STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of  
DTE GAS COMPANY  )
for a Gas Cost Recovery Reconciliation  )  Case No. U-17691-R
proceeding for the 12 months ending  )
March 31, 2016  )

PROTECTIVE ORDER

This Stipulated Protective Order governs the identification, restricted use, and disposition of nonpublic confidential information and materials ("Protected Material") so designated by DTE Gas Company ("DTE"), and disclosed by DTE to the Michigan Attorney General ("AG") and/or any other party to this case who receives it ("Party" or "receiving Party") including the Commission Staff, as set forth in this Order. Accordingly, IT IS HEREBY ORDERED THAT:

1. Protected Material:

   (A) For purposes of this Order only, "Protected Material" consists of confidential, proprietary, or commercially sensitive information made available for review, provided through discovery, any witness’s related testimony and exhibits, and arguments and filings of counsel, containing but not limited to information that could identify the bidders to the Park Arrangement including the winning bidder, copy of the contract for the Park Arrangement including the identity of the counter-party, Midstream fees/rates, Midstream capacity and uncommitted space and deliverability, facilities, equipment, infrastructure, energy market projections, forecasts, or financial arrangements including but not limited to those set forth in contracts or obtained under license from a third-party licensor to which DTE or its affiliate is a party or licensee, including
reports, analyses and other confidential, proprietary, or commercially sensitive materials that
DTE or its affiliate receives pursuant to such contracts, licenses, and other related trade secrets
and proprietary, commercial or financial information.

(B) Any information that DTE considers to be confidential shall be marked or identified by DTE as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER ISSUED MARCH 2017 IN CASE NO. U-17691-R.” Software executable files containing protected material may not be capable of being marked with the foregoing required protective language. The inability to mark software executable files containing protected material with such protective language shall not diminish the requirements of this Protective Order. It shall be sufficient if the medium used to deliver software executable files containing protected information is marked with the required protective language. However, any output from the software executable files containing protected material that is generated only a reproducible document, whether electronic or non-electronic, that is capable of being marked with the required protective language, shall be marked by the party who generated the output with such protective language and subject to the requirements of this Protective Order. This Order also protects and fully applies to any other materials that are made subject to this Order by the presiding officer, the Commission, and any other court or tribunal with competent jurisdiction, as well as any memoranda, handwritten notes, and any other form of information that copies, reproduces, or discloses such material or the information contained in it, all of which shall be Protected Material. All copies of Protected Material shall be conspicuously marked as Protected Material by the Party or the person authorized by the Party to make the copy. Notes of Protected Material shall be conspicuously marked as Protected Material by the person making the notes. All Protected Material in the possession of a Party shall be maintained in a secure place, with access limited to persons authorized according to this Order.
(C) DTE retains the right to seek and obtain further restrictions on the dissemination or use of Protected Material to persons or entities that have or may subsequently seek to intervene in this case. Nothing in this Order precludes DTE from objecting to any use of Protected Material.

2. **Access to and Use of Protected Material:**

(A) DTE’s release of Protected Material to the receiving Party is subject to the conditions that (1) DTE is legally permitted to disclose and provide the Protected Material to the receiving Party and (2) the receiving Party is legally permitted to receive the Protected Material from DTE. A Party may authorize access to and use of Protected Material by a Reviewing Representative identified by the Party, but only as necessary to analyze the Protected Material, make or respond to discovery, present evidence, consider strategy, evaluate settlement, and prepare testimony, cross-examination, argument, briefs or other filings in this case, including but not limited to any administrative or judicial appeals. Such individuals shall not release or disclose the content of Protected Material to any other person or use such information for any other purpose.

(B) All Protected Material made available pursuant to this Order shall be made available only to a Reviewing Representative, who may be only the following persons:

1. an author, addressee or originator of the Protected Material, but such person shall be a reviewing Representative only with respect to confidential information to which the person previously had access;

2. an attorney who has entered an appearance in this case for the receiving Party;

3. an attorney, paralegal, or other employee associated for purposes of this case with an attorney described immediately above, and who is acting at the
direction of that attorney, with that attorney being responsible for assuring that
persons under his or her supervision and control comply with this Order;

(4) an expert retained by the receiving Party for purposes of advising, preparing
materials for, or testifying in this case; and

(5) an attorney or other staff member of a Party with decision-making or
significant responsibility for the above-captioned case.

(C) Prior to the release of any Protected Material, including copies, reproductions, and
notes, to any individual identified above, the receiving Party’s legal counsel shall secure and
provide DTE’s legal counsel with an executed Nondisclosure Certificate in the form of the
certificate attached to this Order (see Attachment 1), by which a Reviewing Representative who
will be granted access to Protected Material acknowledges that he or she understands that such
access is provided pursuant to this Order, and that he or she will abide by and agrees to be bound
by the terms of this Order.

(D) DTE retains the right to object to any designated Reviewing Representative due to
a claimed unacceptable risk of misuse of confidential information. In the event of such an
objection, DTE and the requesting Party will attempt to reach an agreement to accommodate that
Party’s requested review. If no agreement is reached, then either DTE or the Party may submit
the dispute to the presiding officer. If DTE notifies a Party of an objection to a Reviewing
Representative, then the Protected Material shall not be provided to that Reviewing
Representative until the objection is resolved by agreement or by the presiding officer.

(E) Members of the Commission, the Commission staff assigned to assist the
Commission with its deliberations, and the presiding officer shall have access to all
Protected Material that is submitted to the Commission under seal.
(F) Protected Material shall be reviewed, used, and disclosed only by or to the persons authorized under this Order and only in accordance with the terms specified in this Order. The use, review, and disclosure of Protected Material are limited to this proceeding and any administrative or judicial appeals of this proceeding.

3. Procedures:

If a Party receiving access to Protected Material desires to incorporate, utilize, refer to, or otherwise use Protected Material in this case, then the Party shall do so only pursuant to procedures that will maintain the confidential character of the Protected Material, including without limitation the following:

(A) Written Submissions. If a party discloses Protected Material in pre-filed testimony, including any exhibit(s) to such testimony, briefs, pleadings or other written materials, then all such reference(s) shall be placed in a separate sealed record and designated as such. Simultaneously, public versions, which shall be identical versions of the documents but with the Protected Material redacted, shall be filed, offered, introduced or otherwise disclosed and served in the usual manner.

(B) Hearing Room and Filing Procedure. In proceedings before the Commission or presiding officer designated by it, oral testimony, examination of witnesses, and argument on the Protected Material shall be conducted on a separate record. These separate record proceedings shall be closed to all persons except DTE and authorized representatives of parties otherwise subject to this Order. If a Party intends prior to any evidentiary hearing for this case to use Protected Material in oral testimony, cross-examination or argument, that Party shall provide reasonable notice to allow the presiding officer an opportunity to take measures within his or her control to protect the confidentiality of the information.
(C) Seal. Copies of documents filed with the Commission that contain Protected Material, including portions of the exhibits, transcripts and briefs or other written disclosures that refer to Protected Material, shall be marked or identified as, “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER ISSUED MARCH 2017 IN CASE NO. U-17691-R” and shall be maintained in a separate portion of the record under seal, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order.

(D) Discovery. The procedures specified in this Order apply to all Protected Material provided by DTE pursuant to discovery requests made prior to, during, or after hearings in proceedings to which the Order pertains.

(E) Use of Sealed Information. Sealed information may be used as provided in this Order, and for the determination of this case and any administrative or judicial appeals of this case. Otherwise, no information under seal pursuant to this Order shall be used in any manner except pursuant to this Order, additional Commission order, or final order of a court of competent jurisdiction after notice to DTE and hearing, either unsealing such information or providing for the use of such information.

4. Preservation of Confidentiality:

No person who is afforded access to any Protected Material by reason of this Order shall disclose the Protected Material to anyone not specifically authorized to receive such information pursuant to the terms of this Order. Nor shall such persons use the Protected Material in any manner inconsistent with this Order. All persons afforded access to Protected Material pursuant to this Order shall keep the Protected Material secure in accordance with the purposes and intent of this Order and shall adopt all reasonable precautions to assure continued confidentiality, including precautions against unauthorized copying, use, or disclosure thereof.
5. **Scope of Order:**

The parties to this case retain the right to challenge whether a document or information is in fact Protected Material. This Order is not intended to and shall not be used as a precedent for any purposes in any other proceeding, nor does it alter any applicable burden of proof or persuasion pursuant to the laws of the State of Michigan in a dispute over whether materials qualify for protection.

A party seeking or intending to disclose in or on the public record information taken directly from materials identified as Protected Material must – before actually disclosing the information – do one of the following: (a) contact DTE’s counsel of record and obtain written permission to place the information in the public record; (b) take affirmative steps to confirm and actually confirm that the information is otherwise public information and within an exclusion in paragraph 7 of this Order; or (c) challenge the confidential nature of the Protected Material and obtain a ruling under section 10 that the information is not confidential and may be disclosed in or on the public record.

6. **Retention of Documents:**

(A) Within sixty (60) days of completion of these proceedings, including any administrative or judicial review, all documents containing Protected Material provided under the terms of this Order, including all copies of those documents and any notes or other materials prepared by or for a Party, shall be returned to DTE or destroyed. The obligation to return or destroy Protected Material shall be satisfied by these acts and filing of an affidavit that the Protected Material has been returned and/or destroyed. Counsel for the requesting Party or Parties may maintain a single confidential file of Protected Material subject to all other provisions in this Order. If the Protected Material is relevant or reasonably calculated to lead to
admissible evidence in a future Commission case, then it may be used subject to the issuing of a new protective order in that case. Counsel for the requesting Party or Parties shall have the right to retain copies of the pleadings, orders, transcripts, briefs, comments, and exhibits in these proceedings, but this Order will continue in effect with respect to the Protected Material contained in these documents.

(B) Even if no longer engaged in this case, every person who signed a Nondisclosure Certificate shall continue to be bound by it and this Order. The obligations of this Order shall not be reduced or extinguished by entry of a final order in this case, and shall be enforceable before the Commission and in a court of competent jurisdiction. To the extent Protected Material is not returned or destroyed, it shall remain subject to this Order.

7. **Inapplicability:**

The obligations of this Order shall not apply if the Protected Material;

(1) is or has become available to the public through no fault of the Party or Reviewing Representative, and no breach of this Order; or is otherwise lawfully known by the Party without any obligation to hold it in confidence; however, before disclosing a particular document or portion of a document as described above, the Party must first provide DTE with reasonable notice of not less than five (5) business days (best efforts) of its assertion that the document or portion of a document should not be subject to this Protective Order. The obligations of this Order shall not apply to any document or portion of a document that is approved for release by written authorization from DTE, but only to the extent of such authorization;

(2) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure, or is submitted to a regulatory
commission, agency or court of competent jurisdiction under a protective agreement or order; and

(3) is disclosed in response to a valid order of a court of competent jurisdiction or governmental body, but only to the extent of and for the purposes of such order, and only if the recipient of the order first notifies DTE to seek an appropriate protective order.

8. **Violation of Order:**

If a Party or person subject to this Order fails to maintain the confidentiality of Protected Material or otherwise violates this Order, the Commission (or the presiding officer, subject to review by the Commission as provided in R792.10433 of the Commission’s rules of practice and procedure or its successor rule) may impose sanctions upon the offending Party or person as deemed appropriate under the circumstances, which may include but are not limited to sanctions permitted under applicable provisions of the Michigan Court Rules.

Should a Party or any other person who has properly obtained access to Protected Material under this Order violate any of its terms, the violating Party or person must (a) immediately convey the fact of the violation to DTE and to the Commission, and (b) immediately notify the Commission, presiding officer, and DTE in writing of the identity of all persons known or reasonably suspected as having obtained Protected Material through any disclosure. Further, if the violation is improper disclosure of Protected Material, then the offending Party or person must take all necessary steps to remedy the improper disclosure or use.

A Party or other person who breaches this Order remains subject to sanctions regardless of whether DTE could have discovered the violation earlier than when it was actually
discovered. Also, the sanctions for any violation of this order apply to inadvertent or accidental violations, as well as intentional violations.

This Order does not limit any other rights and remedies available to DTE at law or equity against any Party or person using Protected Material in a manner contrary to this Order.

9. **FOIA Request:**

The Protected Material subject to this Order shall be shielded from disclosure to the extent permitted by law. If any person files a Freedom of Information Act ("FOIA") MCL 15.235 *et seq* request with the Commission seeking access to documents subject to this Order, then the Commission’s Executive Secretary shall immediately notify DTE, and DTE may take whatever legal actions it deems appropriate to protect the Protected Material from disclosure. If the Commission decides to deny a claim of privilege, in whole or in part, then the Commission shall give notice to DTE at least five (5) business days prior to the Commission’s contemplated disclosure in response to the request. The notice shall briefly explain why DTE’s objections to disclosure were not sustained by the Commission. In the event that the FOIA requester commences suit against the Commission to compel disclosure of a document for which privilege is claimed, the Commission shall immediately notify DTE of the suit.

10. **Termination of Protected Status:**

The Commission or any presiding officer designated by it may subsequently declare that the protected status of Protected Material should not be continued and immediately communicate that declaration to the parties in writing. If the presiding officer makes the foregoing declaration, then this Order shall cease to apply to such Protected Material unless, within fourteen (14) days, any party files a pleading with notice of hearing asserting forth that the information should continue to be protected and set forth the basis for that assertion. The movant shall bear the
burden of proving that the asserted Protected Material is entitled to continuing protection from disclosure. If the presiding officer finds at such hearing that an asserted Protected Material no longer qualifies for treatment as Protected Material, then it shall remain subject to the protection afforded by this Order only if the movant files an appeal to the Commission within (7) days following the issuance of the presiding officer’s ruling and shall remain subject to such protection until the issuance of the Commission’s order on such ruling. Any party opposing such appeal shall file their answer with the Commission within seven (7) days after the filing and service of the appeal. If the Commission affirms the presiding officer’s ruling, then the asserted Protected Material shall continue to qualify for treatment as Protected Material for an additional 21 days after the issuance of the Commission’s above order.

MICHIGAN ADMINISTRATIVE HEARING SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge
ATTACHMENT 1
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of
DTE GAS COMPANY
for a Gas Cost Recovery Reconciliation proceeding for the 12 months ending March 31, 2016
Case No. U-17691-R

NONDISCLOSURE CERTIFICATE

I hereby certify my understanding and agreement that access to Protected Material is provided to me pursuant to the Protective Order issued in Case No. U-17691-R. I have been given a copy of that Protective Order and have read it, and I agree to be bound by its terms and restrictions. I understand that DTE Gas Company (“DTE”) maintains that Protected Material, as defined in the Protective Order, includes information that is confidential, proprietary, or commercially sensitive. I understand that the Protected Material, including any notes or other memoranda, or any other form of information that copies or discloses Protected Material, shall be maintained as confidential, shall not be used or disclosed to anyone other than in accordance with that Protective Order, and shall not be used for any purpose other than in connection with Michigan Public Service Commission Case No. U-17691-R as set forth in the Protective Order.

Date: __________ Reviewing Representative:________________________________________

Title: ____________________________________________________

Representing: ___________________________________________________________________
STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN  )
County of Ingham       )
___________________________ )

PROOF OF SERVICE

Carol M. Casale being duly sworn, deposes and says that on March 9, 2017, she served a copy of the attached Protective Order via E-Mail, to the persons as shown on the attached service list.

Carol M. Casale

Subscribed and sworn to before me
This 9th day of March, 2017.

_____________________________________
Carol M. Casale

Corinna C. Swafford
Notary Public, County of Ionia acting in Eaton County, Michigan
My Commission Expires December 13, 2019
SERVICE LIST for Case No. U-17691-R

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