵

Mr. Mojica criticized Staff's assertion that the proposed prepay program will address "bill shock." He reiterated that the program does not address affordability and the mere fact that customers can see data on energy consumption in real time does not address the underlying problem.¹³⁶

Mr. Mojica stated that Staff do not evince an understanding of the potential costs of the prepay program for low-income customers and criticized Staff's reliance on the fact the prepay program is voluntary.¹³⁷ He reiterated that the risk of shutoff may be coercive and result in a lack of real options for low-income customers. He questioned whether customers would actually receive the customer support promised by the Company and noted there were multiple customer service complaints in feedback received from the Pay As You Go pilot. He also testified that Staff's mandatory reporting requirements are not sufficiently detailed to provide meaningful evaluation of the program.¹³⁸

Mr. Mojica testified that the costs of the prepay program are significant and outweigh any alleged benefits. While acknowledging Staff's assertion that the prepay program is not only for low-income customers, Mr. Mojica expressed concern that low-income customers may be disproportionately harmed.¹³⁹

¹³⁵ 2 Tr 246-47.

¹³⁶ 2 Tr 248-49.

¹³⁷ 2 Tr 250.

¹³⁸ 2 Tr 251-52.

¹³⁹ 2 Tr 253.

Finally, Mr. Mojica reiterated that the prepay program is unnecessary because customers can prepay currently and the technological benefits of the program could be made available to all customers. And he notes that Staff should not approve of a permanent waiver of critical customer protections before the Commission develops billing rules for prepay programs.¹⁴⁰

Mr. Bunch addressed the testimony of the Staff witness in rebuttal. He testified that because low-income customers are overrepresented in prepay programs, costs and benefits to this group should be particularly scrutinized by the Commission.¹⁴¹

Mr. Bunch testified that Ms. Forist did not sufficiently address the risks associated with the prepay program and failed to recognize enrollment and continued participation in prepay program would not be “voluntary” for some customers.¹⁴² And he testified that Ms. Forist assertion that the prepay program is voluntary simply because customers can return to post pay without penalty is unjustified.¹⁴³

Mr. Bunch stated that Staff do not adequately consider the considerable risks for low-income customers, and asserted they outweigh the alleged benefits of the prepay program.¹⁴⁴ Mr. Bunch disputed that the prepay program would give customers better control over energy usage and asserted classifying reductions based on self-deprivation as voluntary is unsound.¹⁴⁵ And he argued that in practice post-pay customers receive

¹⁴⁰ 2 Tr 254.

¹⁴¹ 2 Tr 347.

¹⁴² 2 Tr 351, 353.

¹⁴³ 2 Tr 357.

¹⁴⁴ 2 Tr 348-49.

¹⁴⁵ 2 Tr 352.

a grace period not available to customers who must pay in real time and asserted prepay customers should receive some grace period.¹⁴⁶

He testified that Staff's support for waiver of the billing rules is not warranted. He stated the Company's experience with the Pay As You Go pilot showed that customers did not like prepay and it did not result in meaningful analysis upon which to base the proposed prepay program. And Mr. Bunch characterized Staff's reliance on the fact the prepay program might be a good option for some customers as nearly irrelevant when considering waiver of protections in the billing rules.¹⁴⁷

Mr. Bunch asserted that Staff's proposed reporting requirements would not provide the Commission with information it will need to evaluate the prepay program.¹⁴⁸ He proposed additional reporting requirements for disconnections; the average number of payment made, including five or more; a measure of any change in usage compared with post pay customer usage; information that enables examination of self-deprivation behaviors; and a measure of the reduction of arrearages.¹⁴⁹

III.

DISCUSSION

DTE Electric seeks approval to implement a program offering prepaid billing option (the prepay program), and for waiver of seven of the Consumer Standards and Billing Practices for Electric and Natural Gas Service Rules (billing rules).¹⁵⁰ The

¹⁴⁶ 2 Tr 349.

¹⁴⁷ 2 Tr 359-60.

¹⁴⁸ 2 Tr 361-62.

¹⁴⁹ 2 Tr 362-63.

¹⁵⁰ September 29, 2021 Application, p 1.

Company contends that waiver of the billing rules is required for implementation of the proposal.¹⁵¹

The Attorney General, CUB, RCG, and Soulardarity argued that the Commission should not approve the proposed prepay program and should not grant requested waiver of the billing rules.

Staff generally support DTE Electric's proposed prepay program and waiver of the billing rules, with the inclusion of some mandatory reporting requirements.

A. Burden of Proof

DTE Electric makes two requests: approval of the prepay program and waiver of billing rules. The burdens of proof for these requests are disparate and should be clarified at the onset of the Commission's analysis.

1. Standard for Program

DTE Electric argues that appropriate standard of review for the program is that the findings be supported by competent, material, and substantial evidence on the record. The Company also argues that the preponderance of the evidence standard applies.¹⁵²

Staff agree that a decision must be based on a preponderance of the evidence and argued that "each component of its rates is just and reasonable."¹⁵³ Staff also assert that a decision or order must be supported by competent, material and substantial evidence.¹⁵⁴

¹⁵¹ Id. at p 2.

¹⁵² DTE Electric Initial Brief, p 5-6.

¹⁵³ Staff Initial Brief, p 8.

¹⁵⁴ Id.

The Attorney General and CUB agree that the preponderance of the evidence standard applies, however, they argue that DTE Electric must establish that the prepay program is reasonable and prudent. They argue, despite DTE Electric's failure to present evidence concerning the cost of the prepay program in this case, there is evidence that it will increase costs to ratepayers.¹⁵⁵ The Attorney General and CUB argue the appropriate the standard of review is the reasonable and prudent standard when the program will increase rates.

Soulardarity also argues that the appropriate standard of review in this case is reasonable and prudent based on a preponderance of the evidence.¹⁵⁶ Like the Attorney General and CUB, Soulardarity argues the Company's proposed prepay program will increase rates and the Commission evaluates programs that seek recovery of costs in rates using the reasonable and prudent standard.¹⁵⁷ Soulardarity distinguish cases where the Commission did not apply this standard and argued that the Company's failure to present the cost data in this case should not alter the standard of review. And Soulardarity argues that DTE Electric should address the programs net benefits and costs to consumers.¹⁵⁸

RCG agrees with the evidentiary arguments put forth by the Attorney General, CUB, and Soulardarity.¹⁵⁹

In its reply brief, DTE Electric argues that reasonable and prudent is not the correct standard of review in this case. The Company argued it is not seeking recovery

¹⁵⁵ Attorney General and CUB Initial Brief, p 5; referencing Mr. Hatsios testimony at 2 Tr 200-01, and Direct testimony of Angie M. Pizzuti in Case No. U-20386 at 7 Tr 2233-35.

¹⁵⁶ Soulardarity Initial Brief, p 12.

¹⁵⁷ Id.

¹⁵⁸ Id. at p 13-15.

¹⁵⁹ RCG Initial Brief, p 1.

of any costs in its application and asserted the requested relief in this case will not increase costs to customers. And DTE Electric argues that the Commission has the authority to approve the prepay program without evidence of costs.¹⁶⁰

In rebuttal, the Attorney General and CUB respond to Staff and DTE Electric. Noting that Staff agree that preponderance of the evidence is the correct standard, the Attorney General and CUB criticize Staff's cite to the substantial evidence standard, as confusing and point to the language of the rule to show it is the standard of review for review of an administrative decision, not the standard for the decision itself.¹⁶¹

The Attorney General and CUB cite to a lengthy portion of Case No. U-20561 where the ALJ addressed the appropriate standard of review. They argue the dispute concerning the appropriate standard was the same and the ALJ, in that case, thoroughly addressed the issue and found the correct standard is that of reasonable and prudent.¹⁶² Citing to the Order in Case No. U-18014, the ALJ noted that the Commission has previously rejected the arguments made by DTE Electric in the current case. The ALJ agreed that the Company confused the burden of proof in an administrative proceeding with the standard for appellate review by a court.

[T]he Commission must apply what has been labeled the "preponderance" standard. If the Commission does this, then reviewing courts will not substitute their judgment for the Commission's judgment, but will defer to the Commission's findings of fact if those findings are supported by "substantial evidence." The judicial review for "substantial evidence" is called a deferential standard of review because the reviewing court does not itself weigh conflicting evidence, and has explained that a finding of fact by the Commission will be upheld if it is supported by any competent evidence that is "more than a scintilla".

¹⁶⁰ DTE Electric Reply Brief, p 2.

¹⁶¹ Attorney General and CUB Reply Brief, p 11.

¹⁶² Attorney General and CUB Reply Brief, p 12-17; citing Case No U-20561 PFD, p 58-63 (citations omitted).

* * *

It is understandable that persons or parties not familiar with the basic principles of administrative law would find this distinction confusing. But because it is fundamental to an appreciation of the different roles of the Commission and reviewing courts, and because DTE has advanced this same argument in other proceedings, this PFD recommends that the Commission take the time and effort to clarify this important distinction.¹⁶³

The Attorney General and CUB point out that Staff argued the Company had proposed the wrong standard in Case No. U-18014.¹⁶⁴ And, they argue the Commission affirmed the ALJ's findings with:

The Commission finds that the ALJ's analysis is correct and that DTE Electric's misconceptions about the burden of proof and standards of review were thoroughly addressed by the PFD and the Staff's and Attorney General's replies to exceptions. Contrary to the claim in DTE Electric's exceptions, the ALJ accurately quoted and did not in any way "misconstrue" the company's statement that "[T]he applicable standard of proof for purposes of determining whether the Company's proposals or recommendations are reasonable and prudent is the 'substantial evidence' standard[.]" As was pointed out by the ALJ, the Attorney General, and the Staff, this is patently wrong. The fact that the company has presented "substantial evidence" (i.e., "more than a mere scintilla") on a particular proposal does not make the reasonableness and prudence of that proposal a forgone conclusion, as DTE Electric would have it, whether or not any other parties weigh in.¹⁶⁵

Based on the above, the Attorney General and CUB stress the matter is settled.

Noting that the Company is seeking cost recovery in Case No. U-20836, Soulardarity reiterated its arguments that the correct legal standard for approval of the prepay program is reasonable and prudent. And Soulardarity argued that the Commission clearly rejected DTE Electric's assertions.¹⁶⁶

¹⁶³ Attorney General and CUB Reply Brief, p 12-17; citing Case No. U-18014 PFD, p 43-45.

¹⁶⁴ Attorney General and CUB Reply Brief, p 14-15.

¹⁶⁵ Attorney General and CUB Reply Brief, p 12-17; citing Case No. U-18014, January 31, 2017 Order, p 8.

¹⁶⁶ Soulardarity Reply Brief, p 3-4.

This PFD agrees with the arguments put forth by the Attorney General, CUB, and Soulardarity and proposes that the Commission find the appropriate standard for approval of the prepay program requires DTE Electric establish the proposal is reasonable and prudent.

First, this PDF finds it has been established that, if approved, the proposed prepay program will increase base rate costs. The Company informed the Commission and parties of its intentions in the application filed on September 29, 2021 with: “Cost recovery for Prepay will be requested in a future rate case filing along with the other identified portfolio of Customer IT capital projects.”¹⁶⁷ Mr. Hatsios confirmed this intent on page 2 of his supporting testimony.¹⁶⁸ And, on January 21, 2022, DTE Electric filed an application to increase rates which contained the supporting direct testimony of Angie M. Pizzuti who stated the Company is requesting recovery of forecasted costs associated with the prepay program.¹⁶⁹ And Mr. Hatsios confirmed the Company is seeking recovery of these costs from rate base customers.¹⁷⁰

Next, this PDF rejects DTE Electric’s argument that because it has not requested costs in this case, a lower burden of proof should apply. As noted above, the assertion that no costs are requested is at best erroneous.

Finally, this PFD finds that the arguments of the Attorney General, CUB, and Soulardarity are more persuasive and recommends the Commission find the appropriate standard for review of a proposed program, which will increase costs to customers, is that of reasonable and prudent. The Attorney General and CUB provided

¹⁶⁷ September 29, 2021 Application p 2, number 2.

¹⁶⁸ 2 Tr 28.

¹⁶⁹ See Direct testimony of Angie M. Pizzuti in Case No. U-20386 at 7 Tr 2234.

¹⁷⁰ 2 Tr 200.

lengthy discussion about how the Commission has addressed the application of the “substantial evidence standard” in a case where program costs will increase rate base costs. And, as noted above, the Commission held that application of this standard was “patently wrong.”¹⁷¹ Application of the reasonable and prudent standard is a more accurate reflection of the Commission’s prior rulings. Accordingly, this PFD recommends the Commission find the appropriate standard of review for approval of a program offered by a utility, specifically DTE Electric, which may increase customer rates be reasonable and prudent.

2. Standard for Waiver of Rules

DTE Electric is requesting the Commission waive the following billing rules: 460.120(3), 460.129(4), 460.139(1), 460.139(6), 460.140(1), 460.140(2) and 460.143(1).

Michigan Administrative Rule Code, R 460.101a(3) provides for a two-prong test for waiver of billing rules:

(3) Upon written request of a person, utility, or on its own motion, the commission may temporarily waive any requirements of these rules when it determines the waiver will further the effective and efficient administration of these rules and is in the public interest.

This rule clearly requires satisfaction of two criteria prior to approval of a waiver: 1) furtherance of the effective and efficient administration of these rules; and 2) is in the public interest.

¹⁷¹ Attorney General and CUB Reply Brief, p 12-17; citing Case No. U-18014, January 31, 2017 Order, p 8.

DTE Electric confirmed the above rule expresses the two criteria required for waiver of the billing rules.¹⁷² The Attorney General and CUB agreed the rule provided the relevant requirements for waiver of the billing rules and stressed both must be met if the Commission grants a waiver.¹⁷³ Soulardarity and RCG also agreed that the above rule provides for two criteria that are precedent to waiver of billing rules. Staff did not address the requirements in its arguments.

RCG also points to Rule 460.751(1) under the Service Quality and Reliability Standards for Electric Distribution Systems, which provides:

- (1) An electric utility may petition the commission for a permanent or temporary waiver or exception from these rules when specific circumstances beyond the control of the utility render compliance impossible or when compliance would be unduly economically burdensome or technologically infeasible.

RCG argued that the Company failed to establish the criteria required by this rule and asserted the Commission should consider this rule to limit the waiver of billing rules designed to protect customers.¹⁷⁴

The parties agreed, or did not dispute, the applicability of Rule 460.101a(3) to the waiver of billing rules requested in this case. All of rules for which the Company requests waiver fall under the rule provision entitled Consumer Standards and Billing Practices for Electric and Natural Gas Service. Rule 101a is part of this section, however Rule 460.751 is found under another section of the MSPC Administrative Rules. Therefore, the waiver provision found in the same section should be considered the most appropriate standard for waiver of rules contained therein.

¹⁷² DTE Electric Initial Brief, p 4.

¹⁷³ Attorney General and CUB Initial Brief, p 6.

¹⁷⁴ RCG Initial Brief, p 4-5.

Accordingly, this PFD recommends that the Commission find the applicable legal standard for waiver of billing rules under the Consumer Standards and Billing Practices for Electric and Natural Gas Service is found in 460.101a(3). This rule provides for two criteria to be met prior to waiver: the Commission determines the waiver will further the effective and efficient administration of these rules and determines waiver is in the public interest.

B. Commission Approval of Prepay Program

DTE Electric asserts it developed the prepay program with lessons learned from other utilities and from its own Pay As You Go pilot. And, the Company states it worked with Staff to incorporate suggestions and recommendations in the proposed prepay program. The Company emphasizes that it intends to implement the prepay program in two phases: Phase 1 will limit enrollment and set eligibility requirements, Phase 2 will expand to full enrollment and fewer requirements.¹⁷⁵

DTE Electric argues the prepay program will benefit its customers. Stressing that enrollment in the program will be entirely voluntary, the Company explains its goals for the program. DTE Electric identified four customer segments which it asserts will benefit from the prepay program to become more engaged in energy usage. First, the Company identified “Tech Savvy customers” and asserts the prepay program will assist this group to monitor energy usage and make payments when convenient.

The second customer segment identified by DTE Electric is the “Financial Stable Savers.” The Company asserted the prepay program would simplify the billing experience and give more control over energy usage. Next, the Company identified

¹⁷⁵ DTE Electric Initial Brief, p 6-8.
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“Renters and College Students” and argued the prepay program will assist roommates and parents to monitor energy usage.

The final customer segment is identified as “Payment Troubled and Vulnerable Customers” (PTVC) who struggle financially, often pay late, accumulate large arrearages, and are at risk for disconnection. Observing that the Company processes a significant number of meter disconnects and restorations in a typical year, DTE Electric argued the prepay program would provide these customers with “another tool to assist customers for whom traditional billing and payment plans do not work, allowing this segment of customers to take more control and responsibility for the energy they use, to decide when and how much they pay based on their financial situation and anticipated usage patterns, and to avoid the stress that comes with receiving a monthly bill that they cannot afford.”¹⁷⁶

DTE Electric argues that energy use reductions flow from positive customer behavior driven by monitoring consumption and making changes. The Company asserts that energy usage by customers who participate in prepay programs is reduced by 5 to 14 percent and noted the 23 customers who remained in its Pay As You Go pilot realized a 6 percent reduction.¹⁷⁷

The Company asserts the prepay program will assist customers to reduce arrearages. Noting that a customer may enroll in prepay program with up to \$750 in arrearages and that 20% of every pre-payment will be applied to the arrearages, DTE Electric argues this feature is unique to the prepay program. And the Company argues

¹⁷⁶ Id. at p 13-14. See also 2 Tr 35.

¹⁷⁷ Id. at p 14; referencing Mr. Hatsios testimony a 2 Tr 36, and citing American Council for an Energy Efficient Economy and ESource studies.

the prepay program can be an affordable option for customers facing a shutoff who have exhausted all available assistance.¹⁷⁸

Finally the Company argues it will develop and track data to measure the success and identify potential improvements for the prepay program, as well as customer satisfaction data, to attain a high level of satisfaction with the prepay program.

Staff assert the prepay program should be approved with the reporting requirements suggested by Ms. Forist.¹⁷⁹ Staff confirmed they consulted with DTE Electric during the planning of the prepay program and asserted that the concerns expressed were incorporated into the current application.

Staff stress that participation in the prepay program is voluntary and based on the testimony of Ms. Forist, argue the prepay program could provide a new option to customers. Staff assert the prepay program could allow customers to manage usage in real time with greater control over their bill. Staff argue that the program could assist customers who cannot afford their utility bills and are facing shutoff, noting that these customers may have exhausted all available assistance.

Staff argue the fact that communication occurs in real-time is a benefit of the prepay program which can allow customers to monitor energy usage and account balances more effectively. Staff also assert that benefits of the prepay program such as a simplified billing experience are difficult to quantify and that a cost-benefit analysis is not necessary.¹⁸⁰

¹⁷⁸ Id. at p 14.

¹⁷⁹ Staff Initial Brief, p 10.

¹⁸⁰ Id. at p 9-10.

Staff acknowledge that “[p]ost-pay customers can also log into their portal to see everything about their account.”¹⁸¹ And, Staff acknowledge that a post-pay customer generally has 21 days to make payment before shutoff.¹⁸²

The Attorney General and CUB argue that DTE Electric has not established that approval of the prepay program is reasonable and prudent and the Commission should not approve it.¹⁸³ They express three main concerns:

1) DTE has failed to establish that the prepay program is something its customers actually want, 2) DTE has failed to support its projected benefits of this program, and 3) DTE has failed to establish that both the monetary and non-monetary costs of the program are not so high as to allow for it to be deemed reasonable and prudent.¹⁸⁴

The Attorney General and CUB argue development of the proposed prepay program was a strategic decision, developed in the Company’s marketing department, and it is not based on customer requests. They also note that the Company’s Pay As You Go pilot was unpopular, with only 23 customers enrolled for at least 11 months.¹⁸⁵

The Attorney General and CUB assert the program is poorly defined and that customer research has not been done to support the Company’s enrollment goals. They argue the Company has made no attempt to calculate costs or savings to its customers and argue that the Company has not conducted sufficient research to determine that the customer segments targeted are interested in the prepay program.

The Attorney General and CUB note that DTE Electric did not provide any data concerning the costs of the prepay program in this proceeding but did requested costs

¹⁸¹ Id. at p 5.

¹⁸² Id. at p 6; citing Mich Admin Code R 460.120(3).

¹⁸³ Attorney General and CUB Initial Brief, p 8.

¹⁸⁴ Id. at p 9.

¹⁸⁵ Id. at 10-11; citing Mr. Hatsios testimony at 2 Tr 180.

in its rate case in the amount of \$12.6 million. They assert the Company has not provided and details or explanation for how the funds will be used to develop and implement the prepay program in either this case or the rate case and argue it is not reasonable and prudent for the Commission to approve a program under these circumstances.¹⁸⁶

Observing that DTE Electric provided no cost-benefit analysis in either case, the Attorney General and CUB state the Company did not attempt to quantify the benefits of the program. And, they argue the Company could not provide projected costs over a five-year period and merely speculated those costs would be negligible.¹⁸⁷ They argue this is not sufficient to find the program is reasonable and prudent and could lead to future cost escalation.

The Attorney General and CUB assert that customers have the ability to prepay under the current system and that many of the alleged benefits of the prepay program are available in other programs such as the Auto-pay and BudgetWise programs. They also argue that DTE Electric could provide all customers with the same amount of electronic information proposed in the prepay program. Noting that cost savings only occur with reduced usage, they argue it is not clear what savings could be achieved and the Company provided no data to support projected savings. And they assert DTE Electric did not attempt to quantify the benefits of reducing arrearages for either the Company or the customers.¹⁸⁸

¹⁸⁶ Id. at p 18-20.

¹⁸⁷ Id. at p 22; citing Mr. Hatsios testimony at 2 Tr 201.

¹⁸⁸ Id. at p 15-16.

The Attorney General and CUB also criticized some operational details for the prepay program and expressed concern that customers would be enrolled in the prepay program before receiving the full terms and conditions of the program shifting all risk to the customer.

Like the Attorney General and CUB, Soulardarity also argues that the Company did not establish that the prepay program is reasonable and prudent and request that the Commission deny approval.¹⁸⁹

Soulardarity argues DTE Electric did not substantiate the alleged benefits or fully addressed the risks of the prepay program. Noting that customers can prepay under the current system, Soulardarity state customers generally do not make advance payment indicating a lack of interest in a prepay program. They argue that most of the usage and payment data that will be available to customers in the prepay program, could be provided to all customers. Soulardarity also argue the Company did not present sufficient data on how energy usage will be reduced with prepayment, arguing reductions are frequently achieved through self-deprivation, rather than efficiency. Asserting the risks to customers are substantial, Soulardarity argues the Commission should not approve a program with such questionable benefits.¹⁹⁰

Soulardarity argues the Commission should not allow the prepay program to be offered to financially vulnerable customers. Noting that no low-income customers participated in the Company's Pay As You Go pilot, Soulardarity argues the Company did not secure feedback or other data to address the needs of these customers.

¹⁸⁹ Soulardarity Initial Brief, p 26.

¹⁹⁰ Id. at p 28-29.

Soulardarity state the Pay As You Go pilot was flawed and did not provide reliable data and pointed to the fact that only 14 customers participated for the duration of the pilot. And they assert the prepay program suffers from similar flaws as DTE Electric did not collect the necessary data for meaningful improvement.

Soulardarity asserts DTE Electric is targeting financially vulnerable customers with the prepay program and argues these are the customers who are least able to deal with unexpected increases in energy usage.¹⁹¹ And, unlike post-pay customers who are allowed time to make payment when the bill comes due, the amount due is calculated in real-time for prepay customers.

Soulardarity criticizes DTE Electric's reliance on the fact that the prepay program is voluntary and argues this does not establish it is reasonable and prudent. And Soulardarity disputes the assertion that the program would be truly voluntary for financially troubled customers. Observing that the Company admits the prepay program may be an option of last resort, Soulardarity argues that a financially troubled customer could feel compelled to enroll simply to maintain service.¹⁹²

Soulardarity also maintain that DTE Electric did not comply with the Commission's Order to provide net consumer benefits for the program.¹⁹³ Soulardarity argues the Commission informed the Company, when denying *ex parte* approval, that the details provided regarding the benefits of the prepay program were insufficient when balanced against the protections forfeited.¹⁹⁴ Soulardarity asserts the Company made

¹⁹¹ Id. at 30-32; citing Mr. Hatsios testimony at 2 Tr 94.

¹⁹² Id. at p 3.

¹⁹³ Id. at 27; referencing Case No. U-21087 July 27, 2021 Order, p 5.

¹⁹⁴ Id.

minor changes to the original *ex parte* application but did not provide sufficient information to allow the Commission to evaluate the risks and benefits of the program.

RCG concurred with the positions of the AG, CUB, and Soulardarity and argued the Commission should not approve the prepay program. RCG asserts the proposed prepay program has "serious gaps and shortcomings unanticipated by DTE."¹⁹⁵ Noting the Commission originally denied the company's *ex parte* application, RCG asserts the proposed prepay program does not address the Commission's concerns and does not demonstrate that any of the alleged benefits to prepay customers "would exceed the protections enrollees would forfeit."¹⁹⁶

RCG pointed out three specific "unintended consequences" of the prepay program and contends the Commission anticipated this with the above instructions. First, RCG notes that customers are entitled to billing credits during some outage situations and asserts the Company has not addressed how these credits will be applied in the prepay program. RCG argues that failure to provide for an automatic, or real time, credit to a customer's account could lead to a disconnection while a credit actually exists on the account. Next, RCG argues that the Company has not considered how the prepay program would address the potential concerns of landlords. Noting that there is a provision under standard post-pay billing for a landlord to be informed of a shutoff, however the prepay program does not contain such a provision. RCG argues that the prepay program should not be available to tenants unless the landlord agreed to participate. Finally, RCG argues that the Company fails to account for the customer

¹⁹⁵ RCG Initial Brief, p 1.

¹⁹⁶ *Id.* at p 2.

with electric service from DTE Electric but has natural gas service from another utility. RCG asserts expedited shutoff of the electric service would jeopardize service from the other utility.¹⁹⁷

RCG argues that the prepay program is "whole unnecessary" and asserts that existing programs such as BudgetWise would provide the benefits alleged by the Company without the risks of sudden shutoff.

Finally, RCG argued the Company failed to provide any cost benefit analysis. Noting that DTE Electric intends to seek cost recover in Case No. U-20836 and indicated several million dollars has been spent to develop the prepay program, RCG argued that absent some cost benefit analysis, the Commission should not find the prepay program to be reasonable and prudent.¹⁹⁸

In its reply brief, DTE Electric again emphasizes that the prepay program is voluntary and provides an option to increase engagement in energy usage and provides alternatives to the post-pay system. The Company states the fact that it did not provide data on customer preferences does not mean that customers are not interested. The Company disputed the assertion that customers will engage in self deprivation and argued that customers will make informed decisions about their usage.

The Company asserts that the benefits of the prepay program are not available outside the program. Noting that the BudgetWise billing program effectively reduces bill fluctuations, but the bill is adjusted quarterly which could cause an increase in the bill. In contrast, DTE Electric argues the daily reconciliation in the prepay program avoids

¹⁹⁷ Id. at p 9.

¹⁹⁸ Id. at p 11.

these increases. The Company argues that paying additional amounts to create a credit under post-pay is not the same as enrollment in the prepay program where customers are provided daily usage information. And DTE Electric asserts that while its Insight App provides usage, cost estimates, and monthly energy budgets, it does not allow customers to control payments.

The Company also argues that intervenors have overstated the potential risks of the prepay program. The Company asserts customers will be fully informed of the terms of the prepay program and energy assistance will be available to qualified customers. And DTE Electric disputes that the real-time notices will not coerce customers into self-deprivation behavior.

Staff agrees with DTE Electric's assertion that current offering such as BudgetWise billing are distinct from the prepay program, noting that the existing programs, have differing requirements from prepay program, and do not provide the ability to control the timing of payments.¹⁹⁹

The Attorney General and CUB criticized Staff's lack of significant analysis of the prepay program and the conclusion that the prepay program is appropriate. They stated the assertion that a customer can choose to pay any amount they want implies flexibility that does not exist because the cost of electricity per kWh is the same for both prepay and post-pay customers; the difference is prepay customers must pay in real-time and before any usage. And the Attorney General and CUB argue the claim that participation in the program is voluntary is misleading and does not account for the fact

¹⁹⁹ Staff Reply Brief, p 2.
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that DTE Electric is requesting recovery of costs from all ratepayers whether they participate in the program or not.²⁰⁰

The Attorney General and CUB disagree with Staff's assertion that a cost-benefit analysis is not necessary. They argue that any reasonable review, based on preponderance of the evidence, requires a comparison of costs and benefits. Reiterating that DTE Electric has not presented any cost data in this case, the Attorney General and CUB argue meaningful evaluation is not possible. The Attorney General and CUB argue the Commission ordered a "fuller description of anticipated benefits" and more information to "provide an opportunity to fully evaluate the potential benefits and any potential unintended consequence."²⁰¹ They argue the Company failed to provide the necessary information.

The Attorney General and CUB state Staff's proposal to implement the prepay program as a pilot is not appropriate arguing there is no evidence to support it as a pilot. They assert that the additional reporting metric requested by Staff are insufficient to address the flaws in the prepay program.²⁰²

In its reply brief, Soulardarity argued the Commission should not approve the proposed prepay program without determining the benefits exceed the costs. Noting that Company is requesting \$12.6 million for the prepay program in its rate case, Soulardarity states the purported benefits should be weighed against these costs and

²⁰⁰ Attorney General and CUB Reply Brief, p 4-6.

²⁰¹ Attorney General and CUB Initial Brief, p 25; citing Case No. U-21087 July 27, 2021 Order, p 5.

²⁰² Id. at p 21.

argue not every cost need be quantified, but the evidence presented in this case does not provide sufficient information for a cost-benefit analysis.²⁰³

Soulardarity argue participation in the prepay program is not voluntary for ratepayers who bear the costs and that financially vulnerable customers who enroll in the program could lack real alternatives, making the assertion that participation is not truly voluntary.²⁰⁴

Soulardarity argue the program is not fully developed and the Company does not have an effective plan to analyze the program. Soulardarity reiterate that DTE Electric has not incorporated lessons learned from its Pay As You Go pilot and again note that pilot did not include low-income customers. And they again note the Company did not engage with the customer segments it identified as potential beneficiaries of the prepay program and has not established the program is something customers want.

Soulardarity assert Staff's metrics are not adequate and repeat the concern that if the prepay program is approved as proposed, DTE Electric will be able to change the program without Commission review.²⁰⁵

Finally, Soulardarity argue that the Commission should not approve the prepay program as a pilot as Staff suggest. They assert the Company has not met the criteria for a pilot program.²⁰⁶

This PFD agrees with the arguments presented by the AG, CUB, Soulardarity, and RCG and recommends the Commission deny approval of the prepay program

²⁰³ Soulardarity Reply Brief, p 18.

²⁰⁴ Id. at p 18-19.

²⁰⁵ Id. at p 13-14.

²⁰⁶ Id. at p 10; citing MPSC Case No. U-20645 February 4, 2021 Order at p 8-9.

proposed by DTE Electric. The information provided by DTE Electric is not sufficient to establish the prepay program is reasonable and prudent.

First, the evidence indicates that DTE Electric did not follow the directives of the Commission in its Order denying the *ex parte* application in this case. The Commission was clear:

[T]he Commission finds that more information is needed in order to justify the proposed program and to provide an opportunity to fully evaluate potential benefits and any potential unintended consequences. The Commission agrees with ELPC that DTE Electric's application, affidavit, and attachments, as submitted to the Commission, do not contain sufficient information regarding the benefits that this program is expected to provide to customers when balanced against the protections that enrollees would forfeit if the requested billing rule waivers were approved.²⁰⁷

The Company did not provide any meaningful analysis of expected net benefits; actual benefits compared to the protections forfeited. As the interveners note there are significant protections contained in the billing rules, and a complete analysis of the prepay program should include detailed benefits. But DTE Electric did not provide details. Instead, there are assertions that some customers could benefit from the prepay program and repeated reference to voluntary participation.

The fact that the Company worked with Staff to develop the program does not prevent scrutiny or ensure approval by the Commission. And, the fact that the prepay program is voluntary does not establish that it will benefit customers.

The Company also did not address the Commission's specific concerns about energy usage and the calculation of the customer's remaining balance. The Commission stated:

²⁰⁷ Case No. U-21087, July 27, 2021 Order, p 5.
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Although DTE Electric avers that, through the use of 12-month rolling usage data in kWhs and dollars, customers will be able to determine how long their prepayment dollars may last before dwindling to a zero balance, this method of discernment may be inadequate to provide customers with a reliable length of time before disconnection of the customer's electric service. Further, the method may involve a complex level of customer participation and expertise in energy billing, energy use, and energy payment such that the prepayment program may be subject to customer error and confusion.²⁰⁸

DTE Electric did not provide essential details to address the Commission's apprehension that customers may not receive reliable data on the length of time remaining prior to shutoff. The Company did not address intervener arguments that a sudden increase in energy usage could render its estimates meaningless. And, other than arguing the prepay program offers a simplified experience, the Company did not address the Commission's concerns about potential customer error or confusion.

Second, even if the Commission determines that the Company's application complied with its order, DTE Electric did not establish that customers are interested in a prepay program. Because the Company is requesting costs from all rate payers for the prepay program the Company has a burden to establish that customers will enroll in and utilize the program. DTE Electric did not provide useful data from its Pay As You Go pilot to establish customer interest in the prepay program and did not detail any lessons learned. The Company confirmed only 23 customers participated in the Pay As You Go pilot for at least 11 months.²⁰⁹ Considering maximum enrollment exceeded 600 customers at some point, this fact indicates a high level of dissatisfaction with the option.²¹⁰

²⁰⁸ Id.

²⁰⁹ 2 Tr 36.

²¹⁰ 2 Tr 317-19.

Mr. Hatsios confirmed that the proposed prepay program originated internally in 2011 and was renewed by management as part of internal conversations about new programs in 2020.²¹¹ As the Attorney General and CUB correctly argue the Company did not perform sufficient research or analysis of customer interest. The Company could not even provide specific data about the four customer segments it alleged would benefit. The Company did not conduct focus groups for any of the customer segments. DTE Electric could not provide any data when asked about the number of customers that fall into a specific segment or even an estimate of enrollment from that segment. Mr. Hatsios testified that analysis was not performed.²¹²

The Company did not provide sufficient details concerning what if any benefits will manifest from the program. DTE Electric intends to learn about the program in two phases which are poorly defined. The Company intends to design and develop the program in Phase 1 and then expand it in Phase 2. Essentially the Company intends to determine if the prepay program is viable as it is implemented. As noted previously, DTE Electric is requesting \$12.6 million in costs to develop and implement the prepay program. While the Company is able to develop a prepay program “on the fly,” in order to obtain approval from the Commission, the asserted benefits must be established. DTE Electric did not do so.

Of particular concern is the lack of accountability for the program if approved. While DTE Electric states it will consult with Staff before making changes to the proposed program, nothing in the application or requested relief requires it to do so.

²¹¹ 2 Tr 180-182.

²¹² 2 Tr 204-207.

The Company chose not to include any information about the potential costs associated with the prepay program in this case. However, Mr. Hatsios confirmed that the Company is requesting approximately \$12.6 million in costs for the program and that these have been included in its rate case U-20836.²¹³ DTE Electric must establish benefits of the prepay program are commensurate with cost that are reasonable and prudent. Failure to provide this information prevents any meaningful cost benefit analysis of the program in this case. And because DTE Electric has the burden of proof, the failure to include costs in this case could be dispositive. The failure also undercuts the Company's assertion that benefits will manifest, and should lead the Commission to question whether the risks and costs of the program overshadow any alleged benefits.

This PDF also agrees that the interveners correctly argue that the alleged benefits of the prepay program are speculative, illusory, and not quantified, and that the Company did not establish they will support the substantial monetary and non-monetary costs of the program. While the Company touts lessons learned from the Pay As You Go pilot and other utility programs, no specifics are provided. And the Company did not even provide data concerning potential arrearage reductions or other potential benefit to rate base customers to justify the rate base expense.

The Company did not establish that real-time data is a benefit to customers or that such data will result in decreased energy usage. And, the alleged benefit of simplicity is not supported. The Company admits that some customers will be financially troubled. The interveners established that these are the customers who are

²¹³ 2 Tr 122-24.
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likely to make smaller payments and receive frequent notifications about low balances. Obviously, this will require more frequent payments. This is not simple.

Intervenors provided reliable testimony concerning the risks to low-income customers and PTVC. This PFD agrees that these customers are particularly in need of the protections afforded by the billing rules and agrees that the Company did not address the full scope of the risks of the prepay program. Soulardarity correctly asserts that DTE Electric has not presented appropriate data on how a customer actually achieves a reduction in energy usage. Soulardarity and other intervenors presented testimony that reductions may come as a result of “self-deprivation” or even dangerous behaviors. These customers are more at risk due to sudden increases in energy usage, such as weather extremes or a new medical condition and PTVC are targeted in the prepay program but have less financial flexibility and are at greater risk of shutoff due to lack of funds.

The intervenors appropriately argue that facing shut off in real-time is very different than the post-pay experience. Even if a customer is not financially troubled, an unexpected problem or medical emergency might prevent making payment in real time to avoid shutoff. This PFD notes that the billing rules afford a post-pay customer a period of 21 days to make payment, while the prepay customer must pay immediately upon reaching a zero balance and could be shutoff within one day.²¹⁴ This does not evince a benefit to the prepay customer.

²¹⁴ See Mich Admin Code R 460.123
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This PFD agrees with Soulardarity that the Commission should not allow PTVC or other financially troubled customers to participate in the program as these customers are the most likely to suffer the risks associated with the prepay program.

Like the interveners, this PFD questions whether the proposed prepay program is actually voluntary to financially troubled customer with limited means, facing shutoff. The evidence established that these customers could have no choice but to remain in the prepay program once enrolled due to limited funds and options. There is limited evidence concerning how DTE Electric's customer service representatives will assist these customers to fully understand the protections they may be forfeiting or the consequences of real-time shutoffs.

This PFD agrees with many interveners who argue the claimed benefits of the prepay program could be achieved without the risks linked to the prepay program. The Company did not provide any reason why the information from the prepay program cannot be provided to all customers. All customers paid for the installation and operation of the AMI system and for the development of the DTE Insight app. The Company and Staff argue that real-time information will benefit customers and lead to reduced energy usage. If true, real-time information should be available to all customers. And the Company confirmed the information could be available using the Insight app.²¹⁵

Accordingly, this PFD recommends the Commission deny DTE Electric's request to approve the proposed prepay program.

Finally, the Commission should deny Staff's proposal to approve the prepay program as a pilot. The Company did not make such a request. The Commission established objective criteria for approval of a pilot program and required a comprehensive plan be presented.²¹⁶ DTE Electric has not filed a plan or presented evidence to establish the required criteria.

However, this PFD respectfully suggests that the Commission could encourage utilities to present innovative proposals in individual cases rather than a rate case by giving some guidance as to its expectations as it did in Case No. U-20645.

C. Commission Approval of the Waiver of Consumer Standards and Billing Practices for Electric and Natural Gas Service

DTE Electric requests waiver of the billing rules in order to implement the proposed prepay program.²¹⁷ As noted above, the Company requests waiver of Rules 460.120(3), 460.129(4), 460.139(1), 460.139(6), 460.140(1), 460.140(2) and 460.143(1).

Approval of the prepay program is a condition precedent to DTE Electric's request for waiver of the billing rules and if the Commission denies the program as suggested in this PFD, the need for further analysis of the requested waiver may be unnecessary. But, in the interest of providing a comprehensive analysis, this PFD address waiver of the billing rules for the prepay program.

²¹⁶ See generally Case No. U-20645, October 29, 2020 Order.

²¹⁷ September 29, 2021 Application, p 2, number 7.

As noted above, in order for the Commission to approve DTE Electric's prepay program they are required to establish both 1) the waiver will further the effective and efficient administration of the rules, and 2) is in the public interest.²¹⁸

DTE Electric states the billing rules are designed for post-pay customers. The Company notes that prepay was defined and a placeholder inserted in the current ruleset with the expectation that utilities offering prepay would request the appropriate waivers.²¹⁹ DTE Electric argues:

The benefit to requesting waivers at this point is that, as we enroll customers in this program, we can capture learning and use those learning to inform the Billing Rule changes that would be forthcoming.²²⁰

DTE Electric then explains why specific billing rules are problematic for a prepay program but did not address the applicable criteria from Rule 460.101a(3) and in conclusion simply asserts the prepay program would satisfy the criteria.

Staff generally supports the Company's request for waiver of the billing rules because participation is entirely voluntary. Staff asserted the billing rules are designed for post-pay customers and the requirements therein "become unnecessary if customers are involved in prepay and receive periodic electronic notifications of their prepay balance or impending shutoff."²²¹ Staff detailed some anticipated effects of waiver and concluded they are not necessary for customers of the proposed prepay program.

The Attorney General and CUB argue the Commission should not waive the billing rules, as the Company barely mentioned, and has not established, either

²¹⁸ Mich Admin Code R 460.101a(3).

²¹⁹ DTE Electric Initial Brief, p 16, citing testimony of Ms. Forist at 2 Tr 222.

²²⁰ Id. at p 16.

²²¹ Staff Initial Brief, p 7.

requirement for waiver of the billing rules.²²² Based on the testimony of Mr. Bunch the Attorney General and CUB argue the Commission should be extremely cautious with the waiver of any billing rule. He stated:

The Company's requested waivers and the practices those waivers would allow would expose customers to shutoff risks with much less notice, weaken protections against shutoff when charges are disputed, and leave customers with little time to evaluate billing notices, access funds, and respond.²²³

They assert DTE Electric is requesting waiver for the convenience of implementing the proposed prepay program with the specifications it designed and state waiver of these specific rules will not "help effectuated the billing rules or make their administration more streamlined or well-organized."²²⁴ This argument does not address either of the required criteria.

Finally, the Attorney General and CUB point out that Rule 460.101a(3) provides: ". . . the commission may temporarily waive any requirements of these rules" ²²⁵ They argue that DTE Electric is requesting a permanent waiver of the billing rules and point to Mr. Hatsios' confirmation that there is no "sunset date" in the proposal.²²⁶ They argue, this fact is dispositive and requires the Commission to reject the requested waivers.

Soulardarity also asserts that the Commission should not approve the waivers requested by DTE Electric. Soulardarity argues the rules ensure vital services and provides notice of due process rights. They assert the billing rules provide valuable and

²²² Attorney General and CUB Initial Brief, p 26.

²²³ 2 Tr 237.

²²⁴ Attorney General and CUB Initial Brief, p 28.

²²⁵ Mich Admin Code R 460.101a(3).

²²⁶ Soulardarity Initial Brief, p 29; citing testimony of Mr. Hatsios at 2 Tr 112.

necessary protections for customers and assert the Company is requesting to waive rules that primarily protect financially vulnerable customers.

Soulardarity argues that DTE did not establish that either criterion was satisfied. They argue the prepay program could be implemented with the billing rules in place.²²⁷ Soulardarity argues “the Company’s requests go beyond changes necessary to implement a prepay program and that continuing to provide many of [the protections in the billing rules] would not impose a significant burden on DTE.”²²⁸

Soulardarity contends DTE Electric did not base its prepay program on customer demand and has not incorporated meaningful customer feedback into its proposed program.²²⁹ Soulardarity also point to the lack of details provided for the program and note DTE Electric is not bound to the implementation described in testimony and could make more restrictive changes to the program without Commission approval. This fact makes waiver of the billing rules more problematic because the protections forfeited could change without notice.

RCG argues against waiver of any of the billing rules. RCG argues that the record in this case clearly demonstrates the benefits of the prepay program could be provided without forfeiting protections for customers. Like other parties, RCG points out that Rule 460.101a(3) provides for a "temporary" waiver of billing rules. And pointing to the two criteria for waiver in that rule, RCG asserts the Company has not established that the waiver request for the prepay program will "further the effective and efficient

²²⁷ Id. at p 19.

²²⁸ Id. at p 16-17; citing testimony of Mr. Hatsios at 2 Tr 126-150.

²²⁹ Id. at p 23; citing testimony of Mr. Hatsios at 2 Tr 90-91.

administration of [the] rules" or that waiver "is in the public interest."²³⁰ RCG argues that the prepay program does not meet either of the criteria.

In reply DTE Electric argues that a "temporary waiver" of the billing rules will further the effective and efficient administration of the rules and is in the public interest but did not change its request for a permanent waiver. The Company argues the prepay program was designed to provide customers with similar, or additional, protections to those in the billing rules. DTE Electric states it is only requesting a waiver of the billing rules to implement its prepay program and the waivers will only apply when a customer is participating in the program. And DTE Electric argues that Staff's support should be given increased evidentiary weight, noting Ms. Forist's credentials.²³¹

Staff maintain its position that if the prepay program is approved, a waiver of the billing rules is necessary. Staff acknowledge that the billing rules only provide for a temporary waiver. If implemented as a pilot, Staff argue the waivers should be temporary and expire at the conclusion of the pilot program.²³²

The Attorney General and CUB criticize Staff's acquiescence to the Company's request for the waiver of the billing rules. They state Staff does not address the standard for waiver of the billing rules in any of its filings in this case. They argue that Staff simply argue that the waivers are necessary because the billing rules are designed for post-pay customers, which conflates approval for the program itself and approval for a waiver of the billing rules. The Attorney General and CUB assert Staff did not provide

²³⁰ RCG Initial Brief, p 3; citing Mich Admin Code R 460.101a(3).

²³¹ Id. at p 12-14.

²³² Staff Reply Brief, p 3.

any analysis or further discussion on the effects of waiver of the billing rules might have on customers.

Soulardarity also criticize Staff's support for the proposed waiver of billing rules and argues that such support is not dispositive. Arguing the Commission should reject Staff's position, Soulardarity states Staff's approval of a "proposal with such scant evidentiary support and so many crucial details left to the utility's unconstrained discretion is, in fact, troubling."²³³

This PFD finds that DTE Electric did not present sufficient evidence to establish either that the requested waiver of billing rules will further the effective and efficient administration of the rules, or that it is in the public interest.²³⁴ In fact DTE Electric did not present any substantive argument that the criteria in rule 460.101a(3) were met. Much of the evidence presented by the Company focused on the need to waive the rules in order to implement the prepay program. This argument does not satisfy either criterion.

DTE Electric and staff argue waiver of the billing rules is appropriate because the program is voluntary and could provide benefits to customers. While this argument might establish the program is in the public interest, it does not address the effective and efficient administration of the rules. This PFD agrees with Soulardity's assessment that simply asserting the prepay program is voluntary or might provide some benefits is not sufficient to establish the criteria for waiver of the billing rules.

²³³ Soulardarity Reply Brief, p 17.

²³⁴ See Mich Admin Code R 460.101a(3).

The billing rules are designed to protect customers and waivers should be carefully considered. As noted above the Attorney General, CUB and Souldardarity provide substantial testimony that the benefits of the prepay program are suspect, and that the prepay program could actually result in harm to vulnerable customers. Even if this PFD found the benefits exceeded the risks (and it does not), this fact would not establish the requested waiver will further the effective and efficient administration of the billing rules. DTE Electric did not argue that waiver of the requested billing rules will further, or even effect, administration of the billing rules. And, as many parties note, the potential benefits of the prepay program could be obtained without the rapid shutoff provisions which DTE Electric argues necessitate waiver of the rules.

This PFD agrees with the Attorney General, CUB and Souldardarity that Rule 460.101a(3) only provides authority for the Commission to waive the requested billing rules on a temporary basis. And Staff appeared to agree stating a temporary waiver would be proper for a pilot. DTE Electric requested the Commission grant permission to waive the rules on a permanent basis. And, while stating, in rebuttal, that a temporary waiver would be appropriate, DTE Electric did not alter its original request for a permanent waiver of the billing rules. This PFD recommends the Commission find that the explicit language of Rule 460.101a(3) prevents the Commission from granting DTE Electric's request for a permanent waiver of the billing rules.

Accordingly, this PFD recommend the Commission deny DTE Electric's request to waive the requested rules under the Consumer Standards and Billing Practices for Electric and Natural Gas Service; specifically Rules 460.120(3), 460.129(4), 460.139(1), 460.139(6), 460.140(1), 460.140(2) and 460.143(1).

IV.

CONCLUSION

This PFD recommends that the Commission adopt the following findings of fact and conclusions of law:

1. The appropriate standard of proof for approval of the prepay program proposed by DTE Electric in this matter is the reasonable and prudent standard.
2. The appropriate standard of proof for waiver of the billing rules is found in R 460.101a(3) and requires proof two criteria are met: 1) the waiver will further the effective and efficient administration of these rules and 2) is in the public interest.
3. Approval of the prepay program requested by DTE Electric in the September 29, 2021 Application in this matter should be denied.
4. Waiver of the billing rules requested by DTE Electric in that Application should be denied.
5. Deny approval of the prepay program as a pilot.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

**Katherine
E. Talbot**

Digitally signed by: Katherine E.

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Katherine E. Talbot
Administrative Law Judge

Issued and Served:
September 26, 2022

STATE OF MICHIGAN
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)	
) SS.	Case No. U-21087
County of Ingham)	
_____)	

PROOF OF SERVICE

Meaghan Dobie being duly sworn, deposes and says that on September 26, 2022, she served a copy of the attached Notice of Proposal for Decision and Proposal for Decision via email and/or first-class mail, to the persons as shown on the attached service list.



Meaghan Dobie

Subscribed and sworn to before me
this 26th day of September 2022.



Brianna L. Brown
Notary Public, Gratiot County, Michigan
My Commission Expires July 4, 2028

Case No. U-21087
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