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October 5, 2017

Ms. Kavita Kale
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, Michigan 48909

Re: MPSC Case No. U-18248

Dear Ms. Kale:

Attached for electronic filing in the above-referenced matter, please find the Initial Brief on behalf of Energy Michigan, Inc., as well as the Proof of Service. Thank you for your assistance in this matter.

Sincerely yours,

VARNUM
Timothy Lundgren
Digitally signed by Timothy Lundgren
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Date: 2017.10.05 15:17:41 -04'00'

Timothy J. Lundgren

TJL/kc
Enclosures
c. ALJ
All parties of record.

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

****

In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341 for **DTE ELECTRIC COMPANY'S** service territory.	))))))	**Case No. U-18248**

INITIAL BRIEF
OF
ENERGY MICHIGAN, INC.

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Contents

INITIAL BRIEF OF ENERGY MICHIGAN, INC.

I. INTRODUCTION

This Initial Brief is filed on behalf of Energy Michigan, Inc. ("Energy Michigan") by its attorneys, Varnum LLP. Failure to address any issues or positions raised by other parties should not be taken as agreement with those issues or positions.

II. ARGUMENT

A. Statutory Requirements for a Capacity Charge

1. Setting a Charge for Non-Exempt AES Load Consistent with MISO Requirements

Section 6w(2) requires that under the present circumstances (i.e., the failure of the Federal Energy Regulatory Commission ("FERC") to put into effect a resource adequacy tariff that includes a capacity forward auction or a prevailing state compensation mechanism) the Michigan Public Service Commission ("Commission") "shall establish a state reliability mechanism under subsection (8)." MCL 460.6w(2). In the course of this process, "[a] state reliability charge must be established in the same manner as a capacity charge under subsection (3) and be determined consistent with subsection (8)." *Id.* Once the capacity charge is set, and no sooner than June 1, 2018, then "[t]he capacity charge must be applied to alternative electric load that is not exempt as set forth under subsections (6) and (7)." MCL 460.6w(3). Subsection (6) provides that the capacity charge "shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier ("AES") can demonstrate that it can meet its capacity obligations through owned or contractual rights to any resource that the appropriate independent system operator allows to meet the capacity obligation

of the electric provider." MCL 460.6w(6). This brief will not explore the issues associated with how capacity obligations may be met, as those are being addressed in another proceeding. However, these provisions are important for the determinations to be made in this proceeding, as they relate to how the capacity charge is to be applied once a determination has been made that a supplier has not met its capacity obligations for a particular planning year as set by the Commission. In the same way, the sentence in the statute immediately following the one last quoted is also critical: "The preceding sentence shall not be applied in any way that conflicts with a federal resource adequacy tariff, when applicable." *Id.* Thus, how the capacity charge is applied to suppliers must, by statute, be in a manner that does not conflict with the Midcontinent Independent System Operator's ("MISO") tariffs. In addition, the charge must *only* be applied to the portion of the supplier's load for that planning year that was not covered by its capacity demonstration: "The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective." *Id.*

2. Mechanics of Setting the Charge

If an AES does not meet the exemptions in 6w(6) and (7), then a "capacity charge" is to be assessed. Subsection (3) of Section 6w specifies how the Commission must make a determination of a capacity charge.

a. Requirements under Section 6w(3)

Section 6w(3) says the following:

> In order to ensure that noncapacity electric generation services are not included in the capacity charge, in determining the capacity charge, the commission shall do both of the following and ensure that the resulting capacity charge does not differ for full service load and alternative electric supplier load:

> (a) For the applicable term of the capacity charge, include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, regardless of whether those costs result from utility ownership of the capacity resources or the purchase or lease of the capacity resource from a third party.
>
> (b) For the applicable term of the capacity charge, subtract all non-capacity-related electric generation costs, including, but not limited to, costs previously set for recovery through net stranded cost recovery and securitization and the projected revenues, net of projected fuel costs, from all of the following:
>
> (i) all energy market sales.
>
> (ii) Off-system energy sales.
>
> (iii) Ancillary services sales.
>
> (iv) Energy sales under unit-specific bilateral contracts.

MCL 460.6w(3). This capacity charge therefore requires a calculation based on inputs to the utility's base rates. As Mr. Zakem points out, however, Section 6w(3) cannot be read in isolation from other applicable statutes. There is another legal principle from a controlling state statute that dictates how all energy-related rates are set, and that is the cost of service principle. See 3 Tr 389-390.

b. Compliance with Cost of Service Principles

Michigan's cost of service requirements are embodied in statute at MCL 460.11, and require the following:

> Except as otherwise provided in this subsection, the commission shall ensure the establishment of electric rates equal to the cost of providing service to each customer class. In establishing cost of service rates, the commission shall ensure that each class, or sub-class, is assessed for its fair and equitable use of the electric grid. [. . .] The commission shall ensure that the cost of providing service to each customer class is based on the allocation of production-related costs based on using the 75-0-25 method of cost allocation and transmission costs based on using the 100% demand method of cost allocation.

MCL 460.11(1). The principles enunciated here, which the Commission is required to uphold, include ensuring that rates equal the costs of proving service to a customer class, and that each class is assessed for its fair and equitable use of the electric grid. Therefore, if it should happen that the capacity charge calculated under the method provided by Section 6w(3) is substantially greater or lesser than the actual costs imposed on the utility by having to obtain capacity for Retail Open Access ("ROA") customers, then there would be a conflict between these two statutory provisions and the Commission, and perhaps the courts, would have to determine how to harmonize them. See, *Nowell v. Titan Ins. Co.*, 466 Mich. 478, 483, 648 N.W.2d 157 (2002) ("In such a case of tension, or even conflict, between sections of a statute, it is our duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them.").

B. What is Capacity?

The core issue throughout Section 6w of PA 341, the technical conferences, and case no. U-18248 is "capacity." Capacity is the product that is required by MISO for resource adequacy, and is supplied, demonstrated, priced, replaced, shown, traded, offered, bought, and transferred. Effective implementation of Section 6w requires a uniform and consistent understanding of capacity shared by all the parties involved. Energy Michigan carefully explained "capacity" in its testimony as follows.

Mr. Zakem, citing the MISO tariff,[1] noted that MISO defines capacity as: "The instantaneous rate at which Energy can be delivered, received or transferred, including Energy associated with Operating Reserve, Up Ramp Capability, and Down Ramp capability, measured in MW." 3 Tr 377. He then explained this definition in simpler language as follows:

[1] MISO Module A - https://www.misoenergy.org/_layouts/MISO/ECM/Download.aspx?ID=19171

Q. What is capacity, in plain language?

A. Capacity is the rate at which energy can be converted from one form to another, ending with electricity, such as from coal to heat to mechanical energy to electricity. The rate at which energy is converted is called power, and electric power is expressed in Watts. A megawatt (MW) is one million Watts.

3 Tr 378. Therefore, capacity is not a physical generation facility or set of facilities, but rather an electric attribute of such facilities. Consequently, the cost or charge for capacity cannot necessarily simply be determined by adding up fixed costs of a set of generation facilities. Section 6w(3), in specifying the components of the SRM charge, does not call them "generation fixed costs," but rather "capacity-related generation costs." See, for example, MCL 460.6w(3)(a). Therefore, the costs to be included must relate to the cost of the electric "attribute," not simply tally fixed costs of generation plants. See 3. Tr 378. Various methods can be used to determine the costs of the electric attribute, "capacity," including the following:

a. the cost of "pure capacity" from the MISO "Cost of New Entry" or CONE (recommended by Staff and Energy Michigan),

b. the capacity portion of embedded costs of generation facilities determined by economic analysis (Constellation's "average and excess" method), or

c. the price of capacity in a competitive market (the MISO Auction Clearing Price).

Because Michigan's ratemaking principles require that the capacity charge be consistent with, and not different from, the cost of providing capacity service to the ROA customer class, which of these methods is most appropriate will depend upon how the utility will acquire the capacity to serve that customer class.

C. DTE's Proposed Tariff Changes in DTE's Retail Access Rider – EC2 - are Inconsistent with Michigan Law and the Commission's March 10, 2017 Order in this Proceeding.

1. DTE's Proposed Tariff Changes Beyond a SRM Are Outside the Scope of This Proceeding.

In his testimony, Mr. Zakem discussed several major flaws in the proposal from DTE Electric Company ("DTE" or the "Company"). Most notably are those issues that DTE addresses which are clearly outside of the scope of this proceeding, per the Commission's March 10, 2017 order ("March 10 Order"). The scope of this proceeding was purposefully focused by the Commission on establishing a state reliability mechanism ("SRM") and the "term of the SRM and the true-up methodology." March 10 Order, p. 20-21. Issues affecting capacity demonstrations and obligations were directed to be considered in the Staff-led Technical Conferences through Case No. U-18197. March 10 Order, pp. 19-20. DTE's numerous attempts to make fundamental tariff changes in its Retail Access Rider EC-2, such as "redefining the roles and responsibilities of the Customer, AES, and Company; terms and conditions for Return to Full Service; potential Firm Service Limitations and Transferring from Utility Capacity Service to Bundled Service", are beyond the scope of this proceeding, which was specifically limited to setting a SRM and the true-up methodology for the Company. 3 Tr 120. As Mr. Zakem noted:

> In aggregate, these changes are excessively complicated, violate just and reasonable ratemaking practices, and are unneeded under Energy Michigan's proposal. Energy Michigan is opposed to all changes in the EC2 tariff that are made to implement DTE's proposed SRM mechanism. Furthermore, many of the proposed DTE changes to EC2 relate to matters that are being addressed in the Section 6w technical work group and so should not be the focus of this proceeding. Energy Michigan is addressing many of these issues in that workgroup, pursuant to the Commission's direction in its May 11 and June 15 Orders in U-18197.

3 Tr 434. The Commission has recently stated that it will be opening a new contested case docket to consider capacity obligations and service requirements that were previously being

discussed in the U-18197 Technical Conference. Energy Michigan submits that tariff provisions that are not directly related to the calculation of the SRM capacity charge and true-up are beyond the stated scope of this proceeding and should be addressed in the forthcoming proceeding.

2. DTE's Proposed Duration of the SRM and Capacity Charge Would Violate Section 6w(2).

DTE asserts that "Section 6w(2) of PA 341 indicates that an SRM must be in place for a minimum of four consecutive planning years. However, the Company proposes that the SRM be in place indefinitely, and the associated capacity charge be in place for 30 years." 3 Tr 78. DTE cites no statutory law supporting its contention of an indefinite SRM and a 30-year capacity charge because none exists. While the Company provides hypotheticals for the exceptionally long duration of an SRM and capacity charge (generation capacity "could be scarce for an extended transition period") and proffers theories as to why such an extended duration could be appropriate ("the opportunity to apply a generation capacity charge should be available to the Commission for at least the minimum expected life of these new plants"), none of these reasons comport with Michigan's laws or Commission precedent. 3 Tr 78-79.

First, Section 6w(2) clearly states that, "[i]f the commission implements a state reliability mechanism, it shall be for a minimum of 4 consecutive planning years beginning in the upcoming planning year." There is no statutory requirement for an indefinite SRM nor for a 30-year capacity charge, and Michigan courts have held that one public service commission cannot bind a future commission. See *Consumers Power Co.* v *PSC*, 189 Mich App 151, 161; 472 NW2d 77 (1991). Therefore, no statutory law or case precedent supports DTE's suggested, lengthy SRM durations.

Furthermore, as Mr. Zakem testified, any significant, long-term SRM durations – including DTE's "indefinite" duration of the SRM or its proposed 30-year capacity charge

duration - are not needed under Energy Michigan's SRM proposal, due to the fact that, "Energy Michigan's proposal eliminates the need for such changes because AESs will always be paying to DTE their shares of the cost of any new capacity built or obtained by DTE within the zone, which in turn will maintain reliability in the zone. Therefore, discrimination between 'returning' Electric Choice customers and existing full service customers is not required." 3 Tr 435. Furthermore, DTE's proposed 30-year duration of its charge finds no basis in the language of the statute, and would in fact violate the legislative policy that sought to balance resource adequacy concerns against adverse customer impacts. As Mr. Zakem stated, "on its face, such an extended duration would be punitive to the customer by limiting the customer's choice of suppliers and would not represent just and reasonable ratemaking under cost of service principles." 3 Tr 436. As there is no statutory, case or Commission precedent to assert a 30-year capacity charge, DTE's requested 30-year capacity charge must be rejected.

3. DTE's Interruptible Service Rate for AESs Unable to Meet Capacity Demonstrations Violates State Law.

DTE seeks a tariff modification, in Retail Access Rider-EC2, that would force customers to be placed on interruptible service rates for an interim period if the customer's AES cannot meet its capacity obligations by procuring sufficient capacity. 3 Tr 120. DTE cites no statutory allowance for this "interruptible proposal," but rather seeks to put it in place to protect "existing customers' service quality" in the event there is a "capacity shortfall in MISO Zone 7." 3 Tr 105. This proposed tariff revision must be rejected for several reasons, including the fact that it is beyond the scope of this proceeding, as noted above, as it deals with capacity demonstration issues. It must also be rejected because it violates the law in several regards.

First, there is no requirement or even allowance for such an interruptible rate or service specified or contemplated in Section 6w. Certainly, the Company cites no controlling authority

for the proposed rate. In evaluating the Commission's jurisdiction and authority, courts have held that the Commission is a creature of statute with no inherent or common law powers, and that its jurisdiction in any instance must affirmatively appear in a statute before it can be invoked or exercised. *Taylor* v *Michigan Public Utility Commission*, 217 Mich 400, 402; 186 NW 485 (1922), *Huron Portland Cement Co* v *Public Service Commission*, 351 Mich 255; 88 NW2d 492 (1958). When determining the extent of the Commission's jurisdiction, courts also have stated that it is important to ascertain and give effect to legislative intent. *Franks* v *White Pine Copper Division, Copper Range Co*, 122 Mich App 177; 332 NW2d 447 (1982). Legislative intent is ascertained by looking to the language used in the applicable statutes, their subject matter, scope, purpose and any prior or related statutes. *Schoolcraft County Board of Commissioners* v *Schoolcraft Memorial Hospital Board of Trustees*, 68 Mich App 654; 243 NW2d 708 (1976), leave denied by 397 Mich 838 (1976). DTE's proposed interruptible rate is neither a SRM nor capacity charge. There is no mention of it in statute, nor was it contemplated through any legislative hearings. Furthermore, DTE's interruptible rate proposal fails to reflect any actual cost of service and is otherwise not linked to any direct cost of energy or capacity that is imposed on the Company. Rather, the interruptible charge appears to be a punitive charge to customers for an AES's failure to meet the Commission's capacity requirements. As DTE cites no basis for creating such an interruptible service and rate in conjunction with the SRM, its proposal must be rejected.

4. DTE's Proposed Customer Notification Requirements Regarding SRM Issues Violate Section 6w and are Punitive and Discriminatory.

DTE proposes that all choice customers notify and provide documentation to the Company by April 1, 2018, demonstrating that the customer's AES has secured sufficient capacity for the full SRM term of June 1, 2018 to May 31, 2022. If a customer fails to provide

such documentation, then the customers will be obligated to take full service or Utility Capacity Service from DTE for 30 years and be billed directly by the company for capacity.[2] These notification provisions are beyond the scope of this docket, are punitive and discriminatory, seek to insert a new customer standard that is not statutorily recognized and would result in slamming – or forced switching of customers without their consent. As Mr. Zakem stated, "Electric Choice has been in place in Michigan for over 16 years, and the return-to-service rules the Commission approved back in 2001 have worked well. If such rules are to change, the Commission should first require documented evidence of a problem with the existing rules." 3 Tr 435.

Moreover, as Mr. Campbell testified, DTE's notification provisions are punitive and discriminatory to customers who exercise their right under Michigan law to choose to participate in the Retail Open Access program:

> Foremost, DTE's proposal to require this notification from customers is overly burdensome to the customer. The 4,906 individual customers participating in electric choice in DTE's territory[3] should not be burdened with a new requirement to be the intermediary between the AES and the Company and provide documentation of information that is squarely with the AES. Further, under the Company's proposal, even if a customer's AES does in fact have sufficient capacity to serve the customer, but the customer fails to include that documentation in its notification to the Company or provide documentation to the Company's satisfaction, that customer will still be subject to the SRM for 30 years. The Company does not define in the tariff what the standard for documentation will be, and the Company does not have the authority to decide whether documentation of capacity under PA 341 is satisfactory or not. Finally, the Company's proposal assumes that AESs designate particular megawatts to particular customers, which is not how AESs (or the utilities, for that matter) manage capacity resources. The proposal is unjustly burdensome to AESs, as it appears to require an AES to create separate documentation for each and every one of its retail customers regarding its procurement of sufficient capacity to serve that retail customer, and provide that documentation to each retail customer.

[2] DTE Proposed Tariffs Exhibit A-12 Retail Access Service Charge, pp. 9-10.

[3] MPSC Status of Electric Competition in Michigan Report for Calendar Year 2016.

3 Tr 490. Mr. Campbell also stated that the Company's proposed requirement to return customers to Full Service or Utility Capacity Service for 30 years if the customer does not provide satisfactory documentation usurps the Commission's role of interpreting PA 341's capacity demonstration provisions and imposes a "customer by customer standard that is not present in PA 341." 3 Tr 491. Furthermore, Mr. Campbell points out that DTE's suggestion of returning a customer to Full Service regardless of his or her intent is in conflict with PA 341:

> PA 341 envisions that, at most, the utility could potentially provide capacity service for the customer while energy is provided by the AES. The law states:
>
> > An electric provider shall provide capacity to meet the capacity obligation for the portion of that load taking service from an alternative electric supplier in the electric provider's service territory that is covered by the capacity charge during the period that any such capacity charge is effective. [Citing PA 341 Section 6w(7)]
>
> The law plainly states that even load "covered by the capacity charge" would continue to be "taking service from an alternative electric supplier". To the extent that the Company proposes to put any AES customer back on full service, that proposal violates PA 341.

3 Tr 491-492. Finally, Mr. Campbell states that:

> DTE's proposal, if approved, would result in forced switching of customers without customer consent or supplier default. Forced switching without affirmative customer consent is often referred to as 'slamming.' DTE's proposal requires affirmative action on the part of customers to avoid forced switching for their capacity service for a term of 30 years. Under DTE's proposal, customers who do not provide DTE's requisite notice regardless of reason could be obligated to pay for capacity service to both DTE pursuant to tariff and their AES pursuant to contract. DTE's draconian proposal is unjust and unreasonable and to the detriment of the customers DTE purports to serve.

3 Tr 492.

DTE's notification provisions violate PA 341 in several regards, are punitive, discriminatory and could result in customer slamming. For all of these reasons, Energy Michigan submits that DTE's various notification provisions should be rejected.

D. Certain Aspects of DTE's Application and Proposal are Inconsistent with Michigan Law and Violate MISO's Tariff

1. DTE Fails to Take Into Account Michigan's Cost of Service Principles

DTE has failed to consider the impact of the State's cost of service statute, MCL 460.11, on the implementation of the capacity charge. As Mr. Zakem noted, the State's cost of service principles must be considered before a capacity charge can be implemented, and doing so necessitates that the costs paid by a customer class are equivalent to those imposed on the system by that customer class. As Mr. Zakem stated:

> DTE's testimony does not fairly consider the cost-of-service statute in calculating its proposed SRM charge. DTE asserts the MPSC must define a local capacity obligation, but does not give a reason why. DTE asserts that there is no conflict between the MISO tariff and the MPSC's "role" in "setting and enforcing compliance" with MISO standards, yet offers no specific situation or example." DTE's testimony continually warns that its proposal is designed for shortages of capacity, but offers only outdated and incorrect information regarding the possibility of such shortages.

3 Tr 394.

As Mr. Zakem demonstrates, "DTE ignores cost-of-service principles and the requirements of the cost-of-service statute. Thus, while DTE states that it will have to acquire <u>additional</u> capacity to meet any capacity requirements that it must take on under Section 6w, it still seeks to determine the cost of such additional capacity from the costs of <u>historical</u> <u>investment</u> in facilities that would <u>not</u> be providing the capacity service." 3 Tr 395 (emphasis in original). Thus, as Mr. Zakem notes, DTE's proposal would violate the State's principles of cost

of service if it were implemented as proposed. Instead, the capacity charge must be based on the costs of the newly acquired, incremental capacity, as Energy Michigan proposes.

2. DTE's Proposal Would Require it to Violate MISO's Tariff

Mr. Zakem also notes that DTE does not explain what authority it has to effectively remove the MISO PRMR obligation from another LSE and transfer that obligation to itself. See 3 Tr 404. The revisions to MISO's tariff that would arguably allow for such a transfer of obligation have been rejected by FERC. As Mr. Zakem testified, "the MISO tariff would need to be changed for DTE to accomplish these two tasks [i.e., removal of the PRMR obligation from another LSE and transfer of that obligation to itself], and such a proposed tariff change has already been denied by the FERC. Thus, DTE's proposal appears to be inconsistent with the MISO tariff." 3 Tr 405.

E. Energy Michigan's Proposals

The primary purpose of Section 6w, as the Commission has noted, was to establish a "new framework for resource adequacy in Michigan – that is, ensuring electric providers can meet customers' electricity needs over the long term." September 15, 2017, Order in Case No. U-18197 ("September 15 Order"), p. 5. Energy Michigan believes that this goal can be achieved best through a 2-part framework for resource adequacy that: (1) provides an opportunity for AESs to share the costs of new capacity added in the zone via a capacity sharing payment, and (2) which is then backstopped with the SRM capacity charge, which would apply if the AES does not have sufficient capacity for its load. AESs that participate in the new capacity cost sharing program will thereby ensure resource adequacy for their load, and will avoid the imposition of the costs of SRM charges, benefitting themselves and their customers. In all other

cases, the SRM capacity charge would be in place to unsure resource adequacy costs are covered. Energy Michigan's two-part proposal is explained below.

1. Cost Sharing for New Capacity

As the Commission has noted, the local clearing requirement ("LCR") in Michigan is currently being met and there is no immediate concern over a shortfall. September 15 Order, p. 40. As Mr. Zakem has testified, based on the utilities' own filings, Michigan is a virtually no electric load growth area, and there is no basis for assuming this will change in the foreseeable future. 3 Tr 429. We may also presume that the utilities will continue to build new plants as needed in order to satisfy their resource adequacy requirements.[4] The first part of Energy Michigan's proposal, then, involves a cost sharing mechanism for new resources added to address maintenance of resource adequacy in the zone (*i.e.*, newly built generation, PURPA contracts, etc.).

As Energy Michigan witness Mr. Zakem explains, MISO's Zone 7 will continue to meet its LCR with no additional capacity other than what is needed for replacement of retiring resources in Michigan, because of the following circumstances: (i) Zone 7 currently meets the MISO LCR, (ii) virtually zero electric growth is expected in Zone 7, (iii) utilities have sufficient capacity for full-service customers but no excess capacity, and (iv) utilities intend to replace retiring capacity to maintain sufficient capacity for full service customers. 3 Tr 408-409.

Consequently, meeting the LCR is more a question of financial responsibility than of electric reliability, with the concern being who will pay for the capacity utilities will obtain to continue meeting zonal resource adequacy. First, it must be recognized that ROA customers have <u>already paid</u> approximately $550 million for utility resources that did not provide any

[4] A clear example is DTE's recent application for a Certificate of Necessity for a 1,000 MW gas-fired power plant in U-18419.

services to ROA customers, but have provided capacity and energy for full-service customers. 3 Tr 408-409. Put another way, ROA customers have already paid for more than their share of the existing utility capacity that is enjoyed by full service customers. The question of further capacity investment by ROA customers only arises, therefore, when existing capacity is retired and replaced by new capacity. As Mr. Zakem points out, this makes maintaining the LCR a forward looking process, as issues of who should be paying only arise when new capacity resources are acquired.

a. What Resources Will Qualify?

Future resources that would count toward the maintenance of meeting the MISO zonal LCR would qualify for cost sharing under Energy Michigan's proposal. This would include new resources built within Zone 7, including plant improvement projects that increase capacity, new demand resources, and new energy optimization resources. All new resources eligible for cost sharing must be qualified as Zonal Resource Credits ("ZRCs") by MISO. In addition, the new resources must be approved by the Commission, either through the Certificate of Necessity process or an equivalent process that affords a review of the prudency and need for the resource.

Excluded would be the purchase of an existing resource, or the output of an existing resource, that is already functioning in Zone 7, because such a purchase does not add any capacity to Zone 7, but rather is merely a change of ownership. Also excluded would be a new resource built outside of Zone 7 or the purchase of an existing resource or the output of an existing resource from outside of Zone 7. Obviously, any resource outside of Zone 7 by definition cannot satisfy the LCR for Zone 7. 3 Tr 411-413.

b. What Costs Would be Shared?

The costs to be shared are the costs of the capacity – that is, an attribute of the electric output of the new resource, not the total cost of the new resource. In short, the utility should receive the capacity cost of a new resource, *i.e.*, MISO's Cost of New Entry ("CONE"). Since the utility will receive the Auction Clearing Price ("ACP") from MISO, the remaining cost of CONE – ACP would be shared pro-rata by all the load serving entities ("LSEs") in the utility's service area.

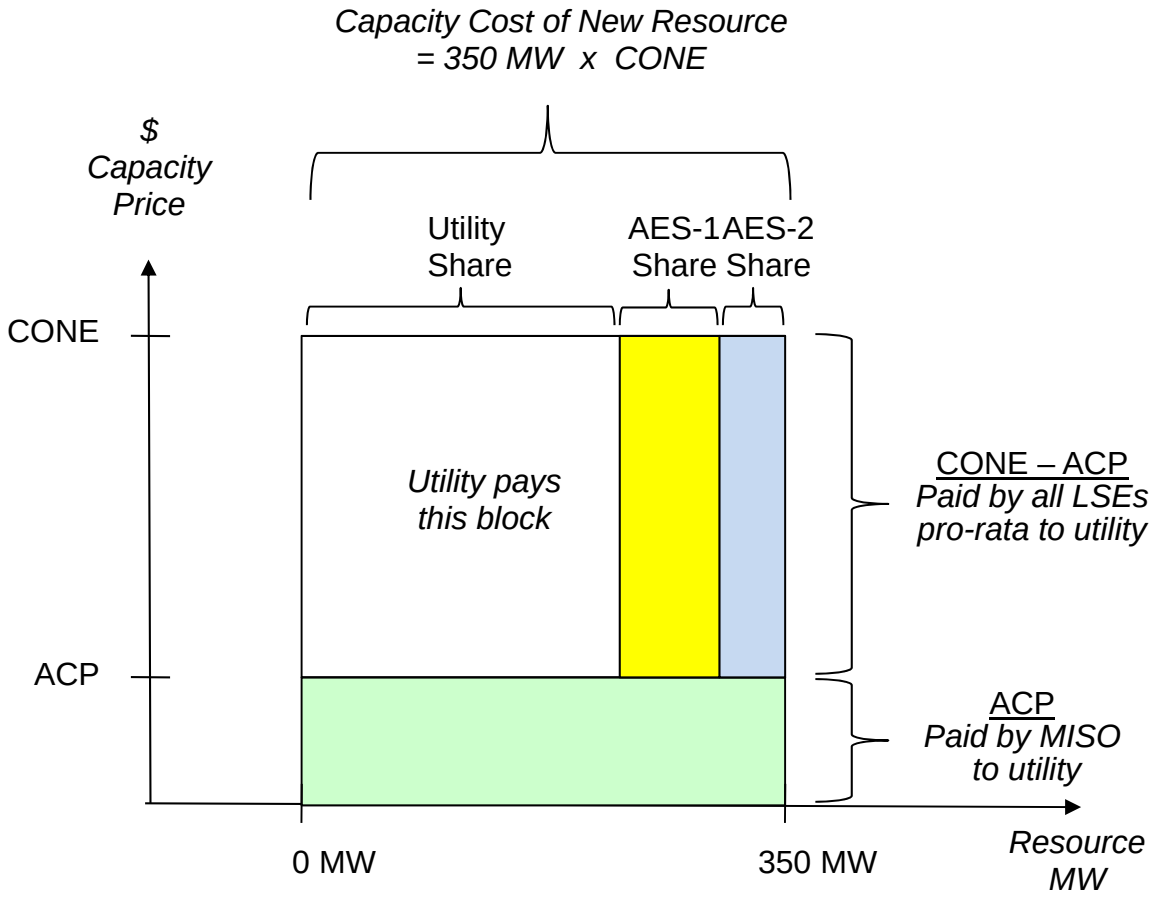
As Mr. Zakem explains:

> The cost to be shared is the cost of the capacity of the new resource, not the total cost. The total cost may be much larger to gain benefits such as lower fuel costs, lower emissions, greater reliability, *etc*. MISO, with approval by the FERC, has determined that the cost of new capacity is represented by the Cost of New Entry ("CONE"). This is an annualized cost of a combustion turbine, without subtraction for sales of capacity, energy, or ancillary services. The cost is determined by zone in MISO, and MISO files an update with the FERC each year. Calculation of CONE is governed by the MISO Tariff, Module E-1, section 69A.8. At present, the CONE in Zone 7 is $94,900 per MW per year.
>
> As described previously, MISO pays the Auction Clearing Price for each MW of ZRC to the owner of the ZRC. Consequently, if a utility builds a new resource, it will receive the ACP for the ZRC capability of the resource. The ACP may be well under the CONE, as it has been consistently for the last several years.
>
> Energy Michigan's proposal is that fair compensation for the capacity value of the qualified new resource should be the CONE. Since the building utility will receive the ACP from MISO, Energy Michigan proposes that the cost to be shared among the LSEs in the utility distribution area be the difference between the ACP and the CONE, or the quantity CONE – ACP for each ZRC MW, per year.
>
> This is an annualized cost, and the CONE – ACP charge would begin when the resource is first placed in service and would continue for as long as the new resource is in service.[5]

[5] Zakem Direct, 3 Tr 413.. Emphasis added.

Mr. Zakem describes the pro-rating method on pages 45-48 of his Direct Testimony. 3 Tr 415-418. Exhibit EM-3 illustrates the concept and Exhibit EM-5 shows a numerical example.

The diagram below is from Energy Michigan's Exhibit EM-3.



The example below is from Energy Michigan's Exhibit EM-5.

Scenario

IF:

- 94.7% Zone 7 LCR percent.
- 11,000 MW ~ DTE service area PRMR.

- $94,900 Zone 7 CONE, $ per MW-year.
- $38,690 Zone 7 ACP, $ per MW-year, = $106 x 365 days.

- 400 MW AES #1 PRMR.
- 300 MW AES #2 PRMR. Owns 100 MW within Zone 7.

THEN:

- 10,417 MW Service area share of LCR, = 11,000 x 94.7%.
- 379 MW AES #1 share of LCR, = 400 x 94.7%
- 184 MW AES #2 share of LCR, = (300 x 94.7%) – 100.

- Suppose DTE builds a new ~ 350 MW (ZRC rating) plant to replace a retiring unit.

Results

- Suppose DTE builds a new 350 MW plant to replace a retiring unit.
- Then

"LCR charge" = 350 x (94,900 – 38,690) / 10,417 = **$1,886 per MW**.

AES #1 owes utility $714,794 annually for its 379 MW share.
= $1,886 x 379 MW

AES #2 owes utility $347,024 annually for its 184 MW share.
= $1,886 x 184 MW

ZRC Credit

MW credit = MW new resource x (LCR AES / LCR area) x (CONE-ACP)/CONE

For AES #1 = 350 MW x (379 / 10,417) x (94,900 – 38,690)/94,900 = 350 x 3.64% x 59.2%
= 7.5 MW

For AES #2 = 350 MW x (184 / 10,417) x (94,900 – 25,550)/94,900 = 350 x 1.77% x 59.2%
= 3.7 MW

Energy Michigan's cost sharing proposal best accomplishes the goal of Section 6w, to "establish[] a new framework for resource adequacy in Michigan – that is, ensuring electric providers can meet customers' electricity needs over the long term." September 15 Order, p. 5. If Mr. Zakem's cost sharing proposal were to be adopted, then the goal of "ensuring electric providers can meet customers' electricity needs over the long term" would be met.

Nevertheless, if a LSE does not participate in paying for new resources, and therefore lacks the right to access a portion of the newly developed capacity in the state, and otherwise fails to obtain capacity necessary to meet the LCR, then a capacity charge, the "SRM charge" would apply. Energy Michigan has two proposals for how the SRM capacity charge could be assessed.

2. SRM Charge

a. Method A – CONE

Energy Michigan proposes that the SRM capacity charge – to be applied to those LSEs who do not sufficiently meet the capacity demonstration requirements as set by the Commission – should be the zonal CONE. In his Direct Testimony, Mr. Zakem explains why this is the appropriate charge:

> **Q. Why do you think that CONE is the appropriate price?**
>
> A. CONE represents the cost of a newly built capacity product that MISO defines as meeting capacity requirements. It is also the highest cost that can be seen in the MISO auction. As shown previously in my testimony, DTE has stated that if it has to acquire capacity for deficient LSEs, it will either buy in the MISO auction or build new. Thus, the CONE is in accordance with cost of service principles.
>
> Theoretically, if DTE were to buy in the auction, the cost of service price would be the Auction Clearing Price, which is less than or equal to CONE. Practically, however, pricing the SRM capacity charge for a deficient LSE at the ACP would make the deficient LSE financially indifferent to meeting its capacity requirement by paying the ACP to MISO or being

> deficient under PA 341 and paying the ACP to the utility. Therefore, charging CONE would provide an incentive to the LSE to meet its requirements through MISO while at the same time following Michigan's cost of service principles should the LSE fail to meet its requirements through MISO.[6]

As Energy Michigan has explained in its testimony, it must be recognized that PA 341 Section 6w is not the only statute that controls the pricing of utility service. While Section 6w(3) specifies the inclusion of "capacity-related generation costs included in the utility's base rates" and the exclusion of "all energy market sales," among other things, another statute, MCL 460.11, requires "rates equal to the cost of providing service."

Using the CONE follows the cost of providing service and so is in accordance with Michigan law. Mr. Zakem explains:

> In this context, "cost of service" does not mean "the Excel file the utility normally uses in its rate case." Instead, it means discerning the principles of reasonably allocating a number of individual and joint costs, fixed and variable, to the customers or classes that affect the incurrence of such costs.
>
> If it has to take on additional capacity obligations under PA 341, DTE has stated it intends to buy from the MISO auction or build new. It is not going to use its existing resources to provide for additional capacity obligations, and therefore the cost of existing resources may not be relevant.[7]

As long as the utility is purchasing from the MISO market whatever additional capacity it may need in order to serve the capacity needs of ROA customer load, as DTE has indicated that it sees no problem in doing,[8] then CONE is the appropriate capacity charge, as it reflects the

[6] Zakem Revised Direct Testimony, 3 Tr 420-421.

[7] Zakem Direct Testimony, 3 Tr 422 (emphasis added).

[8] 3 Tr 424.

highest actual cost the utility would ever have to pay to provide service to that particular customer class.

b. Method B – Larkin and EVA's Calculations

As Mr. Zakem discusses in his Rebuttal (3 Tr 441-442), a number of the parties in this proceeding begin with DTE's embedded costs and subtract various costs from that. Should the Commission favor this approach, then Energy Michigan supports the subtraction of full energy market sales as well as the other factors specified in Section 6w(3). Energy Michigan witness Mr. Ralph C. Smith summarized the recommendations that he and Mr. Jennings make following their analysis of DTE' data. Mr. Smith summarized this as follows:

> As shown on Exhibit EM-8 (RCS-2), I started with DTE's total capacity cost of $1.726 billion and added back DTE's projected energy sales revenue net of fuel cost amount of $44 million. DTE is projected to have $1.385 billion of energy market, off-system energy sales and ancillary service revenue. Net of related fuel costs of $801 million, the amount of net revenue less fuel costs is $584 million. The net capacity cost, determined by subtracting the $584 million net revenue amount from the $1.770 billion total capacity cost is $1.186 million. Dividing the $1.186 million by DTE's owned and purchased capacity of 12,158 MW produces an SRM capacity rate of $97,527 per MW-Year as shown on Exhibit EM-8 (RCS-2), line 14. The SRM capacity rate can also be stated as $267.20 per MW-Day, as shown on Exhibit EM-8 (RCS-2), line 15. As I previously noted, an SRM capacity rate of $267.20 per MW-Day results from a method based on traditional historical embedded costs of service methods. DTE Electric has proposed such a method, and my analysis preceding shows how it should be calculated. Again, such an approach is not being recommended by Energy Michigan, and the reader is referred to witness Zakem's Prefiled Direct Testimony in this matter in order to find Energy Michigan's recommended methodology and rate.

3 Tr 474-475.

The table below draws from Exhibit EM-7 discussed above, for ease of reference.

Line No.	Description	Total Amount (A)	Reference	(Millions of Dollars)
1	Capacity Costs Per Company	$ 1,726	Note A	
2	Add: Projected Energy Sales Revenue Net of Fuel Cost Per Company	$ 44	Note A	
3	Adjusted DTE Capacity Costs	$ 1,770		
	Less:			
4	Energy Market Sales	$ (1,369)	Note B	
5	Off-System Energy Sales	$ -	Note B	
6	Ancillary Service Sales	$ (16)	Note B	
7	Bilateral Energy Sales	$ -	Note B	
8	Revenue	$ (1,385)		
9	Related Fuel Costs	$ 801	Note B	
10	Net Revenue Less Fuel Costs	$ (584)		
11	Net Capacity Cost	$ 1,186	L1 + L8	
12	Owned and Purchased Capacity in MW	12,158	Note C	
13	SRM Capacity Annual Rate $ Million / MW-Year	$ 0.098		
14	SRM Capacity Annual Rate, $ / MW-Year	$ 97,527		
15	SRM Capacity Daily Rate, $ / MW-Day	$1,185,739,000 / 12,158 / 365	= $ 267.20 / MW-Day	

Notes and Source
[A]: Company Exhibit A-14
[B]: Energy Michigan witness Jennings, 2018 amounts
[C]: Company's 2016 SEC Form 10-K, pages 8

	Description	MW
16	Owned Generation	11,669
17	Long-Term Contracts for Renewable Power	489
18	Total Supply	12,158

Energy Michigan witness Rupert R. Jennings utilized and analyzed specific forecasted items included in PA 341, Section 6w(3), in coordination with Energy Michigan witness Ralph Smith, in order to calculate the capacity charge. As Mr. Jennings noted:

> The statute provides in subsection (3)(a) that the capacity charge may include the capacity-related generation costs included in the utility's base rates, surcharges, and power supply cost recovery factors, less the non-capacity-related electric generation costs from all of the following (i) all energy market sales; (ii) off-system energy sales, (iii) ancillary service sales, and (iv) energy sales under unit-specific bilateral contracts, as set forth in subsection (3)(b). EVA's specific scope was to forecast all items included in Section 3(b) which would then be utilized by Larkin to calculate a capacity charge.

3 Tr 479. Mr. Jennings provides his in-depth analysis of the various components of Section 6w(3) applicable to DTE, including his methodologies for: (1) developing the forecast of Energy Market Sales (3 Tr 480-484); (2) forecasting Off-System Power Sales (3 Tr 484-485); and Ancillary Service Revenues for DTE. Based on a DTE discovery response, Mr. Jennings stated that he was not forecasting any bilateral sales for the years 2017-2020. 3 Tr 486.

If the Commission chooses to adopt a capacity charge mechanism that relies on DTE's embedded capacity costs, then Energy Michigan recommends that the calculation above be adopted, as it most accurately reflect the subtraction of the various sales factors specified in Section 6w(3)(b). As Mr. Smith's analysis finds, the total SRM charge should amount to $267.20 per MW-day and should be used in place of DTE's proposal. 3 Tr 475. Just as with the CONE proposal explained above, this charge would be applied to those LSEs who do not demonstrate to the Commission sufficient capacity, either through participation in Energy Michigan's cost-sharing proposal otherwise.

3. DTE's Proposed Requirement for the Payment of an Initial, Mandatory Four-Year Capacity Charge for Any Single-Year Capacity Deficiency Violates Section 6w.

For any capacity deficiency, in any one of the first four-year SRM, DTE seeks to have the customer - not the AES – pay the SRM capacity charge, and the payment must be for the entire four-year period for the first four years that the SRM is in place, regardless of the year in which the AES has a capacity deficiency. 3 Tr 81. DTE cites PA 341 Section 6w(8)(b)(i)) for this alleged requirement. This is an incorrect reading of Section 6w(8)(b)(i). Contrary to DTE's position, Section 6w(8)(b)(i) allows the charge to be paid for "each" year of the deficiency, not the full four-year period. This is a plain reading of the statute and it is a practical one as well. Specifically, in order to avoid double-billing for any SRM charge, the SRM charge should only

be applicable for the delivery year in which the AES fails to meet the capacity obligation – not the entire four-year SRM period. As Mr. Campbell stated:

> Because the AES will be responsible in the eyes of MISO for its customers' capacity obligations, the AES will have to pay the Planning Resource Auction ("PRA") clearing price for that load in each MISO annual auction. In order to avoid double billing for capacity, the AES would be billed the SRM charge by the utility in an amount equal to the SRM minus the PRA clearing price for the applicable delivery year.

3 Tr 496. Mr. Zakem also posited that DTE misinterpreted Section 6w(8)(b)(i), stating that, "the question becomes, what are 'those planning years'? To me, the antecedent of 'those' is 'any' of the years that a capacity charge is required to be paid. That's why 'each' is in the clause, rather than 'all four.' But it doesn't say 'all four.' It says <u>each</u> of <u>those</u> planning years." 3 Tr 437 (emphasis in original).

Mr. Zakem also provided an example of the impractical effect of the reading Section 6w(8)(b)(i) as requiring a 4-year charge for a single year's capacity deficiency:

> In practical application, I will give an example of how interpreting the statute as paying in all four years even if deficient in one year leads to an irrational result. Suppose an AES's load is 100 MW, and it is deficient by 60 MW in year 2 and by 55 MW in year 3. Does it pay the capacity charge on 60 MW for 4 years plus the capacity charge on 55 MW for 4 years? That would be DTE's interpretation and proposal. If so, it would be paying for 115 MW for 4 years when its forecast load is only 100 MW. That would not make sense. And the additional rules to have this situation make sense not only would be complicated but also are not called for in the statute.
>
> Given the plain meaning of the statute, it would seem that a sensible interpretation for the Commission would be that, for the initial 4-year period, the AES should get one chance to demonstrate capacity and cannot, within that initial 4-year period, remedy a deficiency once it is declared. That is, for any year in the initial 4-year period that the AES has a deficiency, it pays the capacity charge for each of those years in which there is a deficiency. If the Commission were to make this interpretation, then (a) the AES is treated fairly – it must demonstrate or pay only for the years it is deficient; (b) the utility is treated fairly – no excess capacity

> charge collection is made if there is no deficiency in a year; and (c) the outcome is always sensible – no possibility of paying for more capacity than the AES has load.

3 Tr 437-437.

DTE's proposal for a multi-year SRM obligation also presents a problem of disparate rate treatment in the form of potential overbilling. In contrast, billing only for the applicable delivery year does not deprive DTE of the full SRM charge. As Mr. Campbell explained, "the utility is selling its capacity into the PRA and receiving the PRA clearing price, so when an AES pays the SRM less the PRA price it simply provides the utility with the remaining funds so that the utility receives the full SRM amount for the capacity used to serve the portion of AES load subject to the SRM." 3 Tr 496. Billing in this manner also ensures that billing for capacity by both MISO and DTE for the SRM amount "marry up as much as possible and occur during the same applicable delivery year." 3 Tr 496. Per Mr. Campbell, "the amount an AES is billed by the utility for the SRM should be apportioned to the AES's load the same way that MISO does it, but looking at the Peak Load Contribution ('PLC') of the AES's load for that delivery year (as established by MISO)." 3 Tr 496. For all of these reasons, billing should only occur for the applicable delivery year of the applicable SRM charge, not for a multi-year SRM period, as proposed by the Company.

4. In Order to Satisfy Section 6w(6), the Capacity Charge Must Be Managed and Paid by the AES.

DTE cites Section 6w(8)(b)(i) for the alleged requirement that "Choice load," i.e., the "customer" must pay any capacity charge – not an AES. 3 Tr 81. Energy Michigan asserts that this is not a correct reading of Section 6w(8)(b)(i), nor any other section of Section 6w. For other practical and fairness reasons, as well, the Commission should reject such a requirement placed directly on customers.

Section 6w(8)(b)(i) reads:

> (i) **For alternative electric load**, require the payment of a capacity charge that is determined, assessed, and applied in the same manner as under subsection (3) for **that portion of the load** not covered as set forth in subsections (6) and (7). If a capacity charge is required to be paid under this subdivision **in the planning year beginning June 1, 2018 or any of the 3** subsequent planning years, the capacity charge **is applicable for each** of those planning years. [Emphasis added.]

There is no mention of the "customer" paying a capacity charge in the above Section. The reference to "alternative electric load" is the description of the amount of load that the AES is covering. It is not a reference to "customers." A similar reference is used in other provisions of Section 6w. For example, Section 6w(6) states, in relevant part, "The capacity charge in the utility service territory must be paid for the portion of its load taking service from the alternative electric supplier not covered by capacity as set forth in this subsection during the period that any such capacity charge is effective." MCL 460.6w(6) (emphasis added).

Contrary to DTE's attempts to make the customer pay a capacity charge, the focus of the charge should be on the provider, not the customer. As Energy Michigan witness Mr. Lael Campbell noted, "AESs manage their customers' needs, and the resources to meet those needs, on a portfolio basis, no different than how the utilities manage a portfolio of resources to serve customers and do not designate specific resources to serve specific individual customers." 3 Tr 493. As Mr. Campbell testified, the above-cited statutory language "envisions this portfolio approach" when it allows an AES to only pay the capacity charge for the "portion of its load" for which it does not have sufficient capacity allocated. 3 Tr 493.

It is also important to note that allocating the capacity obligation, and therefore the capacity charge, to the AES rather than the customer is consistent with MISO's tariff, where the capacity obligation is on the AES and not on individual customers. 3 Tr 495. Further, as Mr.

Campbell notes, doing otherwise would have a discriminatory impact on AESs, as compared to the utilities: "It would also create an additional competitive disadvantage for AES[s] compared to the utilities, who have and will continue to serve their aggregate load through a combined portfolio of generation resources." 3 Tr 493.

There are also customer impacts to be considered when deciding who pays the capacity charge. If the customer itself were required to pay the charge because of the actions or inactions of its supplier, then the customer is being held responsible for actions it cannot control. If disputes arise about whether or not sufficient capacity was obtained, then the customer would be placed in the middle of these disputes and would bear the brunt of the consequences and substantial financial costs without being able to affect the result, as it cannot obtain its own capacity. Furthermore, as Mr. Campbell points out, "it places the responsibility for handling any potential regulatory disputes with the utility squarely with the AES instead of the customer, thus sparing the customer potential litigation costs." 3 Tr 495. Further, if the charge is billed through and managed by the AES, then the AES can continue to bill customers according to the contract between the AES and the customer, which may or may not include the payment of a SRM charge. Finally, allowing the AES the choice to spread the capacity cost across its load base and not requiring it to be applied on a customer-by-customer basis, allows the AES the opportunity to remove any potential discriminatory impact on individual customers, as otherwise some would have to pay the capacity charge and others might not. See 3 Tr 495.

It is not only consistent with the requirements of Section 6w for the capacity charge to be paid by the AES, but it is specifically required that this be the case. Section 6w(6) states that, "[a]ny electric provider that has previously demonstrated that it can meet all or a portion of its capacity obligations shall give notice to the commission by September 1 of the year 4 years

before the beginning of the applicable planning year if it does not expect to meet that capacity obligation and instead expects to pay a capacity charge." MCL 460.6w(6) (emphasis added). This language unequivocally establishes that it is the AES that should "expect[] to pay a capacity charge" and not the customer. Similarly, the capacity demonstration requirement under Section 6w is plainly the responsibility of the AES and not of the customer.[9]

Mr. Campbell provides one method for addressing, in practical terms, how AESs can be assessed the capacity charge for their load, which would likely require amendments to DTE's ROA tariff. There may be other means for addressing this situation. In any event, what is plain is that in order to be consistent with the requirements of Section 6w(6), any capacity charge will have to be able to be managed and paid by AESs and not by their customers.

III. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, Energy Michigan hereby respectfully requests that the Commission fulfill the statutory requirement to establish a "new framework for resource adequacy in Michigan" by implementing Energy Michigan's proposals for a capacity sharing mechanism and for an SRM capacity charge based on one of the methods outlined herein.

[9] See MCL 460.6w: "A capacity charge shall not be assessed for any portion of capacity obligations for each planning year for which an alternative electric supplier can demonstrate that it can meet its capacity obligations . . . ."

Respectfully submitted,

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*****

In the matter, on the Commission's own motion, to open a docket to implement the provisions of Section 6w of 2016 PA 341for **DTE ELECTRIC COMPANY'S** service territory.	))))))	**Case No. U-18248**

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF INGHAM)

Kimberly J. Champagne, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at Varnum LLP and that on the 5th day of October, 2017, she served a copy of the Initial Brief of Energy Michigan, as well as this Proof of Service upon those individuals listed on the attached Service List via email at their last known addresses.

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